

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “J” ON
LAND RIGHTS AND THE ENVIRONMENT**

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

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1. INTRODUCTION

The Technical Committee 'J' was mandated to deal with Chapter Thirteen (Environment and Natural Resources) and Chapter Fourteen (Land and Property Rights) of the Commission's Main Report. The Committee was also mandated to deal with Chapter Eleven (Land and Property) and Chapter Twelve (Environment and Natural Resources) of the Draft Bill of the Constitution of Kenya Review Commission. The Committee was composed of 62 honourable delegates, who represented various categories including Members of Parliament, District Representatives, Political Parties' Representatives Religious Organizations, Professional Organizations, Women's Organizations, Special Interest Groups and NGO'S. Honourable Prof. Saad Saleh Yahya was elected as the Convenor of the Committee. The Rapporteurs of the Committee were Dr. M.A.Swazuri and Dr. A.Nunow.

2. MANDATE AND METHOD OF WORK

2.1 Committee's Mandate

The Committee was established under Regulation 49 of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations; 2003. The Committee was mandated by the Conference under Regulation 49 (4) to deal with the Chapters Eleven and Twelve of the Draft Bill.

In addition, the Committee was mandated under Regulation 45 (11) to consider the contents of the Main Report and of the Draft Bill relevant to Land Rights and Environment.

Further, the Committee was mandated under Regulation 45 (15) to record a minority opinion of a minority vote, which shall constitute a report of the minority views.

The Rapporteurs to the Committee were mandated under Regulation 45 (8) to prepare the Report of the Committee. Further, the Rapporteurs were mandated under Regulation 45 (13) (b) to assist the Rapporteur- General in preparing a consolidated report for presentation to the Steering Committee of the National Constitutional Conference (NCC).

2.2 Committee's Method of Work

The Committee on Land Rights and Environment was guided by the Regulations to the Conference and the guidelines for the NCC ad hoc and Technical Working Groups.

The meetings of the Committee were chaired by the Convenor elected by the Committee members at its meeting in bomas 11, the committee elected Prof. Saad S. Yahya Del. No. 483 as its convenor. Whenever the convenor was not present members of the committee elected/ appointed another delegate to be the acting convenor. In some days during Bomas 111, for example, Dr. Daniel Ichangi, Del. No. 481 was elected to act as convenor when Prof. Yahya was away officially.

A Draftsperson, Mrs Lucy Masua, from the Attorney General's Chambers of Kenya was assigned to the Committee to guide the delegates in making amendments to the Draft

Bill. She was also required to capture all the amendments by the delegates and redraft the articles using the appropriate legal language.

Under Regulation 45 (5) of The Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2003 the Committee invited some experts from the Institution of Surveyors of Kenya who gave a presentation of their observations on Chapter 11 of the Draft Bill. Delegates debated on some of the issues that were raised by the experts and asked them questions. Later, a group of environmental experts were invited to make presentations on the environment, specifically targeting Chapter Twelve of the Draft Bill and Chapter Fourteen of the Commission's Report.

Some time was allocated for general debate where members from other committees were allowed to make contributions. Although some few delegates from other committees of the conference made such presentations, these did not generally alter the content of the two chapters. The Land Rights and Environment Committee in Bomas 111 also invited the Rapporteur General, Prof. Okoth-Ogendo and one draftsman Prof. Phil Knight to clarify some contentious issues in the final versions of the two chapters.

The Committee commenced its business by debating the Commission's Report from which the Draft Bill was drawn. This started in Bomas 11 in August 2003. The Rapporteurs took the delegates through the Commission Report and the report of the Rapporteur- General to the National Constitutional Conference.

The rapporteurs explained to the delegates the rationale behind the provisions in the Draft Bill. Further, they also gave clarifications on issues that the delegates did not understand and explained the rules of procedure governing the conduct of business in the technical committees. Finally, they informed the delegates that they were allowed to make amendments to the Draft Bill through written motions.

Usually, the Convenor would request the Rapporteurs to read out an article and explain to the Committee the rationale and reasoning behind the article. Most articles of the Draft Bill were adopted with amendments; some without amendments; others were passed on to other committees and others were introduced into the Draft Bill as new articles.

3. ANALYSIS OF ISSUES IN THE REPORT AND DRAFT BILL

The Committee used the Commission's Report as a guide in their discussions while the relevant Chapters (Eleven and Twelve) of the Draft Bill formed the main agenda for the Committee. The discussion of the Commission's Report took place within the first four sittings of the committee during Bomas 11.

The Convenor proposed five questions, which would guide the Committee in discussing the Report and Draft Bill of the Commission as follows:

- Is the Commission's Report an adequate representation of what Kenyans want and expect?
- Have all the important problems been addressed?
- Are there any glaring omissions?

- How can the Report be strengthened or improved?
- Does the Draft Bill reflect the Report's sentiments, if not how can it be improved?

Delegates discussed the contents of the Commission's Report and suggested areas of improvement and addition although they did not prescribe exactly how that should be done. The committee observed that the overemphasis on land ownership as the only viable natural resource had brought unending conflicts and controversies. They felt that definitions of "land", "natural resources" and "property" needed a fresh look.

They also suggested that land ceilings and taxing of idle land should have been shown in the Report with examples and statistics of their acreages and where found. The conflict between humans and wildlife over resources needed better solutions too. The Committee felt that the Report needed to be firm on the malpractices of land surveyors, other professionals and officers in the land sector.

The Committee proposed that idle land should be properly identified, distributed and utilized for the benefit of the country as a whole.

The Committee was concerned that local communities do not benefit from natural resources within their localities. They argued that management of these resources by the local communities and sharing of the benefits accruing from those resources needed to be brought out with examples and formulae. Most members called for participation of the devolved government in the distribution of revenue from local natural resources. They proposed that at least 50% of the revenue be expended for the benefit of the local people.

The delegates recommended that the issue of squatters, especially in the Coastal region, be resolved forthwith. They proposed that the government should find land and resettle such squatters as one way of resolving the issue.

The delegates expressed alarm that successive governments have continually ignored the plight of arid and semi-arid areas. They proposed that Kenyans should make better use of arid and semi arid lands. They thus urged the Government to urgently rehabilitate these areas and establish irrigation schemes and sinks boreholes to alleviate hardships in these areas.

There was a long debate on land lease period. Most members felt that the current lease period of 99 years was too long and should be reduced to between 15- 35 years for some categories, and 33 or 66 years for others. In fact delegates were emphatic that any land leases of 99 and 999 years be revoked and be renegotiated through devolved governments. Other delegates argued that the concept of leasing land should be scrapped and be replaced with a harmonized land registration system.

The Committee members urged the Government and relevant bodies / authorities to undertake thorough environmental assessment before licensing foreign investors. This would address the pollution problems that continue to plague the country. Further, they

proposed that stiff penalties be imposed on any investor who fails to meet certain environmental standards.

There was a heated debate on whether water sources should be owned by the community or public (the government). It was generally agreed that government control such water sources for the benefit of all.

The delegates proposed the need to address historical land injustices once and for all. Delegates proposed that land brokers be done away with and guidelines on land transfer be published. They suggested that people should live in designated areas and free more land for farming, because fertile arable land was being eaten up by human settlements.

The delegates strongly proposed the establishment of special courts /tribunals to deal with land disputes as current court systems take too long to decide on disputes on land and related property.

The delegates proposed that definition of intellectual property should include traditional herbs. They further argued that customary land law should be given formal recognition in the Draft Bill. The delegates expressed concerns on how women and children have been treated under the current common law and customary law. They thus urged the Government to amend the current law to enable women and children inherit land and other family properties. Some delegates raised the issue of widows who suffer a great deal as they find themselves with no place to live and no financial support since men control all the resources. For that reason, the delegates proposed that the government should offer assistance to such widows. In addition, matrimonial property should be registered in both spouse's names as a preventive measure.

3.1 General Discussions on the Draft Bill

The Committee was divided on the title of Chapter Eleven. Some preferred the existing title in the Draft Bill while others proposed that it be changed to "Land and Natural Resources" and still others wanted it to read as "Land, Other Natural Resources, Property and Environment."

Dr. Swazuri explained to the delegates why the Draft Bill had to have two chapters; one that deals with "Land and Property" and the other dealing with "Environment and Natural Resources". He cited the unique land problems in Kenya and the need to harmonize classification of land and natural resources including re-designing the concept of ownership of land as the main reasons for placing land and natural resources into two separate Chapters.

On Chapter Twelve on the environment, the Committee agreed to have a general debate before moving to specific articles. They emphasized the need for environmental conservation and protection. They called for general principles to ensure environmental protection, the right to enjoyment of a healthy environment and to put in place mechanisms to seek redress in the event of violation of environmental rights.

Some delegates felt that the Chapter should address the issue of forestry, water catchment areas, wildlife and disposal of waste products. Most delegates were in agreement that at least a certain percentage of any land held should be under trees, and this be made mandatory.

The committee felt that one of the reasons for environmental degradation was lack of environmental conservation awareness among the citizens. They called for community involvement in the conservation and protection of the environment.

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

4.1 General Recommendations on the Draft Bill

Members of the Committee gave their recommendations on both the entire Draft Bill and the two Chapters on Land and the Environment. On the Draft Bill, members recommended that the language of the clauses be simplified to be understandable to the ordinary person, issues to do with environmental rights needed to be harmonized to determine whether they were to be transferred to the Bill of Rights or maintained in the two Chapters relevant to the Committee.

They further recommended that rights over land and related property and rights on other property not related to land be separated and placed in different sections. There was emphasis that transitional mechanisms needed to be very clear on the type of legislation to be effected, the method of implementing the changes and the time durations for all these changes. In addition, there was need for harmony between the Transition Chapter and Chapters Eleven and Twelve.

It was generally agreed that definitions be addressed in the Chapter on Interpretation, but definitions relevant to the two Chapters be included in the said chapters as a means of giving reference. Members of the Committee had no objection to these definitions going to the Transition Chapter as long as they do not get lost.

4.2 Specific Recommendations on or Annotation on the Draft Bill

Majority of delegates recommended that Chapter Eleven be re-titled as “Land, Other Natural Resources and Property.” The delegates felt that such a title would also consider land as a natural resource. A few other delegates recommended the retention of the title of the chapter as it is in the Draft Bill. Some delegates recommended that Chapter Eleven and Chapter Twelve of the Draft Bill be consolidated together to form a single chapter. In the end, it was agreed to have Chapter Eleven as “Land and Property” and Chapter Twelve as “Environment and Natural Resources”

The delegates recommended that Article 238 be renumbered to be Article 232 (1) because the definition of land contained therein should precede any other article on land. Some delegates recommended the adding the word “6ft” after the word “deposit” to amend the article.

Some delegates proposed that Article 232(1) be amended by inserting the words, “preserves the fertility of its soils,” after the words, “which” in order to clarify the true meaning of the provision and to capture the spirit of the provision.

On article 232(2), the delegates recommended involvement of devolved government in the review of a national land policy.

On Article 232(2)(b), some delegates recommended that the words, “in good faith” be deleted while others recommended that the words remain. They argued that the words were difficult to implement.

Article 232(2)(e)

Some Committee members proposed that this article be transferred to Chapter Twelve because it clearly touches on environmental issues. The delegates further recommended that the article define the words, “ecologically sensitive areas.” However, the article was adopted without amendments.

Article 232(2)(f)

Delegates proposed that this article provides for the establishment of special courts or tribunals to deal specifically with land disputes.

Some delegates recommended further that the word, “culturally” be added after the word “socially” to amend the article. Some delegates felt that there was need to have land disputes resolved at the lowest level and for such bodies to comprise of members from that locality who understood the history and ways of the people in that region. There was also mention of the need to have arbitrators from those areas, one delegate was of the opinion that three quarter of these members must be women as they were more sensitive and were less corrupt able.

A new article 232 (2) (g) was adopted which called for elimination of gender inequality in all spheres to read “Elimination of gender discriminatory laws, regulations, customs and practices related to land.”

Articles 233 (1) (2) (3) were adopted without amendments. A new article 233 (4) was adopted to address the concern of delegates on the issue of non- citizens who already own freehold interest in land. The article read “Where on the coming into force of this constitution, any person not being a Kenyan citizen had a freehold interest in any land in Kenya, that interest or right shall revert back to the Republic of Kenya to hold on behalf of the people of Kenya, and the state shall grant to that person a lesser right or interest at a peppercorn rent not exceeding a ninety-nine year lease.”

Article 234 (2) (a) was amended by replacing cap 301 with cap 280 for the reason that the Government Lands Act is cap 280 and not cap 301. Article 234 (2) (b) was adopted without amendments.

In article 234 (2) (c), the words “land declared to be vacant.” were deleted. The delegates argued that the government would mis-use the phrase to declare any land in their interest as vacant land. The sentence after the word “surrender” was formulated into two new articles as article 234 (2) (d) and (e). The amended article 234 (2) (c) read, “all land ceded to the people of Kenya by way of reversion, or surrender.”

The new article 234 (2) (d) was adopted to read, “land in respect of which no individual or community ownership can, by process of law be established” while article 234 (2) (e) read “land in respect of which no heir can, by ordinary process of law be identified.”

The original articles 234 (2) (d) and (e) in the draft bill were renumbered as articles 234 (2) (f) and (g) respectively and adopted without amendments.

On Article 234 (2) (e), delegates complained that water bodies had been used to generate electricity but the local communities do not benefit from these resources. They also called for the involvement of the local people in the exploitation of these water bodies.

On the original article 234 (2) (f), delegates were concerned that beaches were only open to tourists while Kenyans are not allowed access to the beaches. They recommended that the Article be amended by adding the following words after the word “sea-bed” “including all beach land between the high and low water marks” This was to ensure that foreshore remains public land. The article was however renumbered as article 234 (2) (h) and adopted with amendments to read “the territorial sea and sea-bed, including all beach land between the high and low water marks.”

A new sub- article 234 (3) (i) on definition of community was adopted to read “Community” means indigenous Kenyans citizens who reside in a specific geographical area irrespective of their ethnicity and culture.

Articles 234 (3) (a), (b), (c), and (d) were adopted without amendments. A new sub-article 234 (3) (e) was adopted to read “land currently held as government forest and is occupied by hunter-gatherer minority communities as their ancestral land.”

A new provision Article 234 (3) (f) was adopted to read “All natural resources under local authorities and communities should be managed by them for the benefit of the communities and future generations”. Delegates lamented that in the past, the government has exploited the natural resources without sharing the revenue with the communities. They argued that the local communities be involved in the preservation of such natural resources.

A new sub- article 234 (4) was adopted to read “Any unregistered community land shall be held in trust by devolved governments on behalf of the communities.”

The original article 234 (4) in the draft bill was renumbered as article 234 (5). Articles 234 (5) (a), (b), (c) were adopted without amendments. The original article 234 (4) was deleted.

On Article 235 (1) (a), delegates called for involvement of the devolved government in holding public land in trust for the people while the National Land Commission would act as an ombudsman office for protection of public land. The amended article read, “Public land is the collective property of present and future generations and shall vest in and be held by devolved levels of government in trust for the people under the oversights of the National Land Commission as the Ombudsman office for the promotion, protection and fulfillment of the enjoyment of rights in public land.”

Article 235 (1) (b) was adopted without amendments. Articles 235 (2) (a), (b) and 235 (3) were adopted without amendments.

Delegates recommended that a clause be inserted in Article 235 (4) that shall subject the government to enact law within two years into coming into force of this constitution to address the issues in Article 235 (4) (a). Articles 235 (4) (a) (i) (ii) (iii) (iv) (v) (ix) were adopted without amendments while the original article 235 (4) (a) (x) was renumbered as article 235 (4) (a) (xi) and adopted without amendments.

On Article 235 (4) (a) (vi), delegates proposed the addition of the words “physical planning” after the word “effective” and “establishment of land courts in the context of devolved authorities” after the word “including”. Delegates observed that the current physical planning Act was not being enforced. They also complained that land cases take a long time in courts because most judges were reluctant to hear the cases. Therefore, they called for establishment of land courts. The amended article reads “the establishment of an efficient and cost effective physical planning and land administration system including the establishment of land courts in the context of devolved government.”

The committee recommended that the word “squatters” and “rural “ be inserted in article 235 (4) (a) (vii) .The settlement of squatters was seen as a way of poverty reduction. Delegates lamented that the issue of squatters had contributed to the increase of the Aids scourge. The amended article read, “the settlement of the landless and squatters including the rehabilitation of spontaneous settlements in urban and rural areas until a solution is found.”

Some delegates recommended for a new Article 235 (4) (a) (x) be inserted to provide for access to land for development by investors. Most delegates supported this provision and it was adopted to stand as part of the Draft Bill to read “the establishment of a land bank to facilitate availability and accessibility of land for research and development.”

Other delegates were concerned that some individuals have large pieces of land that are idle while others do not have any land at all. They proposed for the setting of the maximum and minimum land holding in arable areas. This was adopted as a new Article 235 (4) (a) (xi) to read “setting of the maximum and minimum sustainable land holding in arable areas bearing in mind the productive potential and location of the land.”

A new sub- article 235 (4) (a) (xiii) was inserted to provide protection and unfettered access to all public land. The article read, “the protection, conservation and unfettered access to all public lands such as riparian, road reserves and beaches for leisure and enjoyment.”

Article 235 (4) (b) was amended to read, “enact laws for”.

Article 235 (4) (b) (i) was adopted without amendments.

Delegates called for the involvement of the devolved government in the review and management of national parks. They argued that local communities should benefit from the national parks located in their areas. This provision was adopted as Article 235 (4) (b) (ii) to read “the review of boundaries and management of national parks and animal sanctuaries with a view to creating opportunities and benefits for the local people in the context of devolved government.”

The original article 235 (4) (b) (ii) was renumbered as article 235 (4) (b) (iii) and adopted without amendments. On Article 235(4) (b) (iii) words “provinces as known before the commencement of this Constitution” were added. The rationale was that boundaries may be altered with the new devolved units.

On Article 235 (4) (c), the delegates called for consultation of the devolved authorities in determining the cut -off date for the unjust expropriation of land. The amended article read, “Parliament, in consultation with devolved authorities, shall determine the cut-off date with reference to which the review required in paragraph (b)(iii) is to be conducted.”

Some delegates recommended that those companies who exploit the natural resources whether public or private should share a part of their profit with the local authorities for the development of the communities where these resources are found. This was further amended and adopted as a new Article 235 (4) (c).

Article 236 (1) and (2) were adopted without amendments.

Article 236(2)(a)

Some delegates proposed for the addition of the words “environmental conservation including the conservation of indigenous species” after the word “public health”. They complained that people had neglected the indigenous seeds and plants and yet foreigners continue to exploit them.

Some delegates proposed Article 236(2)(b) be amended by inserting the word, “community”, after the word “person.”

Article 236(2)(c)

Delegates proposed that this article be amended to provide for adequate compensation in form of land of equivalent value in addition to monetary compensation in the event of

compulsory acquisition of land by the state and a disturbance allowance of 80 % of the market of the land even if the aggrieved persons have no title deeds.

Article 236 (3) was renumbered as article 236 (3) (a) and adopted without amendments. A new article 236 (3) (b) was inserted to control unplanned land use in urban areas. The article read “Regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten (10) years in consultation with devolved governments.”

A new article 236 (3) (c) was introduced to give the original owner of land the chance to regain their land after acquisition if the land is no longer needed for public purpose. The new article read, “Provide for surplus land or land no longer needed for public purposes after acquisition, to be offered to the original owner on first refusal basis.”

A new article 236 (4) was adopted to ensure that every person who owns private land holds a title document to his/ her land. The article read “Any person who owns private land has a right to hold a title document for his/her land and to have an appropriate entry in a land registry.”

On article 237, most delegates strongly felt that the National Land Commission should be devolved to the lowest level of government. Some supported the devolvement of the National Land Commission to the district level. However, others maintained that there was no need of being specific since they were not sure of the levels of the government that would be adopted by the Committee on Devolution. Some members were of the opinion that it is impracticable to devolve the Land Commission to all levels of government. What is required is to have the services of the Commission available at all levels of government.

On the same article, most delegates recommended that the National Land commission be listed among other Constitutional Commissions in chapter Seventeen. Still, others called for gender equality in appointments in the National Land Commission. Dr. Swazuri brought the attention of the committee to Article 281 that provides at least a third of the members of a Constitutional Commission shall be women.

On Article 237 (2) (a) the general view was that the National Land Commission should not hold title to public land since it has been vested with the management of the same. They feared that there would not be fair redress incase of mis appropriation/ misuse of land. The article was however adopted without amendments.

Articles 237 (2) (a) (d) (i) were adopted without amendments.

On article 237 (2)(b) some members were opposed to the administration of public land by the land commission. Commissioner Nunow explained to members that public land included residual land, land bought by the government and local authorities for public use and hence the need to manage and administer such land.

However, a new clause 237 (2) (b) was adopted to read, “To monitor and have oversight responsibilities on the administration and management of public land.” This article was meant to give the commission the overall powers in the administration and management of land.

On article 237 (2) (c), some members felt that the role of defining land policies should be left to the government of the day and that the lands commission should left to review the national land policy. However, the article was adopted without amendments.

A new article 237 (2) (e) was adopted to read, “conduct research and make recommendations to improve the functions of Government Ministries and agencies in charge of land.” This was to ensure beneficial research on land.

A new article 237 (2) (f) was adopted to read, “initiate investigations on its own, or upon a complaint from other person(s) or institutions on land injustices both present and historical and ensure appropriate redress.” The committee commended that the commission should have the power to prosecute and recommend on land injustices.

On the functions of the National Land Commission, some delegates especially the male delegates proposed the upholding of the customary law by the National Land Commission. This was strongly opposed by the female delegates who felt that customary law discriminates against women in land matters. However, those who argued in favour of customary law explained that customary law is one of the sources of Kenyan law. The concept of customary law was captured in a new article 237 (2) (g) to read “facilitate the participation of communities in the enactment of relevant land laws and adherence to customary law in land matters as long as such laws are not inconsistent with this constitution.”

The Committee also proposed that the National Land Commission should have responsibility over national land use and planning.

The Committee debated on definition of the term “Community”. A sub-committee, which had been assigned to look for definition, proposed the following definition. Community means “ ‘indigenous’ Kenyan citizens who reside in a specific geographical area irrespective of tribe, ethnicity and culture.”

A few delegates felt that the word ‘indigenous’ was discriminatory; consequently they called for the deletion of the word in order to promote unity, fairness and social cohesion. Majority proposed the retention of the word “indigenous” which they argued that it would help to guard against foreigners encroaching on our resources. However, they cautioned that the term should not be mistaken as being discriminatory among the Kenyan tribes.

The convenor observed that the difficulty in defining the word “community” was occasioned by the fact that the word itself is dynamic and that not all Kenyans are black. However, the definition of the word “community” was adopted as proposed by the sub-committee and renumbered as article 234 (3) (i).

A sub- committee of seven members was formed to look at Chapter Twelve on the environment. Its membership was

Hon. (Dr.) Daniel Ichangi (481), Convenor
Hon. (Prof.) Wangari Maathai
Hon. (Dr.) James Koske (371)
Hon. Nduta Kiarie (465)
Hon. Gachara Muchiri (111)
Hon. Odenda Lumumba (458)
Hon. William Ole Yiaile (361)

The Terms of Reference (TOR) to the sub- committee as given by the committee were as follows:

1. To Propose amendments aimed at improving the form, content and quality of Chapter 12 in light of current policies and legislation, e.g. E.M.C.A., forest Bills and Sessional Paper No.6/1999.
2. Address the question of natural resources and propose appropriate improvements in a context of Chapters 11 and 12.
3. Harmonize Chapters 11 and 12.
4. Consider and advise on draft articles in other Chapters, which are relevant to land, natural resources and environment taking into account resolutions already made regarding Chapter 11.

The Sub Committee noted with strong reservations that Chapter 12 in the Draft Bill entitled 'Environment and Natural Resources' starts with the subject of 'Environmental Protection' in Article 239. The Sub Committee agreed that there were other crucial aspects that needed to be highlighted in this Chapter before the subject of 'Environmental Protection' could be given consideration.

The Sub-committee proposed a motion that “environment” should be included in the Preamble of the Constitution. The Sub-Committee agreed that this motion would be forwarded to the Technical Working Group “A” (Preamble, Supremacy of the Constitution, etc). There was consensus however that Article 241 in the Draft Bill be deleted or drastically reduced/re-written concisely. The proposed draft on Chapter Twelve as proposed by the sub- committee was as follows:

CHAPTER 12 – ENVIRONMENT

DEFINITION

Article 239 (New Article)

Article 239(1) Environment is the totality of nature and includes physical and biological component and factors, which exist, operate and interact within it.

Article 239 (2) The state shall ensure sustainable management of the environment since it shapes our cultural diversity and supports life in all its diversity.

PRINCIPLES

Article 240 (New Article)

Article 240 (1) Every person has a duty to respect, protect and safeguard the environment for the benefit of present and future generations of humans and other species.

Article 240 (2) The State shall respect the integrity of natural processes and ecological communities, and the intrinsic value of all forms of life and shall take all reasonable measures to ensure that natural resources are used in a prudent and sustainable manner which ensures conservation of habitats and species for the benefit of present and future generations.

Article 240 (3)

The State shall keep in constant review all existing international treaties and agreements on environment and natural resources to ensure the sovereignty, integrity and welfare of Kenyans.

Article 240(4)

The state including the devolved authorities shall manage the environment based on principles of good governance to ensure conservation and sustainable utilization of the environment and its natural resources.

Article 240(5)

The state shall ensure that social and cultural values traditionally applied by communities in Kenya for the sustainable management of environment and natural resources are observed in so far as they are not repugnant to justice and morality and are not in conflict with this constitution.

Article 240(6)

Within two years of the coming into force of this Constitution, Parliament shall;

(i) enact laws requiring reclamation and rehabilitation of degraded areas and stoppage of further excision of conservation areas including forests, national parks and reserves, and water catchment areas.

(ii) Ensure that a land use policy is put in place to protect agricultural land against sub-division, soil degradation and

erosion, and unplanned utilization of agricultural land for settlement.

Article 240(7) Environmental considerations in all aspects of natural resource management shall be incorporated in the ownership and title of land to ensure protection and conservation of ecosystems including forests, marine resources, wetlands and catchment areas.

Article 240(8) The state shall ensure that every landowner shall have at least fifty (50) trees per hectare of land held.

ENVIRONMENTAL RIGHTS

Article 241(1) Every person has a right to a clean and healthy environment.

Article 241(2) Every person has a right to participate in the conservation and protection of the environment.

Article 241(3) Every person has a right to access and enjoyment of the environment.

ENVIRONMENTAL PROTECTION

Article 242 (New Article) - (See Article 239 in the Draft Bill)

Article 242(1) The state at all levels of Government exercising a power or performing a function involving the management of the environment shall have regard to sustainable development including public participation.

Article 242(2) The state at all levels of Government exercising power of performing a function involving the management of the environment shall be guided by the need to:

- (a) protect genetic resources and biological diversity including wildlife and intellectual property related to them.
- (b) protect the intellectual property and indigenous knowledge of communities.
- (c) Practice, encourage and require waste minimization and recycling.
- (d) Establish and ensure the effective functioning of a system of environmental impact assessment that:

- (i) applies to any project or combination of projects, including government projects, likely to have a significant impact on the environment or natural resources;
 - (ii) is open and gives opportunity for public participation.
 - (iii) Is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project.
- (e) establish systems of environmental audit and monitoring; and
- (f) ensure that environmental standards enforced in Kenya are the accepted internationally developing standards.

Article 242(3) Parliament shall enact legislation to protect the intellectual property rights and indigenous knowledge of local communities in genetic resources ensuring prior informed consent of the communities and benefit sharing arrangements through devolved governments.

NATIONAL ENVIRONMENT MANAGEMENT COMMISSION

Article 243 (New Article) - (Refer to Article 240 in the Draft Bill)

Article 243(1) (a) There is established the National Environment Commission consisting of a Chairperson, Deputy Chairperson, and eight (8) other members nominated and appointed in accordance with the provisions of Chapter 17 of this Constitution.

Article 243(1)(b) The National Environment Commission shall be devolved to the lowest level of Government.

Article 243(2) The National Environment Commission shall:

- (a) Ensure the protection, conservation and management of the environment.
- (b) Monitor and have oversight responsibilities on the administration of the environment and land use planning.
- (c) Audit and produce bi-annual report on the state of the environment.

- (d) Promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring proper management and rational utilization of the environment and its natural resources.
- (e) Monitor and evaluate the implementation of the National Environment Policy.
- (f) Examine new and emerging technologies and inventions to determine their impact on the Kenyan environment and put in place the institutional framework for operationalization of such functions.
- (g) Conduct research and make recommendations to improve the functions of Government Ministries and Agencies incharge of the environment and natural resources.
- (h) Initiate investigations on its own, or upon a complaint from other person(s) or institution(s) to ensure appropriate redress.
- (i) Examine resource use patterns and practices to determine their impact on the quality of the environment and to take remedial measures.

Article 243(3) The Commission with approval of Parliament shall promote and facilitate public participation, discussion and input before international conventions, treaties and agreements that have consequences on the environment are ratified.

ENFORCEMENT OF ENVIRONMENTAL RIGHTS

Article 244(1) Every person whose environmental rights are being or are likely to be contravened has the right and duty to seek redress to:

- (a) prevent, stop or discontinue any act or omission which is harmful to the environment.
- (b) Compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment.
- (c) Provide compensation for any victim of such violations of environmental rights and other losses.

Article 244(2) Every person bringing an action under this Article has a right to seek redress even if the person cannot show that the act, omission

or infringement has caused or is likely to cause that person any personal loss or injury.

Article 244(3) There is established a special court for the environment.

ENVIRONMENTAL LEGISLATION

Article 245 Upon the coming into force of this Constitution, Parliament shall enact legislation to give effect to the provisions of this Chapter.

After presentation by the sub- committee to the whole Committee, it was agreed that the proposed draft be analyzed article by article and thereafter, they would move a motion to adopt all the articles as amended.

A member of the sub –committee took the committee through the proposed draft. The committee emphasized on the need for the inclusion of environmental values in the preamble .The convenor asked the rapporteurs to write to the committee dealing with the Preamble on the issue.One of the rapporteurs informed the committee that the committee on preamble had already finished their work. He therefore suggested that the issue could either be referred to the Rapporteur General as a crosscutting issue or the same could be presented at the floor of plenary by way of motion.The committee commenced their debate on the proposed draft.

Article 239(i) &239(ii)

Some delegates proposed an addition of the word emerging phenomena to the definition of Environment to cater for future changes therein. Majority observed that the words ‘totality of nature’ already catered for any changes within the environment.

There was an argument as to whether article 239(2) should be merged with 240(4). Some members opposed that move as it could result in losing meaning to both articles.

The committee then resolved that the aspect of cultural diversity in article 239(2) be incorporated in the definition of environment.

Article 240(1)

Some delegates suggested that the word ‘shall’ be used in place of ‘has duty’. Others were opposed to the word “every person”, A commissioner clarified that the responsibility to respect, safeguard and protect the environment is vested upon all legal persona whether individuals or corporations and that the same should not be limited.

One delegate wondered whether a hostile environment to human beings would still be conserved. The convenor responded by referring to the phrase “.... for the benefit of present and future generations of humans” in article 240(1), which addressed the question.

Article 240(2)

Some delegates felt that the article was a duplication of article 240 (4). Some felt that the state had to be made particularly responsible for the environment and that habitats and species should be brought out clearly as components of the environment.

Article 240(3)

On this article, the committee felt that important aspects of treaties and agreements had been left out. A commissioner pointed out the example of bilateral treaties, which are not International treaties. Delegates called for the inclusion of both the international and bilateral treaties. A delegate argued that the word "current" would be restrictive and called for the replacement of the word "current" with the word "future". Another delegate clarified that the word current takes care of any future treaties.

Article 240(4)

Although it had been earlier suggested that this article be merged with article 239 (2), consensus was reached to replace the "and" with "including".

Article 240(5) – Was adopted with an amendment, the word "Kenya" was deleted.

Article 240 (6)

The article had been previously differed to enable one of the rapporteurs to consider and incorporate a number of issues including: boundaries of national parks, maintaining of rights and privileges that already existed by legislation, dumping of toxic wastes, ocean beds, lakes and rivers, urbanization, livestock, agricultural land, tourism and harmonizing the existing article 240(6)

The sub- committee's article 240 (6) stated, "Within two years of the coming into force of this constitution, parliament shall;

- (i) Enact laws requiring reclamation and rehabilitation of degraded areas and stoppage of further excision of conservation areas including forests, national parks and reserves, and water catchment areas.
- (ii) Ensure that a land use policy is put in place to protect agricultural land against sub-division, soil degradation and erosion, and unplanned utilization of agricultural land for settlement.

The committee embarked on analyzing the article as reformulated by the rapporteur.

Article 240 (6) as reformulated read, "Within two years of the coming into force of this constitution/upon enactment of this constitution, parliament shall:

- (i) Enact laws requiring reclamation, rehabilitation and sustainable utilization of beaches, flood prone areas, degraded areas including ASALS and any other such threatened environment.

On this sub- article, the rapporteur was more inclined to use the words "upon enactment of this constitution" in place of "within two years of the coming into force of this constitution" this was agreeable to all the members.

On article 240 (6) (ii), the formulation by the rapporteur read, "enact laws for the stoppage of further excision of conservation areas including forests, national parks and reserves, beaches and water catchment areas."

There were two formulations of this article

A. enact laws that will conserve forests, national parks and reserves, beaches and water catchment areas and promote eco tourism”

B. enact laws for the stoppage of further excision of conservation areas including forests, national parks and reserves, beaches and water catchment areas, unless such excision is consistent with the principles of sustainable management and community benefit.”

A, was more inclined to conservation while B was on stoppage of excision. Some delegates were not contented since the local communities were not allowed to benefit. Others proposed the merger of A and B but to others there was no need to link national parks and reserves and wild life to excision.

There were two issues to be dealt with in this article namely, stoppage of excision of conservation areas and conservation. Some delegates suggested the addition of the word “unwarranted” before “excision”. Others held the view that there has to be a provision for changing of boundaries when it is a matter of necessity. The words “stop further excision depicted rigidity which could be against the interest of Kenyans. Others were against alteration of boundaries of national parks as it could give leeway for encroachment on the same. Still others felt that the provision was inadequate since it will not benefit local people as management of national parks is wholly by the government. One member referred the committee to article 235 (4) (b) (ii) which had been passed earlier concerning reviewing of boundaries of national parks. He cautioned against potential conflict with the foregoing. A delegate suggested the addition of the words “to enhance” after the word “principles” in article 240 (6) (ii). Most delegates were in agreement with the proposed amendment. Another member sought for the definition of the word “sanctuary”. In response, one of the rapporteurs informed the member that such definitions would be captured in legislation.

Article 240(6) (iii).

The formulation by the rapporteur read,

“Ensure that environmental policy is put in place to protect agricultural and range lands against flooding, soil erosion and unsustainable sub-divisions, soil degradation, soil erosion and the dumping of toxic and hazardous wastes.”

It was agreed that the issue of toxic and hazardous wastes would be included in another substantive article. Some members felt that the article should not be limited to floods since there are other disasters. A delegate emphasized on the inclusion of the aspect of unplanned land use as part of environmental protection. However, the article was amended to read, “Ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation.”

A motion was moved to add a sub-article on hazardous wastes, radiations, minority groups and urbanization. The motion read: “Disposal and storage of environmentally undesirable substances including hazardous wastes and ammunition shall take into account the requirements for a clean, safe and healthy environment.” A delegate suggested that the ‘polluter pays’ principle ought to have been captured in the sub-article. This was agreeable and article 240(6) (iv) was adopted with amendments to read:

“Shall enforce the disposal and storage of environmentally undesirable substances including hazardous wastes and ammunition take into account the requirements for a clean, safe and healthy environment and the polluter pays principal.”

Article 240(6) (v) read,

“Emission of harmful radiation and noise into the environment shall be regulated to meet the requirements of a safe and healthy environment” Some delegates wanted to include noxious gases in this sub-article but one felt that it would be a repetition.

Article 240(6) (vi) read,

“Planning and utilization of the environment shall take into account the needs of minority persons including people with disabilities.”

Some members proposed replacement of the word “minority” with “marginalized”. Others proposed the use of the words “disadvantaged minority persons” their reasoning was that minority could be the rich therefore the need to be more specific. Consensus was reached and the article was adopted with amendment to insert the word “disadvantaged” before minority.

Article 240(6) (vii)

A member proposed a motion on urbanization policy to read,

“Put in place an urbanization policy to promote the orderly development of urban areas and other human settlements for the benefit of all residents.”

A delegate felt that the above was a duplication of an earlier article on physical planning but others felt that there was the need to put emphasis on the urban environment. However, the article was adopted with amendments to read: “put in place urban environmental policy to regulate human settlement.”

There was an issue about the establishment of the office of the Commissioner of Environment. The committee proposed that the Human Rights Commission should comprise of an Environment Commissioner to deal with environmental rights pursuant to article 288(e) of the constitution.

Article 240(7)

On this Sub-article, the committee acknowledged the fact that land owners have to be made responsible for protection of environment. The words “range land” were inserted in the sub-article.

Article 240 (8) – There was a debate on whether the number of trees had to be specified. Some delegates felt that 50 trees per hectare were too many. Most delegates called for a tree planting or environment day and research of the appropriate species of trees to be planted in different areas. However, the article was adopted as proposed by the sub-committee.

On the proposed article 240 (9), most delegates called on the government to irrigate the arid and semi arid land (ASALS). They explained that 80 % of land in Kenya has been neglected which has led to food shortage in the country. However, a delegate was of the

opinion that the effect on arid and semi arid areas (ASALS) was due to degradation on the arable land. She urged the committee to look at environment in totality.

On article 241 (1), delegates called for remedial measures in case of violation of environmental rights. They called on the state and the devolved government to provide a clean and healthy environment.

On article 241 (2), a delegate proposed the replacement of the word “right” with the word “obligation”. One of the rapporteurs noted that articles 242 (1) and 242(2) were the same. Therefore, he proposed the merging of the two articles into a new article 242 (1). A new article 242 (1) (a) was adopted to ensure participation and involvement of the public in environmental protection.

Article 242 (2) (b)

A delegate proposed the insertion of the words “and enhance” after the word “protect”. In article 242 (2) (d), a delegate suggested the insertion of the word “negative” after the word “significant”. Most delegates were of the opinion that all projects should undergo Environmental Impact Assessment. Therefore, they proposed the deletion of the sentence after the words “government projects”. A member proposed the addition of the words “adequate” and “active” in article 242 (2) (d) (ii). In article 242 (2) (d) (iii), a delegate called for the provision of remedial measures.

On article 242 (1) (c), a delegate proposed the insertion of the words “research findings”. The article was amended to read, “Protect and enhance the intellectual property and indigenous knowledge of communities and research findings”

On article 242 (2), a delegate suggested that arts and artifacts should be part of the intellectual property. Some members proposed the addition of the words “bio-diversity and” after the words “communities in”

On article 243 (1) (a), a delegate called for the replacement of the word “is” with the word “shall”. Another delegate was concerned whether the proposed National Environment Commission would be included among other constitutional commissions in chapter seventeen. On the same issue, a delegate sought clarification on how the sub-committee came up with eight members of the environment commission. In response, the convenor explained that it is provided for in article 281 (1) which states that a constitutional commission shall consist of not less than three and not more than ten members at least one-third of whom shall be women.

On article 243(2)(b), one delegate was of the opinion that the National Environment Commission would not handle both administrative and monitoring responsibilities. A delegate explained that the commission would monitor and have oversight of all the other organs like National Environment Management Authority (NEMA) The article was adopted as proposed without amendments.

Article 243(2)(c)

The general feeling amongst the delegates on this article was that environmental reports should be made accessible to the general public and at the devolved levels.

Article 243(2)(d)

There was no much debate on this particular article and the same was adopted without amendment.

Article 243(2)(e)

One of the rapporteurs posed a question as to who would formulate the policy/policies on environment. Some members felt that this should be left to the government of the day while others were of the opinion that the government could be too busy to formulate policies. He cited an example of the Ministry of Land that had undertaken to formulate a land policy that was never forthcoming; He proposed that since the national environment commission was an organ of the government it could formulate the national environment policy in consultation with the government of the day. The Article was adopted with the aforesaid amendment.

Article 243(2)(f)

A rapporteur proposed the deletion of the word Kenyan from the sub-clause to avoid restricting it to the Kenyan environment. Members were in agreement with the proposal and the word “Kenyan” was deleted. The article was adopted as amended.

Article 243(2)(g)

There was a heated debate on this article with delegates expressing the need to limit research conducted on the environment. They argued that such research should only be conducted with the approval of the stakeholders. On the same sub-clause, some members proposed the deletion of “natural resources” while others commended its retention. Iude it. The words were however retained. And the article adopted as amended.

On article 243(2)(h), one of the rapporteurs proposed the deletion of word “to” and the insertion in place thereof the word “and”. There was no debate on the proposal and the article was adopted as amended. Article 243(2)(i) was adopted without amendment.

A new sub-clause 243 (2) (j) was adopted to read, “promote environmental education and ensure access to information and public participation.” The delegate who proposed this article explained the need for national appreciation of the importance of environment, other members concurred saying that once people were aware of the importance of the environment, they would willingly conserve and protect it.

A new sub-clause 243 (2) (k) was adopted to read, “promote peaceful and harmonious co-existence among communities through just, equitable and rational sharing and utilization of the environment and its natural resources.” one delegate appeared to have a problem with the phrase just, equitable and rational sharing and utilization of the environment arguing that corrupt officials would use the phrase to further their interests. Another delegate proposed the addition of the words “subject to the rights of local communities.” He explained that the phrase was meant to safeguard the interests of the local communities. Most delegates felt that the phrase was appropriate since there had been encroachment on the local people where natural resources in their localities are

exploited without any benefit accruing to the local community. The sub- clause was adopted as amended.

A new sub- clause 243 (2) (1) was adopted to read, “Recommend to Parliament effective and efficient policies and programmes to protect and promote sustainable management and utilization of the environment and its natural resources.’ This article was adopted without amendments.

A new sub- clause 243 (2) (m) was adopted to read, “perform any other function as provided for by law or are incidental and conducive to the exercise of its duties as provided for this constitution. A member felt that if the functions were to be prescribed by the government it would contravene article 278 in Chapter 17 of the constitution thus the committee resolved to delete the word “government” and replace it with “law”. This article was adopted as amended.

Article 244 (1) (a) (b) was adopted as proposed by the sub- committee without any amendment. On Article 244 (1) (c), some delegates called for the deletion of the word “provide” insertion thereof the word “for.”

A new article 244(2) was adopted which gives any person locus standi to bring any matter that affected the environment to court without necessarily being personally affected. The article read “every person bringing an action under this article has a right to seek redress even if the person cannot show that the act, omission or infringement has caused or is likely to cause that person any personal loss or injury.

A new article 244(3) on establishment of a special court for the environment was adopted as proposed by the sub- committee.

A new article 245 was adopted as proposed by the sub- committee to read, “upon the coming into force of this constitution parliament shall enact legislation to give effect to the provisions of this chapter.”

There was heated debate on beaches. The Committee was in agreement that all beaches should be public land and that there should be unfettered access to the beaches. However, most delegates wondered how access to beaches would be ensured since they had been privatized. They also noted that the hotels surrounding the beaches are private property. One of the rapporteurs informed the committee that the issue of unfettered access to beaches had been indirectly covered in both chapters eleven and twelve .He asked them to consider whether it would be appropriate to make a direct proposal for the opening up of beaches in the draft bill. Other delegates noted that beaches were an attraction for tourists hence called for a balance between access and enjoyment of the beaches and return on investment. The committee resolved that the proposal for the opening up of beaches and unfettered access be forwarded to the committee on transition.

There was a proposed section on (1) property (2) major natural resources by one of the rapporteurs. A motion was moved to adopt the foregoing as a new article with necessary

amendments the Committee agreed that the section on property be incorporated in Chapter Eleven. The rapporteur explained to the committee that there was need to set out principles to encourage setting up of property and developing issues of physical planning, utilization, standards of building materials which are friendly to the environment, the power to regulate interests and rights in property, National housing policy both private and public housing and building.

The proposed section on property was inserted as article 238 to read,

1. The State shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development (investment) and management of property.
2. Property development and management shall take into consideration the requirements of sustainable physical planning and land use, including safeguarding the environment.
3. Parliament shall enact laws to;
 - (a) compel the State and relevant organizations including devolved authorities to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials, innovations and methods in the property sector provided that such are not harmful and injurious to persons and the physical environment.
 - (b) Ensure that major investments in property by foreigners shall be geared to benefiting local Kenyans and their economy.
4. All public properties shall be held, managed and disposed of according to the legislation specifying the nature and terms of that holding, management and disposal.
5. The State shall regulate the use of any right and interest in property in the public interest in so far as such regulation shall not violate the principles set out in this Constitution.
6. The State shall develop and constantly review a national housing policy with a view to increasing, regulating and maintaining the national housing stock.
7. The State shall encourage the construction and ownership of both public and private housing in so far as such housing shall adhere to the principles and standards of sustainable land utilization, physical planning and environmental safeguards as outlined in this Constitution.
8. There is established a housing development fund to enable Kenyans gain access to more and better housing.

9. The State shall establish a property and housing research organization.

One of the rapporteurs read out the new proposed section on major national resources to be incorporated in Chapter 12. The committee accepted the proposed section by way of motion with a few alterations therein. The section was agreed to as below:

Article 244 - The State shall ensure that important national resources and products including but not limited to agriculture, fisheries, livestock, energy, minerals, mineral oils, fossils, water and tourism are:

- (i) Protected, managed, promoted and sustainably developed (to increase the output and profits).
- (ii) Subjected to strategic research to ensure their enhancement.
- (iii) Protected against unfair trade practices in their production, distribution and marketing from both local and outside/foreign forces.
- (iv) Regulated in terms their exportation and importation.
- (v) Regulated in terms of their origin, quality, methods of production, harvesting and processing;
- (vi) Protected against processes and activities that are likely to endanger them or curtail their existence altogether.
- (vii) Utilised in the interest and benefit of Kenyans.

4.3 Decisions Reached as Recommendations to the Conference

CHAPTER ELEVEN

LAND AND PROPERTY

Article 232A(1) Primacy of land

Land, being Kenya's primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.

(2) The State shall define and keep constantly under review a national land policy directed at ensuring among others, the following:

- (a) equitable access to land and associated resources;
- (b) security of land rights for all land holders, users and occupiers;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) encouragement of communities to settle land disputes through recognized local community initiatives, consistent with this Constitution;
- (g) elimination of gender discriminatory laws, regulations, customs and practices related to land and other landed property.

Article 233

Ownership of land

- (1) All land in Kenya belongs to the people of Kenya collectively as communities and as individuals;
- (2) Subject to this Constitution no person other than a citizen of Kenya shall have the right to acquire any freehold interest or right in land in Kenya;
- (3) Non-citizens may hold or use land on the basis of leasehold tenure only and such leases however granted shall not exceed ninety-nine years.

Article 234

Classification of Land

- (1) All land in Kenya is designated as public, community or private land.
- (2) The following is public land:
 - (a) land which at the commencement of this Constitution was held as unalienated Government land in terms of the Government Lands Act, Cap 280;
 - (b) land held, used or occupied by any Ministry, Department or agency of the Government or local authority, except where such land is held, used or occupied on the basis of a private lease or trust;
 - (c) all land ceded to the people of Kenya by way of reversion, or surrender;

- (d) land in respect of which no individual or community ownership can, by process of law be established;
- (e) land in respect of which no heir can, by ordinary process of law be identified;
- (f) all minerals, except common minerals as defined by any law for the time being in force;
- (g) all roads and thoroughfares to which the Public Roads and Roads of Access Act, Cap 399 apply;
- (h) all rivers, lakes and water bodies as defined in the Rivers and Lakes Act, Cap 409 or in any other law; and
- (i) the territorial sea and sea-bed, including all beach land between the high and low water marks.
- (j) land gazetted as government forest, national parks, catchment areas etc;
- (k) all other lands not specified as private or community land by this Constitution.

(3)The following is community land:

- (a) all land currently held as trust land under the Trust Lands Act, Cap.288;
- (b) all land registered in the name of group representatives in terms of the provisions of the Land (Group Representatives) Act, Cap. 287;
- (c) all land held, managed or used by specific communities as community forests, water sources, grazing areas or shrines and identified by them as such whether or not such land is, but for this provision, classified as public land;
- (d) any land hereinafter ceded to a specific community by way of any process of alienation, transmission or conversion;
- (e) land currently held as government forest and is occupied by hunter-gatherer minority communities as their ancestral land.

(4) The following is private land:

- (a) any land held under freehold tenure and registered under the Registration of Titles Act, Cap.281 and the Land Titles Act, Cap. 282;
- (b) land held as absolute property under the Registered Land Act, Cap 300, not being land to which the Land (Group Representatives) Act, Cap 287 applies;
- (c) land the subject of a leasehold grant whether or not the lease is in respect of public or community land and so long only as the lease remains in force.

Article 235
Tenure of land

(1) Public land is the collective property of present and future generations and shall vest in and be held by devolved levels of government in trust for the people under the oversight of the National Land Commission as the Ombudsman office for the promotion, protection and fulfillment of the enjoyment of rights in public land.

(2) Public land classified under 234 (2) g-k shall vest in and be held by the national government in trust for the people of Kenya.

(3) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.

(4) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or community of interest.

(5) Any unregistered community land shall be held in trust by devolved governments on behalf of the communities.

(6) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(7) Private land shall vest in and be held by individuals or other juristic persons in terms of legislation specifying the nature and extent of rights in respect to private land.

(8) Within two years of the coming into force of this Constitution, Parliament shall:

(a) enact law for:

(i) the revision, consolidation, and rationalization of existing land laws;

(ii) the revision of all sectoral land use law in accordance with the national land policy;

(iii) the manner in which any land may be converted from one category to another;

(iv) the protection of dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;

(v) the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;

(vi) the establishment of an efficient and cost effective physical planning and land administration system, including the establishment of land courts in the context of devolved authorities;

(vii) the settlement of the landless and squatters including the rehabilitation of spontaneous settlements in urban and rural areas;

(viii) the establishment of a land fund to enable Kenyans gain access to land on an equitable basis;

(ix) the establishment of a land bank to facilitate availability and accessibility of land for research and development;

(x) the ascertainment and adjudication of any land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it.;

(xi) setting of the maximum and minimum sustainable land holding in arable areas bearing in mind the productive potential and location of the land;

(xii) the protection, conservation and unfettered access to all public lands such as riparian, road reserves and beaches for leisure and enjoyment;

(xiii) the review of all grants or dispositions of government or other public land to establish their propriety and legality and to determine whether or not such grants or dispositions should be revoked;

(xiv) the review of boundaries and management of national parks and animal sanctuaries with a view to creating opportunities and benefits for the local people in the context of devolved government;

(xv) the review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, and Rift Valley provinces as known before the commencement of this Constitution, or elsewhere whether arising from historical or other causes in order to establish their validity and how best they can be justly, peacefully and equitably resolved.

(c) Parliament, in consultation with devolved authorities, shall determine the cut-off date with reference to which the review required in paragraph (b)(iii) is to be conducted.

Article 236

Protection of Rights in Land

(1) Subject to this Constitution, rights in land and property lawfully acquired shall be protected and may be freely alienated without discrimination on the basis of gender or any other cause.

(2) The State has the power to take possession of or acquire any right or interest in land where the following conditions are satisfied:

(a) The acquisition and or taking is necessary in the interest of defence, public safety, public order, public morality, public health, environmental conservation including conservation of indigenous species, town and country planning or the development or utilization of property so as to promote the public benefit;

(b) The acquisition should not result in hardship to any person(s) or community having an interest or right over the property;

(c) Provision is made by a law applicable to that acquisition or taking of possession, for the prompt payment, prior to occupation of such land of;

(i) full and fair compensation in the form of comparable land or equivalent monetary compensation and;

(ii) a disturbance allowance equivalent to 80% of the market value of the land, provided that bonafide occupants of the land acquired will also be entitled to compensation even if they do not have title deeds.

(3) The State has the power to:

(a) Regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property so as to provide the mutual benefit as long as such regulation does not amount to acquisition of or taking of possession in terms of Clause (2);

(b) Regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten (10) years in consultation with devolved governments;

(c) Provide for surplus land or land no longer needed for public purposes after acquisition, to be offered to the original owner on first refusal basis.

(4) Any person who owns private land has a right to hold a title document for his/her land and to have an appropriate entry in a land registry.

Article 237

Development of Land

(1) The state shall encourage and provide conducive, social, economic, political and legal atmosphere for the creation, development (investment) and management of property.

(2) Property development and management shall take into consideration the requirements of sustainable physical planning and land use, including safeguarding the environment.

(3) All public properties shall be held, managed and disposed of according to legislation specifying the nature and terms of that holding, management and disposal.

(4) The State shall ensure :

(a) the establishment of a housing development fund to enable Kenyans gain access to more and better housing;

(b) the development and review of a national housing policy with a view to increasing, regulating and maintaining the national housing stock;

(c) the promotion of construction and ownership of both public and private housing in so far as such housing shall adhere to the principles and standards of sustainable land utilization, physical planning and environmental safeguards as outlined in this Constitution.

(5) The state shall establish a property and housing research organization.

(6) Parliament shall enact laws:

(a) requiring the State and relevant organizations including devolved authorities to encourage the use of acceptable, affordable and reasonable technologies, building materials, innovations and methods in the property sector provided that such are not harmful and injurious to persons and the environment; and

(b) ensuring that major investments in property by foreigners shall be geared to benefiting local communities and the Kenyan economy.

Article 237 A

The National Land Commission

(1) There is established a National Land Commission.

(2) The functions of the National Land Commission shall be decentralized to the lowest level of Government.

(3) The functions of the National Land Commission are to:

(a) manage public land on behalf of devolved levels of government;

(b) define and keep constantly under review the national land policy;

(c) facilitate the execution of a comprehensive programme for registration of title of land throughout Kenya

(d) consolidate and from time to time review all laws relating to land;

(e) conduct research and make recommendations to improve the functions of Government Ministries and agencies in charge of land;

(f) initiate investigations on its own, or upon a complaint from other person(s) or institutions on land injustices both present and historical and ensure appropriate redress;

(g) facilitate the participation of communities in the enactment of relevant land laws and adherence to customary law in land matters as long as such laws are not inconsistent with this Constitution;

(h) monitor and have oversight responsibilities over land use planning throughout the country;

(i) perform such other functions as may be entrusted to it by law;

(4) Parliament shall enact a law to define the organization and powers of the Commission.

Article 232

Definitions

(1) In this chapter, “Land” means the soil, bio-diversity on it, sub-soil, rocks on or beneath it, lake or marine waters in the territorial sea and exclusive economic zone as defined in the First Schedule of this Constitution, and airspace immediately above it.

(1) “Property” means land as defined in Article 232(1), permanent fixtures thereon and such rights, interest and restrictions therein, personal properties comprising but not limited to movable chattels, financial instruments, livestock, fisheries, crops, plant and machinery and registered intellectual inventions, innovations and rights.

CHAPTER TWELVE

ENVIRONMENT AND NATURAL RESOURCES.

Article 239A

Principles.

(1) The State shall:

(a) respect the integrity of natural process and ecological communities, and the intrinsic value of all forms of life including conservation of habitats and species;

(b) in consultation with devolved authorities shall manage the environment based on principles of good governance to ensure conservation and sustainable utilization of the environment and its natural resources;

(c) ensure that social and cultural values traditionally applied by communities in Kenya for the sustainable management of the environment and natural resources are observed in so far as they are not repugnant to justice and morality and are not in conflict with this Constitution;

- (d) take account of environmental considerations such as protection, conservation and sustainable utilization in the management of natural resources;
 - (e) ensure that all natural resources shall sustainably be developed for the benefit of Kenya as a whole and for the benefit of inhabitants of the region where these resources occur;
 - (f) ensure that the management and exploitation of natural resources benefit the local communities and future generations.
- (2) Planning and utilization of the environment shall take into account the needs of marginalized areas and disadvantaged minority persons including people with disabilities.

Article 239B

Obligations of the State concerning the environment.

The State shall:

- (a) develop and enact legislation for the protection and promotion of sustainable development and utilization of natural resources;
- (b) domesticate international and bilateral agreements and treaties relating to the protection of the environment;
- (c) review current international and bilateral treaties and agreements to ensure the sovereignty, integrity and welfare of Kenyans;
- (d) review contracts entered into with multinational organizations for the utilization of natural resources, to ensure the sovereignty, integrity and welfare of Kenyans and that benefits accrue to the local communities;
- (e) put in place an urban environmental policy to regulate human settlement;
- (f) ensure that every landowner maintains a tree cover of at least 10% equivalent to 50 trees per hectare of land held with appropriate trees to ensure land reclamation, rehabilitation and sustainable utilization of natural resources; and
- (g) allocate adequate resources to reclaim and rehabilitate degraded areas and those prone to disasters to make them habitable and productive.

Article 239C

Environmental Rights and Duties

(1) Every person has a right to:

- (a) a clean and healthy environment;
- (b) participate in the conservation and protection of the environment;

- (c) access and enjoyment of the environment;
- (d) free access to information on the environment.

(2) Every person has a duty to :

- (a) respect, protect and safeguard the environment for the benefit of present and future generations of human and other species;
- (b) promote environmentally sustainable development.

Article 239 D
Environmental protection

(1) The State at all levels of Government exercising power or performing a function involving the management and sustainable development of the environment shall be guided by the need to:

- (a) ensure the participation and involvement of the public;
- (b) protect genetic resources and biological diversity including wildlife and intellectual property related to them;
- (c) protect and enhance the intellectual property and indigenous knowledge of communities;
- (d) practice, encourage and require waste minimization and recycling;
- (e) establish and ensure the effective functioning of a system of environmental impact assessment that:
 - (i) applies to any project or combination of projects, including government projects;
 - (ii) is open and gives adequate opportunity for active public participation;
 - (iii) is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project and ensure adequate remedies;
- (f) establish systems of environmental audit and monitoring; and
- (g) ensure that environmental standards enforced in Kenya are the accepted internally developing standards.

(2) Parliament shall enact legislation to:

(a) protect the intellectual property rights and indigenous knowledge of local communities in bio diversity and access to genetic resources ensuring prior informed consent of the communities and benefits sharing arrangements through devolved governments; and

(b) ensure equitable sharing of the benefits accruing from public or private utilization of natural resources between the local communities, devolved authorities and the national government.

Article 240

Enforcement of Environmental Rights

(1) Every person whose environmental rights are being or are likely to be contravened has the right to seek redress to:

(a) prevent, stop or discontinue any act or omission, which is harmful to the environment;

(b) compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment.

(c) demand compensation for any victim of such violations of environmental rights and other losses.

(2) Every person bringing an action under this Article has a right to seek redress even if the person cannot show that the act, omission or infringement has caused or is likely to cause that person any personal loss or injury.

(3) Parliament shall pass legislation to establish a special court for the environment.

Article 241

Natural Resources.

The State shall ensure that all categories of natural resources and products are:

(a) protected, managed, promoted and sustainably developed;

(b) subjected to strategic research to ensure enhanced benefits to Kenyans;

(c) protected against unfair external trade practices in their production, distribution and marketing;

(d) regulated in terms of their exportation and importation;

(e) regulated in terms of their origin, quality, methods of production, harvesting and processing;

(f) protected against processes and activities that are likely to endanger them or curtail their existence altogether;

(g) utilized in the interest and benefit of Kenyans.

Article 242A

The National Environment Commission

(1) There is established the National Environment Commission.

(2) The functions of the National Environment Commission shall be decentralised to the lowest level of Government.

(3) The National Environment Commission shall:

(a) ensure the protection, conservation and management of the environment;

(b) monitor and have oversight responsibilities on the administration of the environment and land use planning;

(c) audit and produce for the public reports on the state of the environment every two years;

(d) promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring proper management and rational utilization of the environment and its natural resources;

(e) formulate, monitor and evaluate the implementation of the National Environment Policy;

(f) examine new and emerging technologies and inventions to determine their impact on the environment and put in place the institutional framework for operationalization of such functions;

(g) conduct research in consultation with other stakeholders and make recommendations to improve the functions of Government Ministries and Agencies in charge of the environment and natural resources;

(h) initiate investigations on its own, or upon complaint from other person(s) or institution(s) and ensure appropriate redress;

(i) examine resource use patterns and practices to determine their impact on the quality of the environment and to take remedial measures;

(j) promote environmental education and ensure access to information and public participation;

(k) promote peaceful and harmonious co-existence among communities through just, equitable and rational sharing and utilization of the environment and its natural resources, taking into account the rights of the local communities;

(l) recommend to Parliament effective and efficient policies and programmes to protect sustainable management and utilization of the environment and its natural resources;

(m) perform any other functions as provided for by law or are incidental and conducive to the exercise of its duties as provided for in this Constitution.

(4) The Commission shall promote and facilitate public participation, discussion and in put before international conventions, treaties and agreements that have consequences on the environment are ratified.

Article 242 B
Environmental legislation.

(1) Upon the coming into force of this constitution, parliament shall enact legislation to give effect to the provisions of this chapter, and in particular:

(a) for the conservervation of forests, wildlife parks, reserves and sanctuaries, beaches and water catchment areas, and promote ecotourism;

(b) to stop further excision of conservation areas unless such excision is consistent with principles that enhance sustainable management and provide benefits to the community;

(c) to ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation;

(d) to enforce the “polluter pays” principle and ensure that the disposal and storage of environmentally undesirable substances including hazardous wastes and munitions take into account the requirements for a clean, safe and healthy environment;

(e) to ensure that emission of harmful radiation and noise into the environment shall be regulated to meet the requirements for safe and healthy environment;

(f) to minimize human-wildlife conflict

(g) to provide adequate compensation for loss of human life, injury to persons, loss and destruction of private property, arising from human- wildlife conflict.

Article 239
Definitions

(1) Environment is the totality of nature and includes physical and biological components and factors, which exist, operate and interact within it; shapes our cultural diversity and supports all forms of life.

(2)“Natural resources” means the biological and physical non- human factors and components of the natural environment, which include, but are not limited to, both renewable and non renewable natural land, river, lake and marine resources, comprising, but not limited to, land, soils, air sunlight, surface and ground waters, forests, bio-diversity, genetic resources, rocks, minerals, fossil fuels and other energy resources.

5. APPENDICES

APPENDIX A: REPORT ON MINORITY VIEWS.

Some delegates recommended that the title for chapter eleven should read, 'Land, Natural Resources and Property.'

Delegate numbers 405,329,361,371,111,359,458 and 376 recommended that group ranches should remain private to the members of that ranch.

Delegates number 361,111, and 131 were of the view that water sources be owned by the Government for the benefit of all.

**APPENDIX B: LIST OF FORMAL MOTIONS FOR AMENDMENT OF THE REPORT AND
DRAFT BILL AGREED TO BY THE COMMITTEE.**

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
12 TH September 2003	Committee		‘That Chapter 11 on Land and Chapter 12 on Environment be combined into one Chapter.’	Not adopted
12 TH September 2003	Committee		“ That the information in chapter 12 about Natural Resources should be part of Chapter 11 and that Chapter 12 should only contain environment issues and that Chapter 11 should read as Land, other Natural Resources and Property, while Chapter 12 should read as environment.”	Adopted
12 TH September 2003	Committee	238	That Article 238 on interpretation be inserted immediately before article 232.	Adopted
12 TH September 2003	Committee	232(2)(g) new sub-clause	“ Elimination of gender discriminatory laws, regulations, customs and practices related to land.”	Adopted
12 TH September 2003	Committee		“ That Articles between 232 and 238 be renumbered as a result of the insertion of article 238 before 232. ”	Adopted
12 TH September 2003	Committee	232 new sub-sections	a)“ Subject to this constitution no person other than a citizen of Kenya shall have the right to acquire any interest r right in land in Kenya.” b) “ That any other land that is considered	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			underutilized as per the laws of Kenya shall be taxed or given to people who are landless who will utilize it.”	
15 th September 2003	Committee	232 renumbered to article 232(1)	“ In this Chapter ‘Land’ means the soil, sub-soil, rocks on or beneath it, any river, lake or marine waters in territorial sea and exclusive economic zone as defined in the first schedule of this Constitution, and airspace immediately above it.”	Adopted
15 th September 2003	Committee	232(2)	“ In this Chapter ‘Natural Resources’ means the physical and non- human factors and components of the natural environment used to satisfy the needs and wants of Kenyans and for the sustainable development of present and future generations. These include, but are not limited to, both renewable and non-renewable natural land, river, lake and marine resources, comprising but not limited to, land, soils, air, biodiversity, genetic resources, rocks, minerals, fossil fuels and other energy resources.”	Adopted
15 th September 2003	Committee	232(3)	“ In this Chapter ‘ Property ’ means land as defined in article 232(1), permanent fixtures thereon and such rights, interests and restrictions therein, personal property comprising but not limited to, movable chattels, crops, plant and machinery, and intellectual inventions, innovations and rights.”	Adopted
15 th September	Committee	232(4)	As presented in article 232(1) of the ‘draft bill’	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
2003				
15 th September 2003	Committee	232(5)	As presented in article 232(2) of the 'draft bill.'	Adopted
15 th September 2003	Committee	232(6) new	“ All Natural Resources shall be vested in the state on behalf of the people of Kenya and shall be sustainably developed for the benefit of the people of Kenya as a whole, and for the benefit of the people of the inhabitants of the regions where these resources occur.”	Adopted
17 th September 2003	Committee	234(2)(c)	The words “including land declared vacant” be deleted.	Adopted
17 th September 2003	Committee	234(2)(f)	The phrase ‘ including all beach land between high and the low water marks.’ Be inserted after the words ‘sea bed.’	Adopted
17 th September 2003	Sub-committee On definitions	232(1)	“In this Chapter ‘land’ means the soil, sub-soil, rock, any body of water wholly contained within or beneath it, marine waters in the territorial sea and exclusive economic zone as defined in the first schedule of this constitution, and airspace above it.’	Referred to drafts person.
17 th September 2003	Sub-committee On definitions	232(2)	“ In this Chapter ‘ Natural Resources ’ means the biological and physical non- human factors and components of the natural environment which include, but not limited to both renewable and non-renewable natural land, river, lake and marine resources, comprising, but not limited to land, soil, air, sunlight, surface and ground waters, forests,	Referred to drafts person.

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			bio-diversity genetic resources, rocks, minerals, fossil fuels and other energy resources.”	
17 th September 2003	Sub-committee	232(3)	“ In this Chapter ‘Property’ means land as defined in article 232(1), permanent fixtures thereon and such rights, interests and restrictions therein, personal property comprising but not limited to, movable chattels, financial instruments, livestock, fisheries, crops, plant and machinery, and intellectual inventions, innovations and rights.”	Referred to drafts person
17 th September 2003	Committee	234(2)(f)	“That all land beaches be allowed access.”	Adopted
18 th September 2003	Prof. Wangari Maathai-084	Title of chapter 11	“ Land, other natural resources and property.”	Adopted
18 th September 2003	Prof. Wangari Maathai-084	Title of chapter 12	“ environment”	Adopted
18 th September 2003	Mwandawiro Mganga-131	New article 234(3)(e)	“ Community Land includes Land currently held as government forest and is occupied by Hunter Gatherer Communities as their ancestral land.”	Adopted
19 th September 2003	Committee	234(2)(F)	Further amendment “ that all beaches should be allowed unfettered access.”	Adopted.
19 th	Moses Ole Naimamadu.	New article	“ All natural resources under local authorities	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
September 2003		234(3)(f)	and communities should be managed by them for the benefit of their communities and future generations.”	
19 th September 2003	Odenda Lumumba-458	235(1)(a)	“ Public land is a collective property of present and future generations and shall vest in and be held be devolved levels of government in trust for the people under the oversight of the National Land Commission as the Ombudsman Office for the promotion, protection and fulfillment of enjoyment of land rights in public land.”	Adopted
22 nd September 2003	Mwandawiro Mganga-131	232(2)(e)	‘That article 232(2)(e) be removed from chapter 11 and taken to chapter 12 on environment.’	Adopted
22 nd September 2003	Prof. Wangari Maathai-084	235(a)(x)	“ The protection, conservation and unfettered access to all public lands such as riparian, road reserves and beaches for leisure and enjoyment.”	Adopted
22 nd September 2003	F. Mwanzia-133	235(4)	That the word “two” in article 235(4) be deleted and substituted in place thereof with the word “one year.”	Not adopted
22 nd September 2003	Julius Lalampaa-329	235(4)	“ Subject to the enactment of this bill by the government within two years, failure to which it shall be sue able by any individual or community and the state shall bear the cost.”	Adopted
22 nd	----	235(4)(a)(iv)	“ Empowering the elders in that particular	Not Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
September 2003			community to preside over land dispute of dependants of the deceased persons holding interests in any land including the interests of spouses and children in actual occupation of land and pass over such recommendations to the Land Control Board for adoption.”	
22 nd September 2003	William Ole Yiaile-361	235(4)(a)(v)	Be amended to include the principles of “ registration of women in land title deeds and other properties and where a spouse has voluntarily vacated the matrimonial commitment to be married elsewhere forfeits any benefits of such marriage.”	Not Adopted.
22 nd September 2003	Martha Rop-509	235(4)(v)	Be redefined as follows “ The recognition and protection of matrimonial home during and at the termination of marriage and the names of spouses should be registered in one title deed.”	Not Adopted
23 rd September 2003	Benjamin Gitoi-602	235(4)(a)(vi)	Insert the words physical planning to read; “ The establishment of an efficient and cost effective physical planning and administration system including the management and expeditious settlement of land disputes.”	Not Adopted
23 rd September 2003	William Ole Yiaile-361	Further amendment 235(4)(a)(vi)	“ The establishment of an efficient and cost effective physical planning and administration system including the management and expeditious settlement of land disputes at all levels of devolved government.”	Adopted
23 rd	Dr. James Koskei-371	235(4)(a)	Insert the words ‘and rural’ to read	Not Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
September 2003		(vii)	“ The re-settlement of landless people, including spontaneous settlement of communities in urban and rural areas.”	
23 rd September 2003	Joel Haji-246	Further amendment.235(4)(a)(vii)	“ The re-settlement of landless people, squatters including spontaneous settlement of communities in urban and rural areas and such people should remain on such lands until an alternative solution is found.”	Adopted.
23 rd September 2003	Andrew Ligale-083	New article 235(4)(a)(ix)	“ The establishment of a land bank to facilitate availability and accessibility of land for research and development.”	Adopted
23 rd September 2003	Koigi Wa Wamwere-204	New article 235(4)(a)(xii)	“ Parliament to institute a land ceiling that limit the amount of land each individual may own.”	Adopted
23 rd September 2003	Gachara Muchiri-111	further amendment	“ Setting the maximum and minimum land holding in arable areas bearing in mind the productive potential and location of the land.”	
24 th September 2004	F. Mwanzia-133	235(4)(b)	Deletion of the words” establish mechanism. ” And insert in place thereof, the words “ enact a verification and validation law. ”	
24 th September 2003	Joel Haji-246	235(4)(b)(ii)	“ Review the boundaries and management of the national parks and animal sanctuaries with a view to creating opportunities and benefits for the local people in the context of devolved	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			government.”	
24 th September 2003	F. Mwanzia-133	235(4)(c)	Addition of the words “ in consultation with devolved authorities. ”	
25 th September 2003	Koigi Wa Wamwere-204	235(4)(c)	“ Parliament to make a law instructing that companies, government departments or individuals that are allowed to exploit local resources like water, minerals, national parks, sand, magadi soda or beaches, apart from paying a tax to the central government also to contribute a percentage of their profit to the local government to be administered for the benefit of the local community.”	Not adopted
25 th September 2003	committee	235(4)(c)	“ Equitable sharing of the benefits accruing from public or private exploitation of natural resources between the local communities, devolved authorities and the central government.”	Adopted
25 th September 2003	Prof. Wangari Maathai-084	236(2)(a)	Addition of the words “ Environment conservation including the conservation of indigenous species.” After the word “public health”.	Adopted
25 th September 2003	Dr. James Koske-371	236(2)(b)	Addition of the word “ community ” after the word “ person ” appearing on the 6 th line	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
25 th September 2003	Prof. Olweny P. Ayiecho-164	236(2)(c)	“ Provision is made by a law applicable to that of taking of possession for prompt adequate compensation in form of land of equivalent value in addition to monetary compensation prior to occupation of such land.”	Not adopted
25 th September 2003	F. Mwanzia-133	Further amendment 236(2)(c)	Replace the words “compensation in form of land of equivalent value in addition to monetary compensation.” With the words “ Monetary compensation or land of equivalent value.”	Not adopted
25 th September 2003	committee	Further amendment. 236(2)(c)	“ provision is made by a law applicable to that of taking of possession for the prompt payment, prior to occupation of such land of; i) full and fair compensation in the form of comparable land or equivalent monetary compensation and; ii) a disturbance allowance equivalent to 80% of the market value of the land. Provided that bonafide occupants of the land acquired will also be entitled to compensation even if they do not have tittle deeds.”	Adopted
25 th September 2003	Gachara Muchiri-111	New sub-section 236(3)(b)	“ The state shall review every five years all plot ratios, site coverage and minimum plot sizes in all urban areas to ensure controlled and intensive development of land.”	Not adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
25 th September 2003	committee	Further amendment 236(3)(b)	“ To regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every 10 years in consultation with devolved government,”	Adopted
25 th September 2003	F. Mwanzia-133	New sub-section 236(3)(c)	“ Provision is made by law applicable to that acquisition for surplus land or land no longer needed for public purpose after acquisition to revert to the original owner(s)	Not adopted
25 th September 2003	committee	Further amendment 236(3)(c)	“ To provide for surplus land or land no longer needed for public purposes after acquisition to be offered to the original owner on first refusal basis.’	Adopted
26 th September 2003	Prof. Wangari Maathai- 084	New sub-section 236(4)	“ Parliament should enact a law to establish a land court to handle land disputes.”	Not adopted. (Committee resolved that the amendment be incorporated under article 234(4)(vi) or as a new sub section.)

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
26 th September 2003	F. Mwanzia-133 Fibie Atieno Ochola-405	New sub-section 236(3)(d)	“ Every person who own private land has a right to hold a title document for his land and to have an appropriate entry in the land registry.” Further amendment. “ Any person or individual who rightly owns private land has a right to hold a title document for his/ her or jointly and to have an appropriate entry in the land registry.”	Not Adopted Adopted.
26 th September 2003	Augustine Saina-343	237(1)	Insert the word ‘district’ to read “ There is established a National and District Land Commission.”	Not adopted
26 th September 2003	Benjamin Gitoi-602	Further amendment 237(1)	“ There shall be an established National and Devolved Unit Land Commission consisting of a chair person, deputy chair person and eight other members nominated and appointed in accordance with this constitution.”	Not adopted
26 th September 2003	Lumumba Odenda-458	Further amendment 237(1)	The established national land commission shall be devolved at all levels of government as an ombudsman office in ensuring the protection, promotion and fulfillment of enjoyment of land rights.	Not Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
26 th September 2003	Kaaru A. Guleid-263	Further amendment 237(1)	“ There shall be a District Lands Authority and Parliament shall prescribe a legislation on structure and terms of services of the District Lands Authority.”	Not adopted
13 th January 2004	Committee	Further amendment 237(1)	“ There shall be established a National Land Commission consisting of a Chairperson, Deputy Chairperson and eight other members nominated and appointed in accordance with provisions of Chapter 17 of this constitution.”	Adopted
13 th January 2004	Committee	237(1)(b)	“ The National Land Commission shall be devolved to the lowest level of government.”	Adopted.
13 th January 2004	Lumumba Odenda-458	237(2)(a)	“ To ensure protection, promotion and fulfillment of enjoyment of land rights in the public land held by devolved levels of government in trust for the present and future generations of people of Kenya.”	Not adopted Committee resolved that the proposed amendment to article 237(2)(a) be harmonized with article 235(a) to avoid repetition.

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
13 th January 2004	Prof. Patrick Ayiecho Olweny-164	237(2)(b)	“ Administer public land on behalf of the government i.e. accordance with the recommendations of the concerned district/ regional Government- devolved unit.)”	Not adopted
13 th January 2004	Lumumba Odenda-458	Further amendment 237(2)(b)	“ Oversee the administration and management of public land on behalf of the Government at all its devolved levels.”	Not adopted.
13 th January 2004	Committee	Further amendment 237(2)(b)	“Monitor and have oversight responsibilities on the administration and management of public land.”	adopted
13 th January 2004	Lumumba Odenda-458	Further amendment 237(2)(c)	“ Monitor and evaluate the implementation of the National Land Policy in the Republic.”	Not adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
13 th January 2004	Lumumba Odenda- 458	237(2)(d)	“ Investigate and report on the observation of land rights and take steps to secure appropriate redress where land rights have been violated.”	Not adopted Withdrawn by the member.
14 th January 2004	Lumumba Odenda- 458	237(2)(e)	“ Initiate investigations, conduct research and make recommendations to improve the functions of Government ministries and agencies in charge of land and natural resources.”	Not adopted.
14 th January 2004	Committee	Further amendment to Article 237(2)(e)	“Conduct research and make recommendations to improve the functions of government ministries and agencies in charge of land and natural resources	Adopted.
14 th January 2004	Lumumba Odenda- 458	Further amendment to Article 237(2)(f)	‘ Receive complaints about abuse of power, unfair treatment, manifest injustices, corruption and unlawful and unfair official conduct in land and natural resources matters.	Not adopted.

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
14 th January 2004	Committee	Article 237(2)(f)	“Initiate investigations on its own, or upon a complaint from other person(s) or institutions on land injustices both present and historical and ensure appropriate redress.”	adopted
14 th January 2004	Prof. Wangari Maathai-084	New sub section 237(2)(g)	“ Recognize customary law in land and let communities participate in enactment of relevant laws.”	Not adopted.
14 th January 2004	Resolved by the committee	Further amendment 237(2)(g)	“ Facilitate the participation of communities in the enactment of relevant land laws and adherence to customary law in land matters as long as such laws are not inconsistent with this constitution.	Adopted
14 th January 2004	Dr. Daniel Ichangi-481	New Article 237(2)(h)	“ Monitor and have oversight responsibilities over land use planning throughout the country.”	Adopted
14 th January 2004	William Ole Yiaile-361	237(2)(i)	‘ Recognizing the special status of the city of Nairobi. The National Land Commission will hence forth administer through the national unification fund 10% of all land rates collected within the city to develop the most under privileged members of the Maasai community by providing social and other amenities through the devolved authorities.”	Not adopted. Committee resolved that this amendment be forwarded to technical working committee on Affirmative Action.
14 th January 2004	Gachara Muchiri-111	237(2)(j)	“ The commission shall be vested with authority to alienate land and issue title deeds which can only be cancelled by a three judge bench high court and appeal thereof.”	Not adopted Committee resolved that the proposed amendment be incorporated as appropriate under article 237(2)(b)

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
14 th January 2004	S.C.M. Wafula-484	New sub section 237(4)	a) The commission shall be independent in its operations. b) All the affairs of the National Public Lands Commission shall be conducted in a transparent and accountable manner and where possible through public hearings.”	Not adopted. Committee resolved that it should be covered in the relevant Act of Parliament.
15 th January 2004	Committee	232(e)		Committee resolved that article 232(e) be considered under chapter 12.
15 th January 2004	Committee	Article 232(2)(g)	“communities should be encouraged to settle land disputes through recognized local community initiatives, provided that these shall not be against the constitution”	Adopted
15 th January 2004	Committee	Article 234(2)(d)	Deleted.	Adopted
16 th January 2004	Prof. Wangari Maathai-084	Definition of the word ‘community,	“ A community means ‘ indigenous ’ Kenyan citizens who reside in a specific geographical area irrespective of their ethnicity and culture.	Adopted.
20 th January 2004	Committee	Title of chapter 12	Amend by deleting the words ‘and natural resources’ so as to read ‘environment.’	Adopted
21 st January 2004	Sub-committee on environment.	Article 239	“Environment is the totality of nature and includes physical and biological components and factors, which exist, operate and interact within it, shapes our cultural diversity and supports all forms of life.”	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
21 st January 2004	Sub-committee on environment.	240(1)	“Every person has the duty to respect, protect and safeguard the environment for the benefits of present and future generations of humans and other species.”	Adopted
21 st January 2004	Sub- committee on environment.	240(2)	“The state shall respect the integrity of natural processes and ecological communities, and the intrinsic value of all forms of life including conservation of habits and species.”	Adopted
21 st January 2004	Sub-committee on environment.	240(4)	“The state in consultation with the devolved authorities shall manage the environment based on principles of good governance to ensure conservation and sustainable utilization of the environment and its natural resources.”	Adopted
21 st January 2004	Sub- committee on environment.	240(6)(i)	Within two years of the coming into force of this constitution, parliament shall enact “enact laws requiring reclamation of degraded areas and stoppage of further excision of conservation areas including forests, national parks and reserves, beaches and water catchment areas.”	Adopted.
21 st January 2004	Sub-committee on environment.	New article 240(3)(a)	“ The state shall in consultation with devolved authorities keep constant review of all international, multilateral and bilateral treaties and agreements on environment and natural resources to ensure the sovereignty, integrity and welfare of Kenyans.”	Not adopted.
22 nd January 2004	Committee	Further amendment 240(3)(a)	“Develop and enact legislation for the protection and promotion of sustainable development and utilization of our natural resources.”	

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
22 nd January 2004	Sub-committee on environment	240(3)(b)	“Domestic international and bilateral agreements and treaties relating to the protection of the environment.”	Adopted
22 nd January 2004	Sub-committee on environment	240(3) (c)	“ Review current international and bilateral treaties and agreements to ensure the sovereignty, integrity and welfare of Kenyans.”	
22 nd January 2004	Sub-committee on environment	240(3)(d)	“ Review contracts entered into with multinational organizations for the utilization of natural resources, to ensure the sovereignty and welfare of Kenyans that benefits accrue to the local communities.”	Adopted
22 nd January 2004	Committee	240(8)	“The state shall ensure that every landowner maintain a tree cover of at least 10% equivalent to 50 trees per hectares of land held with appropriate trees to ensure land reclamation rehabilitation and sustainable utilization of natural resources.”	Adopted
22 nd January 2004	Kaaru Abdukadir Delegate No. 263.	New Article 240(9)	“The state shall allocate adequate resources to ASAL areas to make those areas habitable and productive.”	Adopte
22 nd January 2004	Sub- committee on environment.	241	“ Every person has a right to a clean and healthy environment.”	
22 nd January	Sub- committee on environment.	241(2)	“ Every person has a right to participate in the conservation and protection of the	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
2004			environment.”	
22 nd January 2004	Sub- committee on environment.	241(3)	“ Every person has a right to access and enjoyment of the environment.”	
22 nd January 2004	Sub- committee on environment.	New article 242(1)	“ The state at all levels of government exercising power or performing a function involving the management and sustainable development of the environment shall be guided by the need to:	Adopted
22 nd January 2004	Sub- committee on environment.	242(1)(a)	“ Ensure the participation and involvement of the public.”	Adopted
22 nd January 2004	Sub- committee on environment.	242(1)(b)	“Protect genetic resources and biological diversity including wildlife and intellectual property related to them.”	
22 nd January 2004	Sub-committee on environment	242(1)(c)	“Protect and enhance the intellectual and indigenous knowledge of communities.”	Adopted
22 nd January 2004	Sub-committee on environment.	242(1)(d)	“Practice, encourage and require waste minimization and recycling.”	Adopted
22 nd January 2004	Sub-committee on environment.	242(1)(e)	“ Establish and ensure the effective functioning of a system of environmental impact assessment that.” (i) Applies to any project or combination of projects, including government projects. (ii) Is open and gives adequate opportunity for active public opportunity for active public	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			(iii) participation. Is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project and ensure adequate remedies.”	
22 nd January 2004	Sub-committee on environment.	242(1)(f)	“Establish systems of environmental audit and monitoring.”	Adopted
22 nd January 2004	Sub-committee on environment.	242(1)(g)	“ Ensure that environmental standards enforced in Kenya are the accepted internationally developing standards.”	
22 nd January 2004	Sub-committee on environment.	242(2)	“Parliament shall enact legislation to protect the intellectual property rights and indigenous knowledge of local communities in bio diversity and genetic resources ensuring prior informed consent of the communities and benefit sharing arrangements through devolved governments.”	Adopted
22 nd January 2004	Sub-committee	243(1)(a)	“There is established the national environment commission consisting of the chairperson, deputy chairperson, and eight other members nominated and appointed in accordance with provisions of chapter 17 of this constitution.”	Adopted
22 nd January 2004	Sub-committee	243(1)(b)	“The National Environment commission shall be devolved to the lowest level of government.”	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
22 nd January 2004	Sub-committee	243(2)(a)	The national environmental commission shall; “a) Ensure the protection, conservation and management of the environment.”	Adopted
23 rd January 2004	Sub-committee	243(2)	b) Monitor and have oversight responsibilities on the administration of the environment and land use planning. c) Audit and produce for the public, bi-annual reports on the state of environment. d) Promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring proper management and rational utilization of the environment and its natural resources. e) Formulate, monitor and evaluate the implementation of the National Environment policy. f) Examine new and emerging technologies and inventions to determine their impact on the environment and put in place the institutional framework for operationalization of such functions. g) Conduct research in consultation with other stakeholders and make	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			<p>recommendations to improve the functions of Government Ministries and Agencies in charge of the environment and natural resources.</p> <p>h) Initiate investigations on its own or upon a complaint from other person(s) or institution(s) and ensure appropriate redress.</p> <p>i) Examine resource use patterns and practices to determine their impact on the quality of the environment and to take remedial measures.</p>	
23 rd January 2004	Dr. Daniel W. Ichangi.(481)	243(2)(j)	“ promote environmental education and ensure access to information and public participation”	Adopted
23 rd January 2004	Dr. Daniel W. Ichangi.(481)	243(2)(k)	“Promote peaceful and harmonious co-existence among communities through just, equitable and rational sharing and utilization of the environment and its natural resources.”	
23 rd January 2004	Fatma Ibrahim Ali(506)	243(2)(l)	“ Recommend to parliament effective and efficient policies and programmes to protect and promote sustainable management and utilization of the environment and its natural resources.”	Adopted
23 rd January 2004	Jamila Mohamed (476)	243(2)(m)	“ Perform any other function as provided for by law or are incidental and conducive to the exercise of its duties as provided for in this constitution.”	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
23 rd January 2004	Sub-committee	243(3).	“ The commission with approval of parliament shall promote and facilitate public participation, discussion and input before international conventions, treaties and agreements that have consequences on the environment are ratified.”	Adopted
23 rd January 2004	Sub-committee	244(1).	“ every person whose environmental rights are being or are likely to be contravened has the right and duty to seek redress to; a) Prevent, stop or discontinue any act or omission, which is harmful to the environment. c) Compel any public officer to take measures to prevent or discontinue any act or omission, which is harmful to the environment. c) Compensation for any victim of such violations of environmental rights and other losses.”	Adopted
23 rd January 2004	Sub-committee	244(2).	“ Every person bringing an action under this article has a right to seek redress even if the person cannot show that the act, omission or infringement has caused or is likely to cause that person any personal loss or injury.’	Adopted
23 rd January 2004	Sub-committee	244(3).	“ There is established a special court for the environment.”	Adopted
23 rd	Sub-committee	245	“ Upon the coming into force of this	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
January 2004			constitution, parliament shall enact legislation to give effect to the provisions of this chapter.”	
23 rd January 2004	Sylvester Wafula-484	Further amendment 245	“ Upon the coming into force of this constitution, parliament shall enact legislation to provide the executing authority to carry out the duties as and when directed by the commission.”	Not adopted. (withdrawn by the member)

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
26 th January 2004	Sub-Committee	240(6)	<p>Upon enactment of this constitution, parliament shall:</p> <p>i) Enact laws requiring reclamation, rehabilitation and sustainable utilization of beaches, flood prone areas, degraded areas including ASALS and any other such threatened environments.”</p> <p>ii) “ Enact laws for the conservation of forests, wildlife parks, reserves and sanctuaries, beaches and water catchment areas, promote conservation areas unless such excision is consistent with principles to enhance sustainable management and community benefit.’</p> <p>iii) “Ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation.”</p> <p>iv) “ Enforce the polluter pays principle and ensure that the disposal and storage of environmentally undesirable substances including hazardous waste and munitions take into account the requirements for a clean, safe and healthy environment.’</p> <p>v) ‘ Emission of harmful radiation and noise into the environment shall be regulated to meet the requirements for a safe and healthy environment.</p> <p>vi) “ To ensure that planning and utilization</p>	Adopted
26 th January 2004	Dr. James Koskei			

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
26 th January 2004	Prof. Wangari Maathai-084	288(e)	“ one of the commissioners be an environmental expert/commissioner”	Adopted
30 th January 2004	Prof. Wangari Maathai-084	‘preamble’	<p>“CELEBRATING this beautiful land that has given birth to us as a nation, shapes our diverse cultures, sustains us as part of the community of life on earth.</p> <p>CONSCIOUS of our common and sacred responsibility to the present and future generations of humans and other species to protect and care for all the living communities in Kenya and to ensure that we maintain and strengthen the integrity of the natural systems that support us all.”</p>	<p>Adopted</p> <p>(Committee resolved to forward the proposal to the technical working committee on preamble.</p>
2 nd February 2004	Fibie Ochola-405	232(7), 232(8) and 235(4)(d)	Transferred to chapter 12 from chapter 11.	Adopted
2 nd February 2004	Prof. Wangari Maathai-084	232(1)	Added the word “ vegetation ” in definition of Land.	Not adopted, the word “biodiversity” inserted thereof.
2 nd February 2004	Levi Ahindukha-379	235(4)(b)(iii)	Word ‘Current’ added.	<p>Adopted</p> <p>(In view of devolution.)</p>
2 nd February 2004	Committee	Proposed Section on Property	The state shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development (investment) and management of property.	<p>Adopted</p> <p>(New section on property as formulated</p>

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			<p>ii) “Property development and management shall take into consideration the requirements of sustainable physical planning and land use, including safeguarding the environment.”</p> <p>iii) Parliament shall enact laws to:</p> <p>a) “Compel the state and relevant organizations including devolved authorities to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials innovations and methods in the property sector provided that such are not harmful and injurious to persons and the physical environment.”</p> <p>b) “Ensure that major investments in property by foreigners shall be geared to benefiting local Kenyan’s and their economy.”</p> <p>iv) “All public properties shall be held, managed and disposed of according to the legislation specifying the nature and terms of that holding management and disposal.”</p> <p>v) “The state shall regulate the use of any right and interest in property in the public interest in so far as such regulation shall not violate the principles set out in this</p>	by Dr Swazuri)

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			<p>constitution.”</p> <p>vi) “ The state shall develop and constantly review a national housing policy with a view of increasing, regulating and maintaining the national housing stock.”</p> <p>vii) “The state shall encourage the construction and ownership of both public and private housing in so far as such housing shall adhere to the principles and standards of sustainable land utilization, physical planning and environmental safeguards as outlined in this constitution.”</p> <p>viii) “There is established a housing development fund to enable Kenyan’s gain access to more and better housing.”</p> <p>The state shall establish a property and housing</p>	
2 nd February 2004	Beatrice Nduta Kiarie-465	240(1)	Be “harmonized”	Adopted
2 nd February 2004	Beatrice Nduta Kiarie-465	240(6)(1)	“Be incorporated under Article 240(a)”	Adopted
2 nd February 2004	William Ole Yiaile-361	242(1)(c)	Addition of the words “ research findings”	Adopted

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
2 nd February 2004	Beatrice Nduta Kiarie-465	244(1) and 244(2)	Be combined.	Adopted
3 rd February 2004	Dr James Koske-371	234(2)(e)	“ Or in any other law” be harmonized.	Adopted
3 rd February 2004	Joel Mwailengo-246	235(4)(vii)	“ The settlement of the landless and squatters including the rehabilitation of spontaneous settlement in urban and rural areas through devolved units until solution is found.”	Adopted
3 rd February 2004	Committee	Proposed Section on Major National Resources	<p>The state shall ensure that important national resources and products, including but not limited to agriculture, fisheries, livestock, energy, minerals and tourism are;</p> <p>i) protected, promoted and sustainably developed to increase their output and profits</p> <p>ii) subjected to strategic research to ensure their enhancement;</p> <p>iii) Protected against unfair trade practices in their production, distribution and marketing from both local and outside/foreign forces.</p> <p>iv) regulated in terms of their exportation and importation;</p> <p>v) regulated in terms of their origin, quality, methods of production, harvesting and processing;</p>	Adopted (Section as formulated by Dr. Swazuri)

DATE	NAME	ARTICLE	SUMMARY OF MOTION	COMMENT
			vi) protected against processes and activities that are likely to endanger them or curtail their existence altogether; vii) Emphasis shall be on the interests and benefits to Kenyan's and communities involved.	
19 th February 2004	Rapporteur-general	234(2)	Inclusion of "private lease"	Adopted
19 th February 2004	Rapporteur-general	234(2)(f)	"all such beaches be allowed access to the public ." be transferred to 235(1)(c)	Adopted
19 th February 2004	Rapporteur-general	235(1)(a)	Contradiction with article 237 be resolved.	Adopted
19 th February 2004	Rapporteur-general	236(2)	Be merged with article 54	Adopted
19 th February 2004	Rapporteur-general	239 and 241	Be transferred to a new Article 237 on "development and management of land."	Adopted

APPENDIX C: LIST OF COMMITTEE MEMBERS

<u>Delegate Name.</u>	<u>Delegate No.</u>	
1.Prof.Saad Yahya	483	Convenor
2.Dr M. A.Swazuri	553	Rapporteur
3.Dr A Nunow	558	Rapporteur
4.Archbishop Njeru Wambugu	527	
5.Augustine Saina	343	
6.Beatrice Mwaringa	233	
7.Benjamin Gitoi	602	
8.Dr Daniel W. Ichangi	481	
9.F. Mwanzia	133	
10.Fibie Atieno Ochola	405	
11.Gachara Muchiri	111	
12.Dr. James Koskei	371	
13. John Serut	186	
14.Julius Lalampaa	329	
15.Kalembe Ndile	140	
16.Levi Ahindikha	379	
17.Lumumba Odenda	458	
18.Muthoni Mburu	312	
19.Martha Rop	509	
20.Mwailengo Haji Joel	246	
21.Munene Othiniel J	427	
22.Mwandawiro Mghanga	131	
23.Nyawira Ngari	306	
24.Opore Zebedeo	171	
25.Peter Kyalo Kaindi	035	
26.Phillip Ole Sironka	461	
27.Praxedes N Wambua	297	
28.Robert Rukunga	621	
29.Samuel Mwaura	604	
30.Wafula Sylvester	484	
31. William Lopetakou	325	
32. William S. Ole Yiaile	361	
33. Fatma Ibrahim Ali	506	
34. Thomas Merengo	421	
35. William Omondi Opondo	167	
36. Rhoda Kamanda	432	
37. Bornice S. Chelang'at	372	
38. Wangari Maathai	084	
39. Andrew Ligale	083	
40. Gideon Konchella	074	
41. Ezekiel Kesendany	356	
42. Fatuma Halako Galgalo	239	
43. Olweny P. Ayiecho	164	
44. Peter E. Ejore	323	
45. Jamila Mohammed	476	
46. Kaaru Abdukadir Guleid	263	

47. Kimani M. Ng'ang'a	598
48. Joe Khamisi	054
49. Koigi wa Wamwere	204
50. Mafunga Wambulwa	376
51. Raphael Wanjala	205
52. Chirau Ali Mwakwere	130
53. Beatrice Kiarie	465
54. Lina Kilimo Jebii	059
55. Mohammed Abdi Mohammed	106
56. Mohammed Kuti	080
57. Adeline Mwau Ndeto	218
58. Noah Wekesa	207
59. Philip Rotino	178
60. Raphael Tuju	199
61. Njenga Karume	045
62. Amos Kimunya	063
64. Rajab Mwondi	440

APPENDIX D: AGENDA AND MINUTES OF THE COMMITTEE PROCEEDINGS.

**MINUTES OF THE FIRST MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD ON MONDAY THE 26TH DAY OF MAY,
2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>	
1. Comm. Tobiko Keriako	-569	Rapporteur
2. Martha Rop	-509	
3. Micheal Wambulwa	-376	
4. F. Mwanzia	-133	
5. Kaaru Budukadir Guleid	-263	
6. Robert Rukungah	-621	
7. Pradedas N. Wambua	-297	
8. William S. Ole Yiaile	-361	
9. Peter E. Ejore	-323	
10. James Koskei	-371	
11. Ausustine Saina	-343	
12. William Lopetalou	-325	
13. Ezekiel Kesendendany	-356	
14. Wangari Maathai	-084	
15. NYawira Ngari	-306	
16. M. Muthoni Mburu	-312	
17. Clare Omanga	-423	
18. Fibie Atieno Ochola	-405	
19. william Omondi	-167	
20. Archbishop Njeru Wambugu	-527	
21. Lumumba Odenda	-458	
22. Phillip Ole Sironka	-461	
23. Saleh Saad Yahya	-481	
25. Levi Ahindikha	-379	
26. John Serut	-186	
27. Mafunga Wambulwa	-376	
28. Mwai Gakunya	-576	
29. Ngorongo Makanga	-605	
30. Kimani m. Nganga	-598	
31. Njuguna Kungu	-582	
32. Samuel Mwaura	-604	
33. Mwailengo Haji Joel	-246	
34. Fatuma Halako Galgalo	-239	
35. Beatrice Mwaringa	-233	
36. Joe Khamisi	-054	
37. Mwandawiro Mgagha	-131	
38. Gideon Konchella	-072	
40. Bornice Chalagat Soi	-372	

Absent:

1. Esther Lelei	-445
2. Fatma Ibrahim	-506
3. Mohamed Kuti	-080
4. Peter Kyalo Kaindi	-035
5. Kalembe Ndile	-140
6. Moses K. Cheboi	-118
7. Michael Sengech	-337
8. Julius Lalampaa	-329
9. Philip Rotino	-178
10. Koigi Wa Wamwere	-204
11. Gachara Muchiri	-111
12. Olweny P. Ayiecho	-164
13. Raphael Tuju	-199
14. Opore Zebedeo	-171
15. David Oyao	-416
16. Manoti Stephen Kengere	-094
17. Jamila Mohammed	-476
18. Beatrice Nduta	-465
19. M.A. Mahamud	-106
20. Raphael Wanjala	-205
21. Wafula Sylvester	-484
22. Noah Wekesa	-207
23. Munene O.J.	-247
24. Danny Irungu	-627

In Attendance:

Rukia Abdinassir - Programme Assistant

MIN.NCC/LRE1/01/03: COMMENCEMENT OF BUSINESS

The Chair Commissioner Tobiko called the meeting to order at 11.58 a.m. The Chair explained that the meeting's agenda was to elect a convenor for the committee and asked whether members have already proposed on a person.

MIN.NCC/LRE1/02/03: ELECTION OF CONVENOR

Hon. Saleh S. Yahya, a delegate representing Professional Organization and from Coast Province was unanimously elected as the convenor.

Hon. Njuguna Kung'u complained that the convenor's nomination was done by the provincial delegates without the knowledge of the other constituencies and added that he will take that matter to the floor of the conference.

Members informed him that all delegates' whether political parties or other constituencies belonged to a province and reiterated that Hon. Saleh S. Yahya was in fact from the professional organizations category.

A member asked what happens if the members lose confidence in the convenor. The Chair clarified that they have the right to recall the convenor if he does not deliver.

RESOLVED

The Chair clarified that members have the right to replace the convenor if his work is unsatisfactory

MIN.NCC/LRE1/03/03: ADJOURNMENT OF THE MEETING

The Chair then adjourned the meeting at 12.13 p.m. until a date to be advised.

SIGNED:
CONVENOR

DATE:

**MINUTES OF THE SECOND MEETING OF THE TECHNICAL WORKING GROUP
ON LAND RIGHTS AND ENVIRONMENT HELD ON TUESDAY THE 19TH DAY OF
AUGUST, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>	
1. Saleh S. Yahya	-483	Convenor
2. M. A. Swazuri	-553	Rapporteur
3. Martha Rop	-509	
4. Kaaru Abdukadir Guleid	-263	
5. Praxedas N. Wambua	-297	
6. William S. Ole Yiaile	-361	
7. James Koskei	-371	
8. Augustine Saina	-343	
9. William Lopetalou	-325	
10. Peter E. Ejore	-323	
11. Daniel W. Ichangi	-481	
12. Samuel Mwaura	-604	
13. Levi Ahindukha	-379	
14. Mwalengo Haji Joel	-246	
15. John Serut	-186	
16. Fatuma Halako Galgalo	-239	
17. Nyawira Ngari	-306	
18. Beatrice Mwaringa	-233	
19. Mafunga Wambulwa	-376	
20. Ras Mwai Gakinya Simon	-576	
21. Ezekiel Kesendendany	-356	
22. Njuguna Kung'u	-582	
23. M. Muthoni Mburu	-312	
24. Joe Khamisi	-054	
25. Clare Omanga	-423	
26. Mwandawiru Mghanga	-131	
27. Fibie Atieno Ochola	-405	
28. Gideon Konchella	-074	
29. William Omondi	-167	
30. Archbishop Njeru Wambugu	-527	
31. Rajab Mwondi	-440	
32. Benjamin N. Gitoi	-602	
33. Esther Lelei	-445	
34. Fatma Ibrahim	-506	
35. Beatrice Nduta	-465	
36. Jamila Mohammed	-476	
37. Julius Lalampaa	-329	
38. Raphael Wanjala	-205	
39. Philip Rotino	-178	
40. Munene O. J.	-247	

41.Olweny P. Ayiecho	-164
42.Danny Irungu	-627
43.Wangari Maathai	-084
44. Andrew Ligale	-083

Absent:

1. Raphael Tuju	-199
2. Opore Zebedeo	-171
3. Mohamed Kuti	-080
4. David Oyao	-416
5. Peter Kyalo Kaindi	-035
6. Manoti Stephen Kengere	-094
7. Kalembe Ndile	-140
8. Beatrice Nduta	-465
9. Michael Sengech	-337
10. M.A. Mohamud	-106
11. Wafula Sylvester	-484
12. Koigi Wa Wamwere	-204
13. Noah Wekesa	-207
14. Gachara Muchiri	-111

In Attendance:

Rukia Abdinassir - Programme Assistant

MIN.NCC/LRE1/03/03: REMARKS BY THE CONVENOR

Hon. Saleh S. Yahya thanked Members for unanimously electing him the Convenor.

MIN.NCC/LRE1/04/03: DISTRIBUTION OF DOCUMENTS

The working documents were distributed to the Members of the technical working group to enable them go through before the Committee begins considering the draft report.

MIN.NCC/LRE1/05/03: ADDITIONAL INFORMATION

Members requested that the report of "Njonjo Commission on Enquiry on Land Systems in Kenya" be availed to the Committee Members.

MIN.NCC/LRE1/06/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting at 4.30 p.m. until a date to be advised.

SIGNED:

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CONVENOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

9th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday 9th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

1. Prayers.
2. Confirmation of minutes.
3. Matters Arising.
4. Consideration of the Report on Environment.
5. Consideration of the Bill.
Article 232
Article 233
Article 234
Article 235
6. Any other Business.
7. Date of the next Meeting.

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE THIRD MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON TUESDAY THE 9TH
DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saleh Saad Yahya	-Convenor
2. Dr. M.A. Swazuri	-Rapporteur
3. Dr. A. Nunow	-Rapporteur
4. Archbishop Njeru Wambugu	-527
5. Augustine Saina	-343
6. Beatrice Mwaringa	-233
7. Benjamin Gitoi	-602
8. Clare Omanga	-423
9. Ezekiel Kesendany	-356
10. F. Mwanzia	-133
11. Fatuma Halako Galgalo	-239
12. Fibie Atieno Ochola	-405
13. Joe Khamisi	-054
14. John Serut	-186
15. Kaaru Abdukadir Guleid	-263
16. Kalembe Ndile	-140
17. Kimani M. Ng'ang'a	-598
18. Lina Kilimo Jebii	-059
19. Lumumba Odenda	-458
20. Munene O.J.	-247
21. Mwai Gakuya Simon	-576
22. Mwalengo Haji Joel	-246
23. Mwandawiro Mghanga	-131
24. Mwau Adeline Ndeto	-218
25. Opore Zebedeo	-171
26. Philip Rotino	-178
27. Samuel Mwaura	-604
28. Wafula Sylvester	-484
29. William S. Ole Yiaile	-361
30. Fatma Ibrahim ali	-506
31. William Omondi Opondo	-167
32. Rhoda G. Kamanda	-432
33. Bornice S. Chelang'at	-372
34. Moses Naimodu	-358
35. Rajab Mwandu	-440
36. Wangare Maathai	-084
37. Andrew Ligale	-083
38. Francis Wabayale	-588
39. Beatrice Kiarie	-465
40. Peter Kyalo Kaindi	-035
41. Gachara Muchiri	-111

42. James Koskei	-371
43. Levi Ahindikha	-379
44. Mafunga Wambulwa	-376
45. Thomas Merengo	-421
46. Mohamed Kuti	-080
47. M. Muthoni Mburu	-312
48. Martha rop	-509
49. C. Nyawira Ngari	-306
50. Peter E. Ejore	-323
51. Praxedas N. Wambua	-297
52. Gideon Konchella	-074
53. Daniel W. Ichangi	-481
54. Robert Rukungah	-621

Absent:

1. Koigi Wa Wamwere	-204
2. Mohamed Abdi Mohamed	-107
3. Noah Wekesa	-207
4. Olweny P. Ayiecho	-164
5. Raphael Tuju	-199
6. Raphael Wanjala	-205
7. Njenga Karume	-045
8. Amos Kimunya	-063
9. Ali Mwakwere	-130

In Attendance:

Rukia Abdinassir	-	Programme Assistant
Jane Kibiru	-	Programme Assistant
Esther Kamau	-	Librarian

MIN.NCC/LRE1/07/03: REMARKS BY THE CONVENOR

The Convenor, Hon. Saleh S. Yahya, called the meeting to order at 10.00 a.m. Archbishop Njeru Wambugu, Delegate Number 527, opened the meeting with prayers.

MIN.NCC/LRE1/08/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Members confirmed the minutes of the previous meeting and signed by the Convenor. These was proposed by Beatrice Mwaringa, Delegate Number 233 and seconded by Fatuma Halako Galgalo, Delegate Number 239.

MIN.NCC/LRE1/09/03: MATTERS ARISING

It was noted that in the attendance list, Delegate No.458 Odede Lumumba was omitted. The correction was made accordingly.

It was further noted that some delegates names were mis-spelt and the necessary corrections were made.

MIN.NCC/LRE1/10/03: CONSIDERATION OF BUSINESS

Commissioner Swazuri explained the rules of procedure governing the conduct of technical committee meetings.

It was agreed that Members would adhere to the rules and regulations as given. The Convenor emphasized of the need to maintain quorum at all times and to observe punctuality.

MIN.NCC/LRE1/11/03: DRAFT BILL AND DRAFT REPORT

The Convenor explained that the Committee has to deal with both the Report and the Bill and requested Members to say how they wished to deal with the two. Members agreed to speak for 5 minutes each.

MIN.NCC/LRE1/12/03: INTERRUPTION OF BUSINESS

And the time being six minutes past Eleven O'clock, the Convenor interrupted business without question to facilitate Members to break for tea.

MIN.NCC/LRE1/13/03: SUMMARY OF THE REPORT

The Rapporteur, Dr. Swazuri gave a summary of the Report on Land and Environment as follows:

Phase I-	the status as of now.
Phase II	- the views of Kenyans
Phase III	- draft Bill

MIN.NCC/LRE1/14/03: SUMMARY OF THE CONFERENCE PROCEEDINGS/REPORT OF RAPPORTUER GENERAL ON LAND AND ENVIRONMENT

Another Rapporteur, Commissioner Nunow gave a recap of the main issues captured in the report of the Rapporteur-General to the National Constitutional Conference and reminded the delegates of the issues that they are expected to deal with in the technical working committee.

There were sentiments that the Rapporteur General's Report may have not have been approved in the plenary. After debate, it was resolved to use the Report as a working document.

MIN.NCC/LRE1/15/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting at two minutes past one O'clock until 14.30 hours.

AFTERNOON SITTING

The meeting reconvened at forty minutes past Two O'clock with the Convenor in the Chair.

MIN.NCC/LRE1/16/03: GENERAL REPORT ON THE DEBATE

The Convenor outlined the basic questions to be addressed by the committee as follows:-

Is the commission report an adequate representation of what Kenyans want and expect.

Have all the important problems been addressed?

Are there any glaring omissions?

How can the Report be strengthened or be improved?

Does the bill reflect the Report's sentiments and if not, how can it be improved?

The delegates went on to debate the Section of the Commission's Report on Land and Property.

MIN.NCC/LRE1/17/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting thirty five minutes past Four O'clock until tomorrow Wednesday, 10th September, 2003 at 8.30 a.m.

SIGNED:

.....
CONVENOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

10th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

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

AGENDA

- | | | | |
|----|-----------------|---|---|
| 1. | 08.30-09.00 a.m | - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2. | 09.00-10.30 a.m | - | Debate on the Report on Environment |
| 3. | 10.30-11.00 a.m | - | TEA BREAK |
| 4. | 11.00-01.00 a.m | - | Consideration of the Bill
Article 232
Article 233 |
| 5. | 01.00-02.30 a.m | - | LUNCH BREAK |
| 6. | 02.30-05.00 a.m | - | Consideration of the Bill
Article 232
Article 233
Any Other Business |

7. Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE FOURTH MEETING OF THE TECHNICAL WORKING GROUP
ON LAND RIGHTS AND ENVIRONMENT HELD AT 12.30 P.M. ON WEDNESDAY
THE 10TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saleh Saad Yahya	-Convenor
2. Dr. M.A. Swazuri	-Rapporteur
3. Dr. A. Nunow	-Rapporteur
4. Benjamin Gitoi	-602
5. Beatrice Mwaringa	-233
6. Augustine Saina	-343
7. Clare Omanga	-423
8. Daniel W. Ichangi	-481
9. Ezekiel Kesendany	-356
10. F. Mwanzia	-133
11. Fatuma Halako Galgalo	-239
12. Fibie Atieno Ochola	-405
13. Gachara Muchiri	-111
14. James Koskei	-371
15. John Serut	- 186
16. Julius Lalampaa	-329
17. Kaaru Abdukadir Guleid	-263
18. Kalembe Ndile	-140
19. Kimani M. Ng'ang'a	-598
20. Levi Ahindikha	-379
21. Lumumba Odenda	-458
22. M. Muthoni Mburu	-312
23. Mafunga Wambulwa	-376
24. Martha Rop	-509
25. Munene O.J.	-247
26. Mwai Gakuya Simon	-576
27. Mwalengo Haji Joel	-240
28. Mwandawiro Mghanga	-131
29. C. Nyawira Ngari	-306
30. Opore Zebedeo	-171
31. Peter E. Ejore	-323
32. Philip Ole Sironka	-461
33. Philip Rotino	-178
34. Praxedas N. Wambua	-297
35. Robert Rukungah	-621
36. Samuel Mwaura	-604
37. Wafula Sylvester	-484
38. William Lopetakou	-325
39. William S. Ole Yiaile	-361
40. Thomas Merengo	-421
41. William Omondi Opondo	-167

42. Rhoda G. Kamanda	-432
43. Moses Naimadu	-358
44. Rajab Mwondi	-442
45. Andrew Ligale	-083
46. Jamila Mohamed	-476
47. Rajab Mwondi	-442
48. Gideon K. Changole	-074
49. Wangari Maathai	-083

Absent:

1. Joe Khamisi	-054
2. Koigi Wa Wamwere	-204
3. Lina Kilimo Jebii	-059
4. Mohamed Abdi Mohamed	-106
5. Mohamed Kuti	-080
6. Noah Wekesa	-207
7. Olweny P. Ayiecho	-164
8. Raphael Tuju	-199
9. Raphael Wanjala	-205
10. Njenga Karume	-045
11. Amos Kimunya	-063
12. Fatma Ibrahim Ali	-506
13. Ali Mwakwere	-130
14. Bornice S. Chelang'at	-372
15. Peter Kyalo Kaindi	-035
16. Gideon Konchella	-074

Apologies:

Mwau Adeline Ndeto	-218
Archbishop Njeru Wambugu	-527

In Attendance:

Rukia Abdinassir	-	Programme Assistant
Jane Kibiru	-	Programme Assistant
Esther Kamau	-	Librarian

MIN.NCC/LRE1/18/03: REMARKS BY THE CONVENOR

The Convenor, Hon. Saleh S. Yahya, called the meeting to order at 12.30 p.m and proceedings were opened with a word of prayer.

MIN.NCC/LRE1/19/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The delegates did not confirm the minutes of the previous meeting as they were to be corrected.

MIN.NCC/LRE1/20/03: MATTERS ARISING

It was noted that some delegates who were present had been marked absent. The minutes were thus corrected to reflect the correct position. The Convenor impressed upon the delegates to always sign the attendance list in order to make preparation of the minutes easy and accurate.

MIN.NCC/LRE1/21/03: GENERAL DEBATE ON LAND AND PROPERTY

The debate on land issues resumed and delegates continued to give their general views on the debate.

MIN.NCC/LRE1/22/03: ADJOURNMENT OF THE MEETING

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

AFTERNOON SITTING

The meeting reconvened at forty minutes past Two O'clock with the Convenor in the Chair.

MIN.NCC/LRE1/23/03: RESUMPTION OF BUSINESS INTERRUPTED

The meeting was called to order at 2.35 p.m. with the Convenor on the Chair.

The Convenor informed the Committee that representatives of the Institution of Surveyors of Kenya as experts were present and were to give professional expertise which the delegates would take into consideration during their deliberations.

The representatives gave a presentation on their observations on Chapter II of the Draft Bill.

Delegates debated some of the issues that were raised by the experts and also asked them various questions relating to their professions.

MIN.NCC/LRE1/24/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting at five minutes past Four O'clock until tomorrow Thursday, 11th September, 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

11th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday 11th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 232
Article 233 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 232
Article 233 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 234
Article 235
Any Other Business |

7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE FIFTH MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD AT 09.15 A.M. ON THURSDAY THE
11TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saleh Saad Yahya	-Convenor
2. Dr. M.A. Swazuri	-Rapporteur
3. Dr. A. Nunow	-Rapporteur
4. Archbishop Njeru Wambugu	-527
5. Augustine Saina	-343
6. Beatrice Mwaringa	-233
7. Benjamin Gitoi	-602
8. Clare Omanga	-423
9. Daniel W. Ichangi	-481
10. Ezekiel Kesendany	-356
11. F. Mwanzia	-133
12. Fatuma Halako Galgalo	-239
13. Fibie Atieno Ochola	-405
14. James Koskei	-371
15. John Serut	-186
16. Julius Lalampaa	-329
17. Kaaru Abdukadir Guleid	-263
18. Kalembe Ndile	-140
19. Kimani M. Ng'ang'a	-598
20. Levi Ahindikha	-379
21. Lumumba Odenda	-458
22. M. Muthoni Mburu	-312
23. Mafunga Wambulwa	-376
24. Martha Rop	-509
25. Mohamed Abdi Mohamed	-106
26. Munene O.J.	-247
27. Mwai Gakuya Simon	-576
28. Mwailengo Haji Joel	-246
29. Mwandawiro Mghanga	-131
30. C. Nyawira Ngari	-306
31. Olweny P. Ayiecho	-164
32. Opore Zebedeo	-171
33. Peter E. Ejore Derick	-323
34. Philip Rotino	-178
35. Praxedes N. Wambua	-297
36. Raphael Wanjala	-205
37. Samuel Mwaura	-604
38. Wafula Sylvester	-484
39. William Lopetakou	-325
40. William S. Ole Yiaile	-361

41. Fatma Ibrahim Ali	-506
42. Thomas Merengo	-421
43. William Omondi Opondo	-167
44. Rhoda G. Kamanda	-432
45. Bornice S. Chelang'at	-372
46. Moses Naimadu	-358
47. Rajab Mwondi	-442
48. Andrew Ligale	-083
49. Beatrice Nduta Kiarie	-465
50. Jamila Mohamed	-476
51. Wangari Maathai	-083
52. Jebii Kilimo	-059
53. Robert Rukungah	-621
54. Beatrice Nduta Kiarie	-465

Absent:

1. Joe Khamisi	-054
2. Koigi Wa Wamwere	-204
3. Mohamed Kuti	-080
4. Noah Wekesa	-207
5. Peter Kyalo Kaindi	-035
6. Phillip Ole Sironka	-461
7. Raphael Tuju	-199
8. Njenga Karume	-045
9. Amos Kimunya	-063
10. Ali Mwakwere	-130
11. Gideon Konchella	-074

Apologies:

Mwau Adeline Ndeto	-218
Gachara Muchiri	-111

In Attendance:

Rukia Abdinassir	-	Programme Assistant
Jane Kibiru	-	Programme Assistant
Esther Kamau	-	Librarian

MIN.NCC/LRE1/24/03: REMARKS BY THE CONVENOR

The Convenor called the meeting to order at 09.15 a.m and proceedings were opened with prayers by William S. Ole Yiaile.

Commissioner Swazuri informed the delegates that the Njonjo Report would be circulated later.

MIN.NCC/LRE1/25/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The minutes of 9th September were proposed by C. Nyawira Ngari (306) and seconded by William S. Ole Yiaile (361).

The minutes of 10th September were also confirmed by a proposal from Fibie Atieno Ochola (405) and seconded by Daniel Ichangi (481).

MIN.NCC/LRE1/26/03: MATTERS ARISING

The delegates expressed concern that the list of absentees comprise mainly of Members of Parliament and requested Minister Jebii Kilimo, who was present in the meeting to convey their concern to her fellow parliamentarians.

MIN.NCC/LRE1/27/03: DEBATE ON LAND AND ENVIRONMENT

The delegates continued to debate the Commission's Report on Land and Environment.

Delegates continued to give their general views on what they wished the new Constitution to include.

MIN.NCC/LRE1/28/03: INTERRUPTION OF BUSINESS

The time being thirty minutes past Ten O'clock, the Convenor temporarily adjourned the meeting to facilitate Members to have a tea break.

MIN.NCC/LRE1/29/03: RESUMPTION DEBATE

The debate interrupted resumed at fifteen minutes past Eleven O'clock and the Technical Working Group continued with the general debate on land and environment.

The delegates expressed various views that needed to be included in the new Constitution which range from ownership and leasing of land, environmental degradation, land and property inheritance to issuance of title deeds among others.

The need for a land policy was equally emphasized.

MIN.NCC/LRE1/30/03: ADJOURNMENT OF THE MEETING

The time being ten minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

MIN.NCC/LRE1/31/03: RESUMPTION OF BUSINESS INTERRUPTED

The meeting reconvened at 2.30 p.m. with the Convenor in the Chair.

The general debate on the Commission's Report on Land and Environment resumed and delegates continued to give their expectations in the new Constitution.

MIN.NCC/LRE1/32/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting at twenty five minutes past Four O'clock until tomorrow Friday 12th September, 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

11th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “J” and has the honour to inform them that a sitting of the Committee will be held **on Friday 12th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 232
Article 233 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 232
Article 233 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 234
Article 235
Any Other Business |

7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE SIXTH MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD AT 09.15 A.M. ON FRIDAY THE 12TH
DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saleh Saad Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Clare Omanga	423
9.Daniel W. Ichangi	481
10.Ezekiel Kesendany	356
11.F. Mwanzia	133
12.Fatuma Halako Galgalo	239
13.Fibie Atieno Ochola	405
14.Gachara Muchiri	111
15.James Koskei	371
16.John Serut	186
17.Julius Lalampaa	329
18.Kaaru Abdukadir Guleid	263
19.Kimani M. Ng'ang'a	598
20.Levi Ahindukha	379
21.Lina Kilimo Jebii	059
22.Lumumba Odenda	458
23.M. Muthoni Mburu	312
24.Mafunga Wambulwa	376
25.Martha Rop	509
26.Mohamed Abdi Mohamed	106
27.Mwai Gakuya Simon	576
28.Mwailengo Haji Joel	246
29.Mwandawiro Mghanga	131
30.C. Nyawira Ngari	306
31.Olweny P. Ayiecho	164
32.Opore Zebedeo	171
33.Peter E. Ejore Derick	323
34.Philip Ole Sironka	461
35.Philiph Rotino	178
36.Praxedes N. Wambua	297
37.Raphael Wanjala	205
38.Robert Rukungah	621
39.Samuel Mwaura	604
40.Wafula Sylvester	484

41. William Lopetakou	325
42. William S. Ole Yiaile	361
43. Thomas Merengo	421
44. William Omondi Opondo	167
45. Rhoda G. Kamanda	432
46. Bornice S. Chelang'at	372
47. Moses Naimadu	358
48. Andrew Ligale	083
49. Beatrice Nduta Kiarie	465
50. Wangari Maathai	083
51. Othiniel J. Mnene	247
52. Amos Kimunya	063
53. Nakalo David Okiya	377

Absent with Apologies:

Mwau Adeline Ndeto	218
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Absent:

1. Joe Khamisi	054
2. Kalembe Ndile	140
3. Koigi Wa Wamwere	204
4. Mohamed Kuti	080
5. Noah Wekesa	207
6. Peter Kyalo Kaindi	035
7. Raphael Tuju	199
8. Njenga Karume	045
9. Ali Mwakwere	130
10. Gideon Konchella	074
11. Fatma Ibrahim Ali	506
12. Rajab Mwondi	442

IN ATTENDANCE:

1. Rukia Abdinassir	-	Programme Assistant
2. Jane Kibiru	-	Programme Assistant
3. Esther Kamau	-	Clerk Assistant

MIN.NCC/LRE1/33/03: REMARKS BY THE CONVENOR

The Convenor called the meeting to order at 09.26 a.m and began with prayers led by Delegate Rhoda G. Kamanda (432).

MIN.NCC/LRE1/34/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The minutes of fifth meeting were confirmed through a proposal by Delegate Levi Ahinduka (379) and seconded by Delegate James Koskei (371).

MIN.NCC/LRE1/35/03: LAND AND PROPERTY (CHAPTER 11)

Amendment proposed:

"That Chapter 11 on Land and Chapter 12 on Environment be combined into one chapter."

Question of the amendment proposed, put and negatived.

Further amendment proposed:

"That the information in Chapter 12 about Natural Resources should be part of Chapter 11 and that Chapter 12 should only contain Environment issues and that Chapter 11 should read as **Land, other Natural Resources and Property**, while Chapter 12 should read as **Environment**."

Question of the amendment proposes, put and agreed to.

Further amendment proposed:

"That **Article 238** on Interpretation be inserted immediately before **Article 232**."

Question of the amendment proposed, put and agreed to.

MIN.NCC/LRE1/35/03: TEA BREAK

The Committee adjourned for tea at 11.00 and reconvened at 11.25 a.m.

MIN.NCC/LRE1/36/03: LAND AND PROPERTY (CHAPTER 11)

Debate interrupted resumed.

Articles 232(2)

- (a) agreed to.
- (b) agreed to.
- (c) agreed to.
- (d) agreed to.
- (e) Deffered to another day.
- (f) Deffered to another day.

MIN.NCC/LRE1/37/03: ADJOURNMENT OF MEETING

The Convenor adjourned the meeting at fifteen minutes past Twelve O'clock until 2.30 p.m.

AFTERNOON SITTING

The Committee reconvened at 2.30 p.m.

MIN.NCC/LRE1/38/03: LAND AND PROPERTY (CHAPTER 11)

Article 232 (2)

Amendment proposed:

"That a New Sub-Clause (g) be inserted at the end of Sub-Clause (F) and the Article to read as follows:

(g)Elimination of gender discriminatory laws, regulations, customs and practices related to land."

Question of the amendment proposed, put and agreed to.

Amendment proposed:

"That the Articles between 232 and 238 be renumbered as a result of the insertion of article 238 before 232.

Article 232 was adopted as amended.

Article 232 (LAND OWNERSHIP)

Amendment proposed:

"That New Sub-Clauses (a) and (b) be inserted immediately after the word individuals to read as follows:

(a) Subject to this Constitution no person other than a citizen of Kenya shall have the right to acquire any interest or right in land in Kenya."

Question of the amendment proposed, put and agreed to.

(b) "That any land that is considered underutilized as per the laws of Kenya shall be taxed or given to people who are landless who will utilize it."

Question of the amendment proposed.

By leave of the Committee, the Mover was directed to re-draft and improve on his amendment.

Article 233 (2) differed to another day.

Article 233 (3) agreed to.

MIN.NCC/LRE1/39/03: ADJOURNMENT OF THE MEETING

The Convenor adjourned the meeting at ten minutes to Four O'clock until Monday 15th September, 2003 at 8.30 a.m.

SIGNED:

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CONVENOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

15th September, 2003

TECHNICAL WORKING COMMITTEE 'J' ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee "j" and has the honour to inform them that a sitting of the Committee will be held **on Monday 15th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 233
Article 233 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 234
Article 234 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 235
Article 235
Any Other Business |

7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE SEVENTH MEETING OF THE TECHNICAL WORKING GROUP
ON LAND RIGHTS AND ENVIRONMENT HELD AT 12.15 P.M. ON MONDAY THE
15TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saleh Saad Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Daniel W. Ichangi	481
9.Ezekiel Kesendany	356
10.F. Mwanzia	133
11.Fatuma Halako Galgalo	239
12.Fibie Atieno Ochola	405
13.Gachara Muchiri	111
14.Dr. James Koskei	371
15.John Serut	186
16.Kaaru Abdukadir Guleid	263
17.Kimani M. Ng'ang'a	598
18.Levi Ahindukha	379
19.Lumumba Odenda	458
20.M. Muthoni Mburu	312
21.Mafunga Wambulwa	376
22.Martha Rop	509
23.Mohamed Abdi Mohamed	106
24.Mnene Othinie J.	247
25.Mwai Gakuya Simon	576
26.Mwailengo Haji Joel	246
27.C. Nyawira Ngari	306
28.Olweny P. Ayiecho	164
29.Opore Zebedeo	171
30.Peter E. Ejore Derick	323
31.Philip Ole Sironka	461
32.Philiph Rotino	178
33.Praxedes N. Wambua	297
34.Robert Rukungah	621
35.Samuel Mwaura	604
36.Wafula Sylvester	484
37.William Lopetakou	325
38.William S. Ole Yiaile	361
39.Thomas Merengo	421
40.William Omondi Opondo	167
41.Rhoda G. Kamanda	432

42. Bornice S. Chelang'at	372
43. Moses Naimodu	358
44. Gideon Konchella	074
45. Rajab Mwondi	440
46. Andrew Ligale	083
47. Beatrice Nduta Kiarie	465
48. Nakalo David Okiya	377
49. Wangari Maathai	084
50. Jamila Mohammed	476
51. Clare Omanga	423

Observers

1. Lois Town	084
2. Fatuma Yussuf	011
3. Ummie Mavumba	025
4. Gideon K. Changole	155
5. Moses Leleu Laima	03
6. Omar Almustafa	125
7. Wycliff Muema	132
8. Stephen Muthiani Malului	201
9. Amina S. Kassim	074

Absent with Apologies:

Mwau Adeline Ndeto	218
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Absent:

1. Joe Khamisi	054
2. Kalembe Ndile	140
3. Koigi Wa Wamwere	204
4. Lina Kilimo Jebii	059
5. Mohamed Kuti	080
6. Noah Wekesa	207
7. Peter Kyalo Kaindi	035
8. Raphael Wanjala	205
9. Raphael Tuju	199
10. Njenga Karume	045
11. Amos Kimunya	063
12. Ali Mwakwere	130
13. Fatma Ibrahim Ali	506
14. Mwandawiro Mghanga	131
15. Julius Lalampaa	329

IN ATTENDANCE:

CONSTITUTION OF KENYA REVIEW COMMISSION

1. Rukia Abdinassir - Programme Assistant
2. Jane Kibiru - Programme Assistant

NATIONAL ASSEMBLY

Esther Kamau - Clerk Assistant

MIN.NCC/LRE1/40/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The meeting was called to order at 12.15 p.m. and the minutes of the previous meeting were confirmed and signed by the Convenor. They were proposed by Wafula Silvester (484) and seconded by C. Nyawira Ngari (306).

MIN.NCC/LRE1/41/03: LAND AND PROPERTY (CHAPTER 11)

Debate interrupted on 12th September, 2003 resumed.

Amendment proposed:

"That **Article 232** be amended and renumbered as follows:

Article 232(1)

In this Chapter "land" means the soil, sub-soil, rocks on or beneath it, any river, lake or marine waters in territorial sea and exclusive economic zone as defined in the First Schedule of this Constitution, and airspace immediately above it.

And that

Article 232(2) - Definition of "Natural Resources".

"In this Chapter "Natural Resources" means the physical non-human factors and components of the natural environment used to satisfy the needs and wants of Kenyans and for the sustainable development of present and future generations.

These include, but are not limited to, both renewable and non-renewable natural land, river, lake and marine resources, comprising but not limited to, land, soils, air, sunlight, surface and ground waters, forests, biodiversity, genetic resources, rocks, minerals, fossil fuels and other energy resources.

And that

Article 232(3) becomes definition of "property."

And that

Article 232(4) as presented in **Article 232(1)** of the Draft Bill.

And that

Article 232(5) as presented in **Article 232(2)** of the Draft Bill.

Article 232(6) - Addition.

And that

A **New Article 232 (6)** be inserted and to read as follows:

"All natural resources shall be vested in the state on behalf of the people of Kenya and shall be sustainably developed for the benefit of the people of Kenya as a whole, and for the benefit of the inhabitants of the regions where these resources occur."

After lengthy deliberations, the delegates agreed in principle to have **Article 232** as proposed but appointed a sub-committee to re-draft the definitions and present the re-defined definitions to the Committee the next day.

MIN.NCC/LRE1/42/03: ADJOURNMENT OF MEETING

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

AFTERNOON SITTING

The Committee reconvened at 2.40 p.m.

The sub-committee appointed to look at the definitions of land etc. reported that they were not ready and therefore, the debate was deferred to the next day.

MIN.NCC/LRE1/43/03: LAND AND PROPERTY (CHAPTER 11)

Article 232 (2) (e)

Amendment proposed:

"That Article 232 (2)(e) be removed from Chapter 11 and taken to Chapter 12 on Environment.

After lengthy deliberations the delegates were advised to re-visit the Article later.

MIN.NCC/LRE1/44/03: ADJOURNMENT OF THE MEETING

And the time being five minutes past Three O'clock, Ezekiel Kesendany (356) proposed a Motion of Adjournment to enable delegates to go and mourn their Colleague, Prof. Odhiambo Mbai, the Motion was seconded by Mwailengo Haji Joel (246) until the next day Tuesday 16th September, 2003 at 8.30 a.m.

SIGNED:

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CONVENOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

16th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 17th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 234
Article 234 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 235
Article 235 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 236
Article 236
Any Other Business |

7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE EIGHTH MEETING OF THE TECHNICAL WORKING GROUP
ON LAND RIGHTS AND ENVIRONMENT HELD AT 09.15 A.M. ON WEDNESDAY
THE 17TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

The following Members of Technical Working Group J were present:-

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saleh Saad Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Augustine Saina	343
5.Beatrice Mwaringa	233
6.Benjamin Gitoi	602
7.Daniel W. Ichangi	481
8.Ezekiel Kesendany	356
9.F. Mwanzia	133
10. Fatuma Halako Galgalo	239
11. Fibie Atieno Ochola	405
12. Gachara Muchi	111
13. Dr. James Koskei	371
14. Joe Khamisi	054
15. John Serut	186
16. Julius Lalampaa	329
17. Kaaru Abdukadir Guleid	263
18. Kalembe Ndile	140
19. Kimani M. Ng'ang'a	598
20. Koigi wa Wamwere	204
21. Levi Ahindikha	379
22. Lumumba Odenda	458
23. M. Muthoni Mburu	312
24. Mafunga Wambulwa	376
25. Martha Rop	509
26. Munene Othiniel J.	247
27. Mwai Gakuya Simon	576
28. Mwailengo Haji Joel	246
29. Mwandawiro Mghanga	131
30. Nyawira Ngari	306
31. Olweny P. Ayiecho	164
32. Opore Zebedeo	171
33. Peter E. Ejore Derick	323
34. Philip Ole Sironka	461
35. Philip Rotino	178
36. Praxedes N. Wambua	297
37. Raphael Wanjala	205
38. Robert Rukungah	621

39. Samuel Mwaura	604
40. Wafula Sylvester	484
41. William Lopetakou	325
42. William S. Ole Yiaile	361
43. Amos Kimunya	063
44. Fatma Ibrahim Ali	506
45. Thomas Merengo	421
46. Rhoda G. Kamanda	432
47. Moses Naimodu	358
48. Rajab Mwondi	440
49. Beatrice Nduta Kiarie	465
50. Wangari Maathai	084
51. Jamila Mohammed	476
52. Clare Omanga	423
53. Andrew Ligale	083

Absent with Apologies:

Mwau Adeline Ndeto	218
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Absent:

1. Archbishop Njeru Wambugu	527
2. Lina Kilimo Jebii	059
3. Mohamed Abdi Mohamed	106
4. Mohamed Kuti	080
5. Noah Wekesa	207
6. Peter Kyalo Kaindi	035
7. Raphael Tuju	199
8. Njenga Karume	045
9. Ali Mwakwere	130
10. William Omondi Opondo	167
11. Bornice S. Chelang'at	372
12. Gideon Konchella	074
13. Nakalo David Okiya	377

Observers Present:

1. Lois Town	084
2. Fatuma Yussuf	011
3. Gideon K. Changole	155
4. Moses Leleu Laima	003
5. Omar Almustafa	125
6. Monica Opole	055
7. S.S. Ole Timoi	061
8. Amina S. Kassim	074

IN ATTENDANCE:

- | | | |
|---------------------|---|---------------------|
| 1. Rukia Abdinassir | - | Programme Assistant |
| 2. Jane Kibiru | - | Programme Assistant |
| 3. Esther Kamau | - | Clerk Assistant |

MIN.NCC/LRE1/45/03: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The meeting was called to order at 9.15 a.m. and the prayers were led by Beatrice Mwaringa (233).

The Convenor informed the delegates that the minutes of the previous meeting had some minor corrections and would therefore be firmed later.

MIN.NCC/LRE1/46/03: LAND AND PROPERTY (CHAPTER 11)

Article 234 (Classification of Land)

Article 234(1) was adopted without amendments.

Article 234(2) (a) was adopted without amendments.

Article 234(2) (b) was adopted without amendments.

Article 234(2) (c)

Amendment proposed:

That the words "including land declared vacant" immediately after the word "established" in **clause 234(2) (c)** be deleted.

Question of amendment proposed, put and agreed to.

Article 234(2)(d) was deferred

Article 234(2)(e) was adopted without amendments.

Article 234(2)(f)

Amendment proposed.

That the word "including all beach land between high and the low water marks". Be inserted after the words "sea bed".

Question of amendment proposed, put and agreed to.

MIN.NCC/LRE1/47/03: TEA BREAK

The Convenor adjourned the meeting at forty five minutes past Ten O'clock to facilitate tea break until 11.45 a.m.

MIN.NCC/LRE1/48/03: CONFIRMATION OF MINUTES

Debate interrupted resumed at 11.45

The minutes of the previous meeting were confirmed and signed by the Convenor. Ezekiel Kesendany (356) proposed and was seconded by Benjamin Gitoi (602).

MIN.NCC/LRE1/49/03: MATTERS ARISING

The sub-committee appointed to look at the definitions proposed amendments to Chapter 11 on Land, other Natural Resources and Property as follows:

Article 232(1)- Article 238 in the Draft Bill revised to define "land" as follows:

In this Chapter "**land**" means the soil, sub-soil, rock, any body of water wholly contained within or beneath it, marine waters in the Territorial Sea and Exclusive Economic Zone as defined in the First Schedule of this Constitution, and airspace above it.

And that **Article 232 (2)** - Definition of "Natural Resources" be as follows.

In this Chapter "**Natural Resources**" means the biological and physical non-human factors and components of the natural environment which include, but are not limited to, both renewable and non-renewable natural land, river, lake and marine resources, comprising, but not limited to, land, soils, air, sunlight, surface and ground waters, forests, biodiversity genetic resources, rocks, minerals, fossil fuels and other energy resources"

Article 232(3) - Definition of "Property" be as follows:

In this Chapter "**Property**" means land as defined in **Article 232(1)**, permanent fixtures thereon and such rights, interests and restrictions therein, personal property comprising, but not limited to, movable chattels, financial instruments, livestock, fisheries, crops, plant and machinery, and intellectual inventions, innovations and rights."

And that

Article 232(4) be as presented in **Article 232(1)** of Draft Bill or as amended by this Committee.

And that

Article 232(5) be as presented in **Article 232(2)** of Draft Bill or as amended by this Committee.

And that

Article 232(6) additional Article on Policy Governing Natural resources be inserted after **Article 232(5)** as follows:

"All natural resources inclusive of land and air, shall be protected and managed sustainably in trust by the state, and shall be utilized in partnership with devolved authorities and local communities for the benefit of present and future generations of citizens".

Further amendment proposed:

That the new **Article 232(6)** should read as follows:

"All natural resources inclusive of land and air, shall be protected, managed and utilized in partnership with devolved authorities and local communities for the benefit of the present and future generations of citizens."

After lengthy deliberations, it was recommended that the Committee present the two proposals to the Legal Draftsmen for consideration and inclusion in the new Constitution.

Article 232 was adopted as amended.

MIN.NCC/LRE1/50/03: ADJOURNMENT

The time being five minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

MIN.NCC/LRE1/51/03: LAND AND PROPERTY (CHAPTER 11)

Resumption of debate interrupted.
Meeting was called to order at forty minutes past Two O'clock.
Article 234(3)(a) adopted without amendments

Article 234(3)(b)
Amendment proposed:

"That Group Ranches be classified as private land as opposed to community land."

Debate not concluded.

MIN.NCC/LRE1/52/03: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past Four O'clock, the Convenor adjourned the meeting until tomorrow Thursday 18th of September, 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

17th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 18th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|----------------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 234
Article 234 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 235
Article 235 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 236
Article 236
Any Other Business |
| 7.Date of the next meeting | |

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE NINTH MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD AT 09.45 A.M. ON THURSDAY THE
18TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Clare Omanga	423
9.Dr. Daniel W. Ichangi	481
10.Ezekiel Kesendany	356
11.F. Mwanzia	133
12.Fatuma Halako Galgalo	239
13.Fibie Atieno Ochola	405
14.Dr. James Koskei	371
15.Joe Khamisi	054
16.John Serut	186
17.Julius Lalampaa	329
18.Kaaru Abdukadir Guleid	263
19.Kalembe Ndile	140
20.Kimani M. Ng'ang'a	598
21.Koigi wa Wamwere	204
22.Levi Ahindukha	379
23.Lumumba Odenda	458
24.M. Muthoni Mburu	312
25.Mafunga Wambulwa	376
26.Martha Rop	509
27.Mnene Othiniel J.	247
28.Mwai Gakuya Simon	576
29.Mwailengo Haji Joel	246
30.Mwandawiro Mghanga	131
31.Mwau Adeline Ndeto	218
32.C. Nyawira Ngari	306
33.Olweny P. Ayiecho	164
34.Peter E. Ejore Derick	323
35.Philiph Rotino	178
36.Praxedes N. Wambua	297
37.Raphael Wanjala	205
38.Robert Rukungah	621
39.Samuel Mwaura	604
40.Wafula Sylvester	484
41.William Lopetakou	325
42.William S. Ole Yiaile	361

43.Fatma Ibrahim Ali	506
44.Thomas Merengo	421
45.William Omondi Opondo	167
46.Rhoda G. Kamanda	432
47.Bornice S. Chelang'at	372
48.Moses Naimodu	358
49.Rajab Mwondi	440
50.Jamila Mohammed	476
51.Gachara Muchiri	111

Absent with Apology:

Wangari Maathai	084
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Absent:

1.Lina Kilimo Jebii	059
2.Mohamed Abdi Mohamed	106
3.Mohamed Kuti	080
4.Noah Wekesa	207
5.Opore Zebedeo	171
6.Peter Kyalo Kaindi	035
7.Philip Ole Sironka	461
8Raphael Tuju	199
9.Njenga Karume	045
10.Amos Kimunya	063
11.Ali Mwakwere	130
12.Gideon Konchella	074
13.Beatrice Nduta Kiarie	465
16.Andrew Ligale	083

Observers Present:

1. Lois Town	084
2. Ummie Mavumba	025
3. Gideon K. Changole	155
4. Omar Almustafa	125
5. Josephie Nashipae Sane	018
6. S.S. Ole Timoi	061
7. Eunice S.S. Marima	176
8. Anyango Oluoch	035
9. Amina S. Kassim	062

IN ATTENDANCE:

1. Rukia Abdinassir	-	Programme Assistant
2. Jane Kibiru	-	Programme Assistant
3. Esther Kamau	-	Clerk Assistant

MIN.NCC/LRE1/53/03: REMARKS BY THE CONVENOR

The meeting was called to order at 9.35 a.m., 35 minutes late due to lack of quorum. Fibie Atieno Ochola (405) led in prayers.

MIN.NCC/LRE1/54/03: CONFIRMATION OF MINUTES

The minutes of the 8th meeting of the Technical Working Group J were confirmed. Hon. Rajab Mwondi (440) and Augustine Saina (343) respectively proposed and seconded confirmation of the minutes.

MIN.NCC/LRE1/55/03: MATTERS ARISING

Under Minute NCC/LRE/1/46/03

The delegates resolved that

Article 234(2)(f) has a further amendment as follows:

"That all land beaches be allowed access"

Amendment adopted:

Under Minute NCC/LRE/1/35/03

The delegates resolved that

The Motion tabled by Professor Wangari Maathai on the title was ratified as follows:-

"That **Chapter 11**, which is titled Land and Property" be amended to read as follows:

Chapter 11 - Land, Other Natural Resources and Property.

Chapter 12 - Environment

MIN.NCC/LRE1/56/03: LAND AND PROPERTY (CHAPTER 11 - CLASSIFICATION OF LAND)

Resumption of debate interrupted.

The delegates raised the issues of the absence of the legal draftsman in the Committee and were promised that the matter was being addressed to.

MIN.NCC/LRE1/57/03: CLASSIFICATION OF LAND

Article 234(3)(b) was adopted.

The general consensus was that the **Article 234(3)(b)** be adopted without amendments. However, the following delegates were of contrary opinion:

Hon. Julius Lalampaa	-	329
Hon. William S. Ole Yiaile	-	361
Hon. Fibie Atieno Ochola	-	405
Hon. James Koskei	-	371
Hon. Lumumba Odenda	-	458
Hon. Mafunga Wambulwa	-	376
Hon. Gachara Muchiri	-	111
Hon. Ezekiel Kesendany	-	356

Article 234(3)(c)

Amendment proposed

That, "**water sources**" should not be classified as community land but as public land.

Debate interrupted without question put.

MIN.NCC/LRE1/58/03: INTERRUPTION OF BUSINESS

The time being 10.48, the Convenor adjourned the meeting to facilitate tea break.

MIN.NCC/LRE1/59/03: LAND CLASSIFICATION

Resumption of debate interrupted. The meeting reconvened at 11.30 a.m.

Further amendment proposed to **Article 234 (3)(c)** as follows:

That the words "**Water Sources**" in **Article 234(3)(c)** be removed and that **Article 234(2)(e)** be redefined as follows.

"All water resources, springs, rivers, lakes and water bodies as redefined in the **Rivers and Lakes Act, Cap 409** or in any other law, provided that the immediate community benefits from the said water sources and bodies"

Question proposed, put and negatived.

Contrary opinion of the following delegates was also registered, Gachara Muchiri (111), Mwandawiro Mghanga (131) and William S. Ole Yiaile.

Article 234(3)(d) adopted.

Amendment proposed.

New Article 243(3)(e) be inserted after **Article 234(3)(d)** as follows:

"All land that has been demarcated to individuals, without approval and knowledge of the community shall revert back to the community.

Motion deferred.

Amendment proposed.

That a **New Article 234(3)(e)** be inserted as follows:

"community land includes land currently held as Government forest and is occupied by Hunter Gatherer Communities as their ancestral land."

Question proposed, put and agreed to.

Article 234(3)(d) was adopted.

That **Article 234(3)** adopted as amended.

MIN.NCC/LRE1/60/03: ADJOURNMENT

And the time being five minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

MIN.NCC/LRE1/61/03: RESUMPTION OF BUSINESS

Resumption of debate interrupted.

Meeting was called to order at forty minutes past Two O'clock.

Hon. Philip Rotino (178) proposed a Motion of Adjournment due to the continued absence of a legal draftsman.

Motion made and question proposed that the Committee do now adjourn.

Debate arising.

Question put and agreed to.

MIN.NCC/LRE1/62/03: ADJOURNMENT OF THE MEETING

And the time being fifty five past Two O'clock, the Convenor adjourned the meeting until tomorrow Friday 19th of September, 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

19th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 19th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 234
Article 235 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 235
Article 235 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 236
Article 236
Any Other Business |

7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE TENTH MEETING OF THE TECHNICAL WORKING GROUP ON
LAND RIGHTS AND ENVIRONMENT HELD AT 09.35 A.M. ON FRIDAY THE 19TH
DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Benjamin Gitoi	602
7.Clare Omanga	423
8.Dr. Daniel W. Ichangi	481
9.Ezekiel Kesendany	356
10.F. Mwanzia	133
11.Fatuma Halako Galgalo	239
12.Fibie Atieno Ochola	405
13.Gachara Muchiri	111
14.Dr. James Koskei	371
15.John Serut	186
16.Julius Lalampaa	329
17.Kaaru Abdukadir Guleid	263
18.Kimani M. Ng'ang'a	598
19.Levi Ahindikha	379
20.Lumumba Odenda	458
21.M. Muthoni Mburu	312
22.Mafunga Wambulwa	376
23.Martha Rop	509
24.Mohamed Abdi Mohamed	106
25.Mnene Othiniel J.	247
26.Mwai Gakuya Simon	576
27.Mwailengo Haji Joel	246
28.Mwandawiro Mghanga	131
29.Mwau Adeline Ndeto	218
30.C. Nyawira Ngari	306
31.Olweny P. Ayiecho	164
32.Peter E. Ejore Derick	323
33.Philip Ole Sironka	461
34.Philiph Rotino	178
35.Praxedes N. Wambua	297
36.Robert Rukungah	621
37.Samuel Mwaura	604
38.Wafula Sylvester	484
39.William Lopetakou	325
40.William S. Ole Yiaile	361

41.Amos Kimunya	063
42.Fatma Ibrahim Ali	506
43.Thomas Merengo	421
44.William Omondi Opondo	167
45.Rhoda G. Kamanda	432
46.Bornice S. Chelang'at	372
47.Moses Naimodu	358
48.Beatrice Nduta Kiarie	465
49.Wangari Maathai	084
50.Beatrice Mwaringa	233

Absent:

1.Joe Khamisi	054
2.Kalembe Ndile	140
3.Koigi wa Wamwere	204
4.Raphael Wanjala	205
5.Raphael Tuju	199
6.Gideon Konchella	074
7.Rajab Mwondi	440
8.Jamila Mohammed	476
9.Lina Kilimo Jebii	059
10.Mohamed Kuti	080
11.Noah Wekesa	207
12.Opore Zebedeo	171
13.Peter Kyalo Kaindi	035
14.Njenga Karume	045
15.Ali Mwakwere	130
16.Andrew Ligale	083

Observers Present:

1. Lois Town	084
2. Fatuma Yussuf	011
3. Nimrod Kipkemoi	124
4. Ummie Mavumba	025
5. Moses Leleu Laima	003
6. Omar Almustafa	125
7. Eunice S.S. Marima	176
8. Wycliffe Muema	132

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Rukia Abdinassir	-	Programme Assistant
3. Jane Kibiru	-	Programme Assistant
4. Esther Kamau	-	Clerk Assistant

MIN.NCC/LRE1/63/03: REMARKS BY THE CONVENOR

The Convenor called the meeting to order at 9.35 a.m. and prayers were led by Kaaru Abdukadir Guleid (263).

The Convenor informed the Committee that there were two delegates from other technical committees who wished to make contributions to the debate on land and environment.

To the interest of time, the Convenor directed that the delegates be given time to make their contributions and then the Committee shall confirm the minutes afterwards.

MIN.NCC/LRE1/64/03: CONFIRMATION OF MINUTES

Hon. Fibie Atieno Ochola and Christine Ngari respectively proposed and seconded confirmation of the minutes subject to the suggested corrections.

MIN.NCC/LRE1/65/03: MATTERS ARISING

Under Minute NCC/LRE/1/55/03

The delegates clarified that further amendments to Article 234(2)(f) had been amended to read as follows:

"That all beaches should be allowed unfettered access."

Under Minute NCC/LR/1/57/03

The delegates resolved that the name of the Mover of the motion and all other motions be minuted.

Under Minute NCC/LR/1/59/03

"The delegates raised concern over the Motion moved by Mwandawiro. Some were of the opinion that the Motion was agreed, to while others indicated that the Motion was negated. The matter was however, left pending until Monday morning when it will be revisited.

MIN.NCC/LRE1/66/03: INTERRUPTION OF BUSINESS

The Convenor adjourned the meeting at 11.00 a.m. to facilitate tea break.

MIN.NCC/LRE1/67/03: CLASSIFICATION OF LAND (CHAPTER 11)

Resumption of debate interrupted.

The meeting reconvened at 11.30 a.m.

Article 234(3)(f)

Amendment proposed.

That a **New Article 234(3)(f)** be inserted after **Article 234(3)(e)** (whose motion was passed previously) and to read as follows:

"All Natural Resources under Local Authorities and Communities should be managed by them for the benefit of their communities and future generations." by Moses L. Ole Naimodu.

Debate arising.

MIN.NCC/LRE1/68/03: WITHDRAWAL FROM THE COMMITTEE FOR DISORDERLY CONDUCT RULE 40 (3)

Pursuant to Rule 40 (3), the Convenor ordered Hon. John Serut (186) to withdraw his unacceptable remarks or withdraw from the Committee for the rest of the day's sitting for disorderly conduct.

And the Delegate declining to withdraw, the Convenor insisted that the Delegate must withdraw the remarks and apologise.

And the Delegate accepting the order, debate interrupted resumed.

MIN.NCC/LRE1/69/03: ADJOURNMENT

And the time being five minutes past Twelve O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

The meeting reconvened at forty-five minutes past Two O'clock with the Convenor on the Chair.

Resumption of debate interrupted.

Motion by Moses L. Ole Naimodu continued.

Question of the amendment proposed, put and agreed to.

MIN.NCC/LRE1/70/03: CLASSIFICATION OF LAND (CHAPTER 11)

Article 234(4)(a) was adopted without amendments.

Article 234(4)(b) was adopted without amendments.

Article 234(4)(c) was adopted without amendments.

Article 234(4)(d) deferred.

MIN.NCC/LRE1/71/03: TENURE OF LAND (CHAPTER 11)

Article 235(1)(a)

Amendment proposed.

That **Article 235(1)(a)** be amended to read as follows:

"Public land is a collective property of present and future generations and shall vest in and be held by devolved levels of Government in trust for the people under the oversight of the National

Land Commission as the Ombudsman Office for the promotion, protection and fulfillment of enjoyment of land rights in public land." by Odenda Lumumba (458).

Debate arising.

Question of the amendment proposed, put and agreed to.

MIN.NCC/LRE1/72/03: ADJOURNMENT OF THE MEETING

And the time being five minutes past Four O'clock, the Convenor adjourned the meeting until Monday 22nd of September, 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

21st September 2003

TECHNICAL WORKING COMMITTEE 'J' ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee "j" and has the honour to inform them that a sitting of the Committee will be held **on Monday, 22nd September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|----------------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 235
Article 235 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 236
Article 236 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 236
Article 236
Any Other Business |
| 7.Date of the next meeting | |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE ELEVENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON MONDAY THE 22ND DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Clare Omanga	423
9.Dr. Daniel W. Ichangi	481
10.Ezekiel Kesendany	356
11.F. Mwanzia	133
12.Fatuma Halako Galgalo	239
13.Fibie Atieno Ochola	405
14.Gachara Muchiri	111
15.Dr. James Koskei	371
16.Joe Khamisi	054
17.Julius Lalampaa	329
18.Kaaru Abdukadir Guleid	263
19.Kimani M. Ng'ang'a	598
20.Levi Ahindikha	379
21.M. Muthoni Mburu	312
22.Mafunga Wambulwa	376
23.Lumumba Odenda	458
24.Martha Rop	509
25.Mnene Othiniel J.	247
26.Mwai Gakuya Simon	576
27.Mwailengo Haji Joel	246
28.Mwandawiro Mghanga	131
29.C. Nyawira Ngari	306
30.Olweny P. Ayiecho	164
31.Peter E. Ejore Derick	323
32.Peter Kyalo Kaindi	035
33.Philip Ole Sironka	461
34.Philiph Rotino	178
35.Praxedes N. Wambua	297
36.Raphael Wanjala	205
37.Samuel Mwaura	604
38.Wafula Sylvester	484
39.William Lopetakou	325
40.William S. Ole Yiaile	361

41.Chirau Ali Mwakwere	130
42.Fatma Ibrahim Ali	506
43.Thomas Merengo	421
44.William Omondi Opondo	167
45.Rhoda G. Kamanda	432
46.Bornice S. Chelang'at	372
47.Moses Naimodu	358
48.Gideon Konchella	074
49.Rajab Mwondi	440
50.Beatrice Nduta Kiarie	465
51.Wangari Maathai	084
52.Andrew Ligale	083
53.Jamila Mohammed	476
54.Koigi Wa Wamwere	204
55. Robert Rukungah	621

Absent:

1.John Serut	186
2.Kalembe Ndile	140
3.Lina Kilimo Jebii	059
4.Mohamed Abdi Mohamed	106
5.Mohamed Kuti	080
6.Mwau Adeline Ndeto	218
7.Opore Zebedeo	171
8.Raphael Tuju	199
9.Amos Kimunya	063
10.Njenga Karume	045

Observers Present:

1.Loïs Towon	084
2.Fatuma Yussuf	011
3.Nimrod Kipkemoi	124
4.Ummie Mavumba	025
5.Moses Leleu Laima	003
6.S.S. Ole Timoi	061
7.Cleophas Nyangiro	159
8.Omar Almastafa	125

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Rukia Abdinassir	-	Programme Assistant
3. Jane Kibiru	-	Programme Assistant
4. Florence Abonyo	-	Clerk Assistant
5. Esther Kamau	-	Clerk Assistant

MIN.NCC/LRE1/73/03: REMARKS BY THE CONVENOR

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Prof. Wangari Maathai (084).

The Convenor informed the Committee that a meeting has been scheduled for Provincial Coordinators of District Delegates at 1.00 p.m. in the Steering Committee tent to elect the Convenor for Technical Committee on Culture.

MIN.NCC/LRE1/74/03: CONFIRMATION OF MINUTES

The minutes of the Tenth Sitting of the Committee held on Friday 19th September, 2003 were confirmed by the Members present and signed by the Convenor subject to the suggested corrections.

They were proposed by Dr. James Koskei (371) and seconded by William S. Ole Yiaile (361).

MIN.NCC/LRE1/75/03: MATTERS ARISING

Under Minute NCC/LRE/1/65/03

The committee re-visited the motion moved by Hon. Mwandawiro Mganga (131) under Article 234 (2) (e).

Question proposed, put and agreed to.

Article **234 (2)(e)** - Adopted as amended.

MIN.NCC/LRE1/76/03: TENURE OF LAND (CHAPTER 11)

(i) Article 235(1)(b) - was adopted without amendments

(ii) Article 235(2)(a) - adopted without amendments.

The Committee resolved to constitute a Sub-Committee comprising of the following delegates to define the term "community".

Hon. (Prof.) Wangari Maathai	-	084
Hon. Mwandawiro Mghanga	-	131
Hon. Benjamin Gitoi	-	602
Hon. Ezekiel Kesendany	-	356
Hon. Beatrice Mwaringa	-	233

(iii) **Article 235(3)** -adopted without amendments

MIN.NCC/LRE1/77/03: INTERRUPTION OF PROCEEDINGS

The Convenor interrupted the proceedings and adjourned the meeting at eleven O'clock to facilitate the tea break.

Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/78/03: TENURE OF LAND (CHAPTER 11)

Article 235(4)(a)

Amendment proposed.

That a **New Article 235(a)(x)** be inserted as follows:

"The protection, conservation and unfettered access to all public lands such as riparian, road reserves and beaches for leisure and enjoyment." By Hon. Wangari Maathai (084).

Question of amendment proposed, put and agreed to.

General debate on **Article 235(4)**.

MIN.NCC/LRE1/79/03: ADJOURNMENT

And the time being twelve minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

Resumption of business at 2.48 p.m.

MIN.NCC/LRE1/80/03: TENURE OF LAND (ARTICLE 235)

Article 235(4)

Amendment proposed:

That the word "two" in **Article 235(4)** be deleted and substituted in place thereof with the word "one year". By F. Mwanzia (133).

Debate arising:

Question of amendment proposed, put and **negatived.**

Further amendment proposed: That **Article 235(4)** be amended to include a clause that, subject to the enactment of this bill by the government within two years, failure to which, it shall be sueable by any individual or community and the state shall bear the cost. By Julius Lalampaa (329).

Debate arising.

Question on amendment proposed, put and **agreed to.**

Article 235(4)(a) (i) - adopted without amendments.

Article 235(4)(a) (ii) - deferred.
Article 235(4)(a) (iii) - adopted without amendments.

Article 235(4)(a)(iv).

Amendment proposed:

That **Article 235(4)(a)(iv)** should be amended to read as follows:

"Empowering the elders in that particular community to preside over land dispute of dependants of the deceased persons holding interests in any land including the interests of spouses and children in actual occupation of land and pass over such recommendations to the Land Control Board for adoption."

Debate arising.

Question of amendment proposed, put and **negatived.**

Article 235 (4)(iv) - adopted without amendments.

Article 235(4)(a)(v)

Amendment proposed:

That **Article 235(4)(a)(v)** be amended to include the principles of "Registration of women in Land Title deeds and other properties and where a spouse has voluntarily vacated the matrimonial commitment to be married elsewhere forfeits any benefits of such marriage." By William S. Yiaile.

Debate arising.

Question proposed, put and **negatived.**

Further amendment proposed:

That **Article 235(4)(v)** be redefined as follows:

"The recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage and the names of spouses should be registered in one title deed (Martha Rop).

Question proposed, put and **negatived.**

MIN.NCC/LRE1/81/03: ADJOURNMENT OF THE MEETING

And the time being thirty five minutes past Four O'clock, the Convenor adjourned the meeting until Tuesday 23rd of September, 2003 at 8.30 a.m.

SIGNED:

.....
CONVENOR

DATE:

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NATIONAL CONSTITUTIONAL CONFERENCE

22nd September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “J” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday 23rd September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|----------------------------|---|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 235
Article 235 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 236
Article 236 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Consideration of the Bill
Article 237
Article 237
Any Other Business |
| 7.Date of the next meeting | |

Approved for circulation- Convenor

Date.....

Time.....

**MINUTES OF THE TWELFTH MEETING OF THE TECHNICAL WORKING GROUP
ON LAND RIGHTS AND ENVIRONMENT HELD AT 09.45 A.M. ON TUESDAY THE
23RD DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA**

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Clare Omanga	423
9.Daniel W. Ichangi	481
10.Ezekiel Kesendany	356
11.F. Mwanzia	133
12.Fatuma Halako Galgalo	239
13.Fibie Atieno Ochola	405
14.Gachara Muchiri	111
15.Dr. James Koske	371
16.Joe Khamisi	054
17.Julius Lalampaa	329
18.Kaaru Abdukadir Guleid	263
19.Kimani M. Ng'ang'a	598
20.Levi Ahindikha	379
21.M. Muthoni Mburu	312
22.Mafunga Wambulwa	376
23.Lumumba Odenda	458
24.Martha Rop	509
25.Mnene Othiniel J.	247
26.Mwai Gakuya Simon	576
27.Mwailengo Haji Joel	246
28.Mwandawiro Mghanga	131
29.C. Nyawira Ngari	306
30.Olweny P. Ayiecho	164
31.Peter E. Ejore Derick	323
32.Peter Kyalo Kaindi	035
33.Philip Ole Sironka	461
34.Philiph Rotino	178
35.Praxedes N. Wambua	297
36.Samuel Mwaura	604
37.Wafula Sylvester	484
38.William Lopetakou	325
39.William S. Ole Yiaile	361
40.Chirau Ali Mwakwere	130
41.Fatma Ibrahim Ali	506

42.Thomas Merengo	421
43.Rhoda G. Kamanda	432
44.Bornice S. Chelang'at	372
45.Moses Naimodu	358
46.Rajab Mwondi	440
47.Beatrice Nduta Kiarie	465
48.Wangari Maathai	084
49.Andrew Ligale	083
50.Jamila Mohammed	476
51.Koigi Wa Wamwere	204
52.John Serut	186
53.Kalembe Ndile	140
54.Raphael Wanjala	205
55.William Omondi Opondo	167
56.Opore Zebedeo	171
57.Gideon Konchella	074
58.Robert Rukungah	621

Absent:

1.Lina Kilimo Jebii	059
2.Mohamed Abdi Mohamed	106
3.Mohamed Kuti	080
4.Mwau Adeline Ndeto	218
5.Raphael Tuju	199
6.Amos Kimunya	063
7.Njenga Karume	045
8.Noah Wekesa	207

Observers Present:

1.Loïs Towon	082
2.Fatuma Yussuf	011
3.Nimrod Kipkemoi	124
4.Ummie Mavumba	025
5.Moses Leleu Laima	003
6.S.S. Ole Timoi	061
7.Cleophas Nyangiru	159
8.Omar Almastafa	125
9.Gideon K. Changole	155
10.Wycliffe Muema	132
11.Monica Opole	055

IN ATTENDANCE:

1.Lucy Masua	-	Draftsperson
2.Rukia Abdinassir	-	Programme Assistant
3.Jane Kibiru	-	Programme Assistant

4. Florence Abonyo - Clerk Assistant
5. .Esther Kamau - Clerk Assistant

MIN.NCC/LRE1/82/03: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 09.45 a.m. and prayers were led by Kaaru Abdukadir Guleid (263).

MIN.NCC/LRE1/83/03: CONFIRMATION OF MINUTES

The minutes of the Eleventh Sitting of the Committee held on Monday 22nd September, 2003 were confirmed by the members present and signed by the Convenor.

They were proposed by Benjamin Gitoi (602) and seconded by Ezekiel Kesendany (356).

MIN.NCC/LRE1/84/03: TENURE OF LAND (CHAPTER 11)

(i) Article 235(4)(a)(vi) - Amendment proposed.

That **Article 235(4)(a)(vi)** be amended by inserting the words "Physical Planning" so as to read as follows:

"The establishment of an efficient and cost effective physical planning and administration system including the management and expeditious settlement of land disputes." (Benjamin Gitoi - (602).

Debate arising.

Further amendment proposed:

That **Article 235(4)(a)(vi)** be further amended by inserting the following words "at all levels of devolved government" to read as follows:

"The establishment of an efficient and cost effective physical planning and administration system including the management and expeditious settlement of land disputes at all levels of devolved government. (William Ole Yiaile - (361).

Question of the amendments proposed, put and agreed to.

Article 235(4)(a)(vi) – adopted as amended.

(ii) Article 235(4)(a)(vii) - Amendment proposed.

That **Article 235(4)(a)(vii)** be amended by inserting the words "and rural" to read as follows:

"The re-settlement of landless people including spontaneous settlement communities in urban and rural areas." (Dr. James Koskei - (371).

Further amendment proposed.

That **Article 235(4)(a)(vii)** be further amended by inserting the following words at the end so as to read as follows:

"The re-settlement of landless people, squatters including spontaneous settlement of communities in urban and rural areas and such people should remain on such lands until an alternative solution is found." (Joel Haji - (246).

Question of the amendments proposed, put and agreed to.

Article 235(4)(a)(vii) - adopted as amended.

MIN.NCC/LRE1/85/03: INTERRUPTION OF THE PROCEEDINGS

The Convenor interrupted the proceedings at 11.00 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.30 a.m.

MIN.NCC/LRE1/86/03: TENURE OF LAND (CHAPTER 11)

Article 235(4)(a)(viii) – adopted without amendments.

Article 235(4)(a) - Amendment proposed.

That a **New Article 235(4)(a)(ix)** be inserted as follows immediately after **Article 235(4)(a)(viii)** and to renumber (ix) as new (xi)

"The establishment of a land bank to facilitate availability and accessibility of land for research and development" (Andrew Ligale - 083).

Question of the amendment proposed, put and agreed to.

Article 235(4)(ix) – adopted without amendments.

(v) **Article 235(4)(a)(xi)** – adopted without amendments.

(vi) **Article 235(4)(a) -Amendment proposed.**

That a **New Article 235(4)(a)(xii)** be inserted as follows:

"Parliament to institute a land ceiling that will limit the amount of land that each individual may own." (Koigi Wa Wamwere (204).

Debate arising.

MIN.NCC/LRE1/87/03: ADJOURNMENT

And the time being ten minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

Resumption of business at 2.30 p.m.

MIN.NCC/LRE1/88/03: REMARKS BY THE CONVENOR

The Convenor informed the Committee that a non-member, Mr. Apollo Njonjo (583), wished to contribute to the debate on land.

In his contributions the delegate informed the Committee that, since the Constitution cannot provide adequate land policy, it would be prudent for the Committee to develop the principle and guidelines for onward transmission to the Land Commission and Parliament to provide appropriate land policy.

The Convenor further informed the Committee that the following environmental experts had been invited to make presentations to the Committee on Chapters 11 and 12 on Land and Property and Environment and Natural Resources respectively.

- Mr. Morris Mac Oloo

- Dr. Albert Muma

- Prof. Charles Okidi

MIN.NCC/LRE1/89/03: MR. MORRIS MAC OLOO (PROPOSALS/SUGGESTIONS)

- (i) There is need for precautionary principle for the management of environment and natural resources especially those that extend beyond the borders.

Article 239(3)(a) and (b) - substitute the word "protect" with the word "conserve."

Article 240 - Need to be consistent in the use of the words "state" and "government" interchangeably.

Article 240(2)(b) - substitute the word "environmental resources" with the word "natural resources."

Article 240(1)

Need for improvement on the functions of the National Environment Management Commission by taking cognizance of the provisions of Section 9(1) of the Environmental Management and Co-ordination Act.

Need to empower the Commission by inserting a new sub section to enable the Commission to perform such other functions as may be entrusted by any written law.

Article 241(1)

Substitute the word "Chapter" with the word "Constitution" since the Article does not provide for environmental rights which is under Chapter 63.

Deletion of the words "in relation to that person" because the words will compromise the fundamental rights.

Article 241(2)

Substitute the word "High Court" with the word "Court" because redress should not be limited to the High Court only.

(viii) **Article 242** - Provision for time frame ought to be given.

MIN.NCC/LRE1/90/03: DR. ALBERT MUMA (PROPOSALS/SUGGESTIONS)

Article 234(4)(b)

The description of land to exclude the land held by local authorities since the bulk of land held by local authorities is trust land.

Article 234(3)

Need to redefine/describe Community land because land classified as public land cannot be classified as community land.

Article 234(3)(c) - Deletion proposed.

Article 234(4)(d) - Deletion proposed.

Reason being that, all categories or classification provides for the exclusive ownership of land hence the Article is superfluous.

Article 239(1)

Specific duty must be vested on the government to safeguard and improve the environment.

Need to include the right to participate in decision-making and improvement of the quality to environment.

Article 235(1)

Public land must be available for alienation to individuals and community for productive use.

Public land should be categorized into two namely;

Public land of conservation value (forests, national parks, recreational areas).

Public land currently held by public bodies, which should be alienated through a transparent process.

Need for the establishment of a Land-Trust to be vested with the ownership of public land of conservation value while vesting the rest of public land to National Land Commission.

Article 235(2)(a) -

The definition of community is unworkable and should be defined on the basis of residence as there is no community identified on the basis of ethnicity or culture.

MIN.NCC/LRE1/91/03: PROF. CHARLES OKIDI (PROPOSALS/SUGGESTIONS)

Article 237(1)

Review of all laws relating to land should be given time frame e.g. 10 years.

Ownership of natural resources though not clear, should not be under the Government but under Parliament because the latter offers more public debate.

Article 242

The utilization of natural resources for sustainable development should be subjected to ratification by Parliament as is the case in Ghana and Uganda.

Need to grant mining and mineral compensation.

The developer should submit to Parliament through the Ministry the following requirements for approval:

- Environmental management plan.
- Environmental restoration plan
- Resettlement plan
- Revenue management plan
- Industrial development plan
- Socio-economic development plan
- Environmental impact assessment.

MIN.NCC/LRE1/92/03: TENURE OF LAND (CHAPTER 11)

Article 235(4)(a) -Amendment proposed:

That a **New Article 235(4)(a)(xii)** be inserted as follows:

"Parliament to institute a land ceiling that limit the amount of land each individual may own."
(Koigi Wa Wamwere - (204).

Debate interrupted resumed:

Further amendment proposed:

That **Article 235(4)(a)(xii)** be further amended to read as follows:

"Setting the maximum and minimum land holding in arable areas bearing in mind the productive potential and location of the land."
(Gachara Muchiri (111).

Question of amendments proposed, put and agreed to.

Article 235(4)(a)(xii) - agreed to as amended.

MIN.NCC/LRE1/93/03: ADJOURNMENT OF THE MEETING

And the time being thirty-five minutes past Five O'clock, the Convenor adjourned the meeting until Wednesday 24th of September 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

23rd September 2003

TECHNICAL WORKING COMMITTEE 'J' ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee "j" and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 24th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- 1.08.30-09.00 a.m - Prayers.
Confirmation of minutes.
Matters Arising.
- 2.09.00-10.30 a.m - Consideration of the Bill
Articles 235
Article 235
- 3.10.30-11.00 a.m - TEA BREAK
- 4.11.00-01.00 a.m - Consideration of the Bill
Article 236
Article 236
- 5.Any Other Business
- 6.Date of the next meeting
- 7.01.00-02.30 a.m - LUNCH BREAK
- 8.Funeral Service for the late Dr .C .O. Mbai.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON WEDNESDAY THE 24TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Beatrice Mwaringa	233
6.Benjamin Gitoi	602
7.Dr. Daniel W. Ichangi	481
8.Ezekiel Kesendany	356
9.F. Mwanzia	133
10.Fatuma Halako Galgalo	239
11.Fibie Atieno Ochola	405
12.Gachara Muchiri	111
13.Dr. James Koske	371
14.Joe Khamisi	054
15.John Serut	186
16.Julius Lalampaa	329
17.Kaaru Abdukadir Guleid	263
18.Kalembe Ndile	140
19.Kimani M. Ng'ang'a	598
20.Koigi Wa Wamwere	204
21.Lumumba Odenda	458
22.Mafunga Wambulwa	376
23.Martha Rop	509
24.Mnene Othiniel J.	247
25.Mwailengo Haji Joel	246
26.Olweny P. Ayiecho	164
27.Opore Zebedeo	171
28.Peter E. Ejore Derick	323
29.Philip Ole Sironka	461
30.Raphael Wanjala	205
31.Robert Rukungah	621
32.Samuel Mwaura	604
33.Wafula Sylvester	484
34.William Lopetakou	325
35.William S. Ole Yiaile	361
36.Chirau Ali Mwakwere	130
37.Fatma Ibrahim Ali	506
38.Thomas Merengo	421
39.William Omondi Opondo	167
40.Rhoda G. Kamanda	432

41.Moses Naimodu	358
42.Beatrice Nduta Kiarie	465
43.Andrew Ligale	083
44.Mwandawiro Mghanga	131
45.Wangari Maathai	084
46.Jamila Mohammed	476
47.Levi Ahindukha	379
48.M. Muthoni Mburu	312
49.Praxedes N. Wambua	297
50. Mwailengo Haji Joel	246
51.Augustine Saina	343
52.C. Nyawira Ngari	306

Absent:

1. Lina Kilimo Jebii	059
2. Mohamed Abdi Mohamed	106
3. Mohamed Kuti	080
4. Adeline Mwau Ndeto	218
5. Noah Wekesa	207
6. Peter Kyalo Kaindi	035
7. Philip Rotino	178
8. Raphael Tuju	199
9. Njenga Karume	045
10.Amos Kimunya	063
11.Rajab Mwondi	440
12.Bornice S. Chelang'at	372

Observers Present:

1.Lois Towon	082
2.Fatuma Yussuf	011
3.Gideon K. Changole	155
4.S.S. Ole Timoi	061
5.Cleophas Nyangiru	159
6.Rosemary Sawe	121
7.Ummie Mavumba	025
8.Moses Leleu Laima	003
9.Omar Almustafa	125

IN ATTENDANCE:

1.Lucy Masua	-	Draftsperson
2.Rukia Abdinassir	-	Programme Assistant
3.Jane Kibiru	-	Programme Assistant
4. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/94/03: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Archbishop Njeru Wambugu (527).

MIN.NCC/LRE1/95/03: CONFIRMATION OF MINUTES

The minutes of the Twelfth Sitting of the Committee held on Tuesday 23rd September 2003 were confirmed by the members present and signed by the Convenor.

They were proposed by Wangari Maathai (084) and seconded by Archbishop Njeru Wambugu (527).

MIN.NCC/LRE1/96/03: MATTERS ARISING

Article 235(4)(a)(vii)

Under Minute No.MIN.NCC/LRE1/84/03 (ii), the committee noted that the word "re-settlement" had been substituted with the word "settlement."

Article 235(4)(a)(xii)

Under Minute No.MIN.NCC/LRE1/86/03 (vi), the committee noted that the following motion that proposed further amendment was inadvertently omitted.

"That this Constitution sets up limits of private land ownership as follows: - high potential - 150 acres; medium potential - 300 acres; and low potential or semi arid areas -1000 acres, that no land shall ever be subdivided beyond one acre if its land use is agricultural." (Gachara Muchiri - 111).

MIN.NCC/LRE1/97/03: TENURE OF LAND (CHAPTER 11)

Article 235(4)(b) - Amendment proposed.

That **Article 235(4)(b)** be amended by deleting the words "establish mechanism" and insert in place thereof, the words "enact a verification and validation law."

(F. Mwanzia - 133)

Debate arising.

Question of the amendment proposed, put and agreed to.

Article 235(4)(b)(i) - Amendment proposed

That **Article 235(4)(b)(i)** be amended to include the following:

"All land which was previously crown land and community land reserve areas which were used by communities but taken over by the state and made public land as the expansive national parks as Tsavo East and West national parks which makes 62% of all land mass of Taita/Taveta District as a result of such take-over, should revert back to the communities for agricultural production or game reserves/sanctuaries to be managed by the communities." (Joel Haji - 246).

Debate arising.

MIN.NCC/LRE1/98/03: INTERRUPTION OF THE PROCEEDINGS

The Convenor interrupted the proceedings at 11.15 a.m. to facilitate tea break.

Resumption of the debate interrupted at 11.30 a.m.

MIN.NCC/LRE1/99/03: TENURE OF LAND (CHAPTER 11)

Article 235(4)(b)(i)

Debate interrupted resumed.

Further amendment proposed.

That **Article 235(4)(b)** be amended by inserting the following new sub-section (ii) and renumbering (ii) as (iii).

Article 235(4)(b) (ii) - Review the boundaries and management of national parks and animal sanctuaries with a view to creating opportunities and benefits for the local people in the context of devolved government.

Question of the amendment proposed, put and agreed to.

Article 235(4)(b)(ii) - adopted.

Article 235(4)(b)(i) - adopted without amendment.

(iii) **Article 235(4)(b)(iii)** - adopted without amendment.

(iv) **Article 235(4)(c)** - Amendment proposed:

That **Article 235(4)(c)** be amended by inserting the following words "in consultation with devolved authorities" so as to read as follows:

"Parliament in consultation with devolved authorities shall determine the cut-off date with reference to which the review is required in paragraph (b) is to be conducted." (F. Mwanza - 133).

Question of the amendment proposed, put and agreed to:

Article 235(4) (c) - adopted as amended.

MIN.NCC/LRE1/100/03: REPORT OF THE SUB-COMMITTEE

Under Minute No.NCC/LRE1/76/03, Hon. (Prof.) Wangari Maathai (084) updated the committee on the progress made by the sub-committee defining the term "community."

The member gave varied suggested definitions of the term and impressed upon the members to brainstorm further so as to enable the committee to develop appropriate definition of the term.

MIN.NCC/LRE1/101/03: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past One O'clock, the Convenor adjourned the meeting until Thursday 25th of September 2003 at 8.30 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

24th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday 25th September 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- 1.08.30-09.00 a.m - Prayers.
Confirmation of minutes.
Matters Arising.
- 2.09.00-10.30 a.m - Consideration of the Bill
Articles 236
- 3.10.30-11.00 a.m - TEA BREAK
- 4.11.00-01.00 a.m - Consideration of the Bill
Article 236
- 5.01.00-02.30 a.m - LUNCH BREAK
- 6.02.30-05.00 a.m - Consideration of the Bill
Article 237
Any Other Business
- 7.Date of the next meeting

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE FOURTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON THURSDAY THE 25TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA

Present:

<u>Name</u>	<u>Delegate No.</u>
1.Prof. Saad Saleh Yahya	Convenor
2.Dr. M.A. Swazuri	Rapporteur
3.Dr. A. Nunow	Rapporteur
4.Archbishop Njeru Wambugu	527
5.Augustine Saina	343
6.Beatrice Mwaringa	233
7.Benjamin Gitoi	602
8.Dr. Daniel W. Ichangi	481
9.F. Mwanzia	133
10.Fibie Atieno Ochola	405
11.Gachara Muchiri	111
12.Dr. James Koske	371
13.John Serut	186
14.Julius Lalampaa	329
15.Kalembe Ndile	140
16.Levi Ahindikha	379
17.Lumumba Odenda	458
18.M. Muthoni Mburu	312
19.Martha Rop	509
20.Mnene Othinie J.	247
21.Mwailengo Haji Joel	246
22.Mwandawiro Mghanga	131
23.C. Nyawira Ngari	306
24.Opore Zebedeo	171
25.Peter Kyalo Kaindi	035
26.Philip Ole Sironka	461
27.Praxedes N. Wambua	297
28.Robert Rukungah	621
29.Samuel Mwaura	604
30.Wafula Sylvester	484
31.William Lopetakou	325
32.William S. Ole Yiaile	361
33.Fatma Ibrahim Ali	506
34.Thomas Merengo	421
35.William Omondi Opondo	167
36.Rhoda G. Kamanda	432
37.Bornice S. Chelang'at	372
38.Moses Naimodu	358
39.Wangari Maathai	084
40.Andrew Ligale	083

41.Gideon Konchella	074
42.Ezekiel Kesendany	356
43.Fatuma Halako Galgalo	239
44.Olweny P. Ayiecho	164
45.Peter E. Ejore Derick	323
46.Jamila Mohammed	476
47 Kaaru Abdukadir Guleid	263
48.Kimani M. Ng'ang'a	598

Absent:

1. Joe Khamisi	054
2. Koigi Wa Wamwere	204
3. Mafunga Wambulwa	376
4. Raphael Wanjala	205
5. Chirau Ali Mwakwere	130
6. Beatrice Nduta Kiarie	465
7. Mwailengo Haji Joel	246
8. Lina Kilimo Jebii	059
9. Mohamed Abdi Mohamed	106
10. Mohamed Kuti	080
11. Adeline Mwau Ndeto	218
12. Noah Wekesa	207
13. Philip Rotino	178
14. Raphael Tuju	199
15. Njenga Karume	045
16. Amos Kimunya	063
17. Rajab Mwondi	440

Observers Present:

1.Lois Towon	082
2.Gideon K. Changole	155
3.S.S. Ole Timoi	061
4.Ummie Mavumba	025
5.Omar Almustafa	125
6.Josephie Nashipae Sane	018
7.Eunice S.S. Marima	176
8.Moses Leleu Laima	003

IN ATTENDANCE:

1.Lucy Masua	-	Draftsperson
2.Rukia Abdinassir	-	Programme Assistant
3.Jane Kibiru	-	Programme Assistant
4. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/102/03: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Prof. Wangari Maathai (084).

MIN.NCC/LRE1/103/03: CONFIRMATION OF MINUTES

The minutes of the Thirteenth Sitting of the Committee held on Wednesday 24th September, 2003 were confirmed by the members present and signed by the Convenor.

They were proposed by Augustine Saina (343) and seconded by William Ole Yiaile (361).

MIN.NCC/LRE1/104/03: MATTERS ARISING

Article 235(4)(b)

Under Minute No. MN.CC/LRE1/97/03 (i),

The Committee noted that Article 235(4)(b) was amended by inserting the words "enact a verification and validation law" without deleting the words "establish mechanism."

MIN.NCC/LRE1/105/03: SUB-COMMITTEE REPORT

The Committee considered the various suggested definitions on the term "community" and agreed on the following working definition in the interim pending final report of the task force.

"Community is a group of people living in a given geographical area and who derive their livelihood from common resources and who subscribe to common aspirations, traditions and norms."

MIN.NCC/LRE1/106/03: PERSONAL STATEMENT

Pursuant to Rule No.23(1), Dr. Daniel W. Ichangi (481) sought the indulgence of the Committee to make a personal statement.

There upon, the member brought to the attention of the committee, the derogatory statement both in the electronic and print media attributed to the Minister for Lands and Settlement (Hon. Amos Kimunya - 063) to the effect that the National Constitutional Conference had degenerated into a circus.

The committee noted with great concern that such sentiments emanated from one of its members. The committee resolved that the matter be referred to the steering committee for appropriate action.

MIN.NCC/LRE1/107/03: TENURE OF LAND (CHAPTER 11)

Article 235(4) - Amendment proposed.

That **Article 235(4)**, be amended by inserting a new sub-section (c) as follows:

Article 235 (4)(c)

"Parliament to make a law instructing that companies, government departments or individuals that are allowed to exploit local resources like water, minerals, national parks, sand, magadi soda or beaches, apart from paying a tax to the central government also contribute a percentage of their profit to the local government to be administered for the benefit of the local community."

(Koigi Wa Wamwere - 204).

The committee resolved that **Article 25(4) (c)** be amended to read as follows:

"Equitable sharing of the benefits accruing from public or private exploitation of natural resources between the local communities, devolved authorities and the central government."

Question of the amendment proposed, put and agreed to.

Article 235(4)(c) - adopted as amended.

MIN.NCC/LRE1/108/03: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.30 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/109/03: PROTECTION OF PROPERTY AND LAND

Article 236(1) - adopted

Article 236(2)(a)

Amendment proposed.

That **Article 236(2)(a)** be amended by inserting the following words after the word "public health"

"Environmental conservation including the conservation of indigenous species."

(Prof. Wangari Maathai - 084).

Question of the amendment proposed put and agreed to.

Article 236(2)(a) - adopted as amended.

Article 236(2) (b)

Amendment proposed

That **Article 236(2)(b)** be amended by inserting the word "community" after the word "person" appearing on the 6th line. (Dr. James Koskei - 371).

Question of the amendment proposed put and agreed to.

Article 236(2)(b) - adopted as amended.

Article 236(2)(c)

Amendment proposed:

That **Article 236(2)(c)** be amended so as to read as follows: -

"Provision is made by a law applicable to that acquisition or taking of possession for prompt adequate compensation in form of land of equivalent value in addition to monetary compensation prior to occupation of such land." (Prof. Olweny P. Ayiecho - 164).
Further amendment proposed.

That **Article 236(2)(c)** be further amended by deleting the words "compensation in form of land of equivalent value in addition to monetary compensation" and inserting the following words "monetary compensation or land of equivalent value (F. Mwanzia - 133).
Debate arising.

MIN.NCC/LRE1/110/03: ADJOURNMENT

And the time being ten minutes past One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

Resumption of debate at 2.30 p.m.

MIN.NCC/LRE1/111/03: PROTECTION OF PROPERTY IN LAND

Article 236(2)(c).

Debate interrupted resumed.

Further amendment proposed.

That **Article 236(2)(c)** be amended by inserting the following words:

"Or appropriate settlement or both" after the word "compensation" and inserting the words "according to the prevailing market price" after the word "land" (Levi Ahindukha - 379).

Debate arising

Further amendment proposed:

That **Article 236(2) (c)** be amended to read as follows:

That provision is made by a law applicable to that acquisition or taking possession of any property in land for a public purpose or in the public interest shall be upon prompt payment of full compensation that must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstance, including:

The current use of property

The history of the acquisition and use of property.

The market value of the property.

The extent of direct and indirect state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

The purpose of the expropriation.

(Prof. Wangari Maathai - 084)

Debate arising.

The committee resolved that **Article 236(2)(c)** be amended to read as follows:

"Provision is made by a law applicable to that acquisition or taking of possession for the prompt payment, prior to occupation of such land of: -

Full and fair compensation in the form of comparable land or equivalent monetary compensation and;

A disturbance allowance equivalent to 80% of the market value of the land.

Provided that bona fide occupants of the land acquired will also be entitled to compensation even if they do not have title deeds.

Question of the amendment proposed put and agreed to.

Article 236(2)(c) – adopted as amended.

Article 236(3)(a) – adopted without amendments.

Article 236(3)

Amendment proposed

That **Article 236(3)** be amended by inserting a new sub-section (b) as follows:

Article 236(3)(b):

The state shall review every five years all plot ratios, site coverage and minimum plot sizes in all urban areas to ensure controlled and intensive development of land. (Gachara Muchiri - 111)

The committee resolved that **Article 236(3)(b)** be amended to read as follows:

"To regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every 10 years in consultation with devolved government."

Question of the amendments proposed, put and agreed to.

Article 236(3)(b) - adopted as amended.

Article 236(3)

Amendment proposed:

That **Article 236(3)** be amended by inserting a new sub-section "c" as follows:

Article 236(3)(c):

Provision is made by law applicable to that acquisition for surplus land or land no longer needed for public purpose after acquisition to revert to the original owner(s). (F. Mwanzia - 133)

Further amendment proposed.

That **Article 236(3) (c)** be amended to read as follows:

"To provide for surplus land or land no longer needed for public purpose after acquisition to be offered to the original owner on first refusal basis."

Question of the amendment proposed, put and agreed to.

Article 236(3)(c) – adopted as amended.

Article 236(3)

Amendment proposed.

That **Article 236(3)** be amended by inserting a new sub-section "**d**" as follows:

Article 236(3)(d)

Every person who owns private land has a right to hold a title document for his land and to have an appropriate entry in the land registry. (F. Mwanzia - 133).

Debate arising.

Article 236(3)(d) - deferred.

MIN.NCC/LRE1/112/03: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past Five O'clock, the Convenor adjourned the meeting until Friday 26th of September 2003 at 8.30 a.m.

SIGNED:

.....

CONVENOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

25th September 2003

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday 26th September, 2003 in the Tent No. 10, Bomas of Kenya at 8.30a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.08.30-09.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.09.00-10.30 a.m - | Consideration of the Bill
Articles 237 |
| 3.10.30-11.00 a.m - | TEA BREAK |
| 4.11.00-01.00 a.m - | Consideration of the Bill
Article 237 |
| 5.01.00-02.30 a.m - | LUNCH BREAK |
| 6.02.30-05.00 a.m | - Plenary |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE FIFTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON FRIDAY THE 26TH DAY OF SEPTEMBER, 2003 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Beatrice Mwaringa	233
7. Benjamin Gitoi	602
8. Dr. Daniel W. Ichangi	481
9. F. Mwanzia	133
10. Fatuma Halako Galgalo	239
11. Fibie Atieno Ochola	405
12. Gachara Muchiri	111
13. Dr. James Koske	371
14. John Serut	186
15. Julius Lalampaa	329
16. Kaaru Abdukadir Guleid	263
17. Kalembe Ndile	140
18. Kimani M. Ng'ang'a	598
19. Koigi Wa Wamwere	204
20. Levi Ahindikha	379
21. Lumumba Odenda	458
22. M. Muthoni Mburu	312
23. Mafunga Wambulwa	376
24. Martha Rop	509
25. Mnene Othiniel J.	247
26. Mwailengo Haji Joel	246
27. C. Nyawira Ngari	306
28. Opore Zebedeo	171
29. Olweny P. Ayiecho	164
30. Peter E. Ejore Derick	323
31. Ezekiel Kesendany	356
32. Peter Kyalo Kaindi	035
33. Philip Ole Sironka	461
34. Praxedes N. Wambua	297
35. Robert Rukungah	621
36. Samuel Mwaura	604
37. Wafula Sylvester	484
38. William Lopetakou	325
39. William S. Ole Yiaile	361
40. Fatma Ibrahim Ali	506

41.	Thomas Merengo	421
42.	William Omondi Opondo	167
43.	Bornice S. Cheleng'at	372
44.	Beatrice Nduta Kiarie	465
45.	Wangari Maathai	084
46.	Andrew Ligale	083
47.	Jamila Mohammed	476

Absent:

1.	Gideon Konchella	074
2.	Rhoda G. Kamanda	432
3.	Mwandawiro Mghanga	131
4.	Joe Khamisi	054
5.	Raphael Wanjala	205
6.	Chirau Ali Mwakwere	130
7.	Mwailengo Haji Joel	246
8.	Lina Kilimo Jebii	059
9.	Mohamed Abdi Mohamed	106
10.	Mohamed Kuti	080
11.	Adeline Mwau Ndeto	218
12.	Mwai Gakuyu Simon	576
13.	Noah Wekesa	207
14.	Philiph Rotino	178
15.	Raphael Tuju	199
16.	Moses Naimodu	358
17.	Njenga Karume	045
18.	Amos Kimunya	063
19.	Rajab Mwondi	440

Observers Present:

1.	Lois Towon	082
2.	Ummie Mavumba	025
3.	Gideon K. Changole	155
4.	Moses Leleu Laima	003
5.	Omar Almustafa	125
6.	S.S. Ole Timoi	061
7.	Eunice S.S. Marima	176

IN ATTENDANCE:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kibiru	-	Programme Assistant
3.	Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/113/03: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Kaaru A. Guleid (263).

MIN.NCC/LRE1/114/03: CONFIRMATION OF MINUTES

The minutes of the Fourteenth Sitting of the Committee held on Thursday 25th September, 2003 were confirmed by the members present and signed by the Convenor.

They were proposed by Benjamin Gitoi (602) and seconded by Dr. James Koske (371).

MIN.NCC/LRE1/115/03: MATTERS ARISING

Personal Statement.

Under Minute No. MIN.CC/LRE1/106/03, the Convenor informed the Committee that the Steering Committee had discussed the matter regarding statements attributed to Hon. Amos Kimunya – 063 and referred the same to the sub-committee on welfare and discipline.

MIN.NCC/LRE1/116/03: PROTECTION OF PROPERTY IN LAND (CHAPTER 11)

Article 236(3)

Amendment proposed.

That **Article 236(3)** be amended by inserting a **new sub section (4)** as follows:

Article 236(4) Parliament should enact a law to establish a Land Court to handle land disputes.
(Prof. Wangari Maathai – 084).

The Committee resolved that the amendment be incorporated under **Article 234(4)(vi)** or as a new sub section.

“The establishment of an efficient and cost effective administrative and management of land matters including the establishment of land courts in the content of devolved authorities.

MIN.NCC/LRE1/117/03: PROTECTION OF PROPERTY IN LAND (CHAPTER 11)

Article 236(3)(d)

Amendment proposed.

That **Article 236(3)** be amended as follows:

“Every person who own private land has a right to hold a title document for his land and to have an appropriate entry in the land registry.”

(F. Mwanzia – 133)

Debate interrupted on Thursday 25th September, 2003 resumed.

Further amendment proposed.

That **Article 236(3)(d)** be further amended to read as follows:

“Any person or individual who rightly owns private land has a right to hold a title document for his/her or jointly and to have an appropriate entry in the Land Registry.” (Fibie Atiento Ochola – 405).

Question of the amendment proposed, put and agreed to.

Article 236(3)(d) – adopted as amended.

MIN.NCC/LRE1/118/03: ESTABLISHMENT OF NATIONAL LAND COMMISSION
(CHAPTER 11)

Article 237(1)

Amendment proposed.

That **Article 237(1)** be amended by inserting the
word “and District” to read as follows:

“There is established a National and District Land Commission”. (Augustine Saina – 343)

Debate arising.

Further amendment proposed.

That **Article 237(1)** be amended by inserting the following words so as to read as follows:-

“There shall be an established National and Devolved Unit Land Commission consisting of a chairperson, a vice chairperson and eight other members nominated and appointed in accordance with this Constitution.” (Benjamin Gitoi – 602).

Debate arising.

Further amendment proposed.

That **Article 237(1)** be amended to read as follows:

The established National Land Commission shall be devolved at all levels of government as an Ombudsman Office in ensuring the protection, promotion and fulfillment of enjoyment of land land rights. (Lumumba Odenda – 458)

Debate arising.

Further amendment proposed.

That **Article 237(1)** be amended to read as follows:-

“There shall be a District Lands Authority and Parliament shall prescribe a legislature on structure and terms of services of the District Lands Authority.” (Kaaruu A. Guleid – 263)

Debate arising.

Article 237(1) – Deferred.

MIN.NCC/LRE1/119/03: ADJOURNMENT

And the time being Eleven O'clock, the Convenor adjourned the meeting until Monday 17th November, 2003 at 8.30 a.m.

SIGNED:

.....
CONVERNOR

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

12th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 13th January 2004 in the Tent No. 10, Bomas of Kenya at 9.30a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.09.30-10.00 a.m - | Prayers.
Confirmation of minutes.
Matters Arising. |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Article 237(1) deferred
Article 237 (2)
Article 237 (3) |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 238 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE SIXTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 11.45 A.M. ON TUESDAY 13TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Clare Omanga	423
7. Benjamin Gitoi	602
8. Dr. Daniel W. Ichangi	481
9. Ezekiel Kesendany	356
10. F. Mwanzia	133
11. Fatuma Halako Galgalo	239
12. Fibie Atieno Ochola	405
13. Gachara Muchiri	111
14. John Serut	186
15. Julius Lalampaa	329
16. Kaaru Abdukadir Guleid	263
17. Kalembe Ndile	140
18. Kimani M. Ng'ang'a	598
19. Levi Ahindikha	379
20. Lumumba Odenda	458
21. M. Muthoni Mburu	312
22. Mafunga Wambulwa	376
23. Martha Rop	509
24. Mnene Othiniel J.	427
25. Mwailengo Haji Joel	246
26. Mwau Adelina Ndeto	218
27. C. Nyawira Ngari	306
28. Olweny P. Ayiecho	164
29. Opore Zebedeo	171
30. Peter E. Ejore Derick	323
31. Peter Kyalo Kaindi	035
32. Philip Ole Sironka	461
33. Philip Rotino	178
34. Praxedes N. Wambua	297
35. Raphael Wanjala	205
36. Robert Rukungah	621
37. Samuel Mwaura	604
38. Wafula Sylvester	484
39. William Lopetakou	325
40. William S. Ole Yiaile	361

41. Ali Mwakwere	130
42. Fatma Ibrahim Ali	506
43. William Omondi Opondo	167
44. Rhoda G. Kamanda	432
45. Bornice S. Cheleng'at	372
46. Rajab Mwondi	440
47. Beatrice Nduta Kiarie	465
48. Wangari Maathai	084
49. Andrew Ligale	083
50. Jamila Mohammed	476

Absent:

1. Archbishop Njeru Wambugu	527
2. Dr. James Koske	371
3. Joe Khamisi	054
4. Koigi Wa Wamwere	204
5. Lina Kilimo Jebii	059
6. Mohamed Abdi Mohamed	106
7. Mohamed Kuti	080
8. Mwai Gakuyu Simon	576
9. Mwandawiro Mghanga	131
10. Njenga Karume	045
11. Amos Kimunya	063
12. Thomas Merengo	421
13. Moses Naimodu	358
14. Gideon Konchella	074
15. Noah Wekesa	207
16. Raphael Tuju	199

Observers Present:

1. Fatuma Yussuf	011
2. Nimrod Kipkemoi	124
3. Ummie Mavumba	025
4. Omar Almustafa	125
5. Wycliffe Muema	132

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/119/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 11.45 a.m. and prayers were led by Beatrice Mwaringa (233).

MIN.NCC/LRE1/120/04: CONFIRMATION OF MINUTES

The minutes of the Fifteenth Sitting of the Committee held on Friday 26th September, 2003 were confirmed by the members present and signed by the Convenor.

They were proposed by William Ole Yiaile (361) and seconded by Fatuma Halako Galgalo (239).

MIN.NCC/LRE1/121/04: MATTERS ARISING

Under Minute No.MIN.CC/LRE1/115/03, the Convenor informed the Committee that the Welfare and Discipline Sub Committee has not concluded on the matter reported to it regarding Hon. Amos Kimunya (063).

MIN.NCC/LRE1/122/04: ESTABLISHMENT OF NATIONAL LAND COMMISSION (CHAPTER 11)

Article 237(1) - Amendment proposed.

Debate interrupted on Friday 26th September, 2003 resumed.

The Committee resolved that **Article 237(1)** be amended by inserting the following new sub sections:

(i) **Article 237(1)(a)**

"There shall be an established a National Land Commission consisting of a Chairperson, Deputy Chairperson and eight other members nominated and appointed in accordance with provisions of Chapter 17 of this Constitution."

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

The Committee further resolved that the National Land Commission be included in Chapter 17 of this Constitution as one of the Constitutional Commissions.

(ii) **Article 237(1)(b)**

The National Land Commission shall be devolved to the lowest level of Government.

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

MIN.NCC/LRE1/123/04: ADJOURNMENT

And the time being One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

Afternoon Sitting

Resumption of debate interrupted at 2.30 p.m.

MIN.NCC/LRE1/124/04: ESTABLISHMENT OF NATIONAL LAND COMMISSION
(CHAPTER 11)

(i) Article 237(2)(a) - Amendment proposed.

That Article 237(2)(a) be amended to read as follows:

"To ensure protection, promotion and fulfillment of enjoyment of land rights in the public land held by devolved levels of Government in trust for the present and future generations of people of Kenya." (Lumumba Odenda - 458).

Debate arising.

The Committee resolved that the proposed amendment to Article 237(2)(a) be harmonized with Article 235(a) to avoid repetition.

Article 237(2)(b) - Amendment proposed.

That Article 237(2)(b) be amended to read as follows:

"Administer public land on behalf of the Government in accordance with the recommendations of the concerned district/regional Government - (devolved unit)." (Prof. Patrick Ayiecho Olweny - 164).

Debate arising.

Further amendment proposed.

That Article 237(2)(b) be further amended to read as follows.

"Oversee the administration and management of public land on behalf of the Government at all its devolved levels." (Lumumba Odenda - 458).

Debate arising.

The Committee resolved that Article 237(2)(b) be amended to read as follows:

"Monitor and have oversight responsibilities on the administration and management of public land."

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

Article 237(2)(b) - Agreed to as amended.

Article 237(2)(c) - Amendment proposed.

That Article 237(2)(c) be amended to read as follows:

"Monitor and evaluate the implementation of the National land policy in the republic." (Lumumba Odenda - 458)

Debate arising.

Question of the amendment proposed, put and **negatived**.

Article 237(2)(c) - **Agreed to without amendment**.

Article 237(2)(d) - Amendment proposed that Article 237(2)(d) be amended to read as follows:

"Investigate and report on the observation of land rights and take steps to secure appropriate redress where land rights have been violated." (Lumumba Odenda - 458).

Debate arising:

Article 237 (2)(d) - Deferred.

MIN.NCC/LRE1/125/04: ADJOURNMENT

And the time being fifteen minutes past Four O'clock, the Convenor adjourned the meeting until Wednesday 14th January, 2004 at 9.00 a.m.

SIGNED:

CONVERNOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

13th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 14th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Article 237 (2) (d)- deferred
Article 237 (e) & (f) |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Article 238 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 239 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE SEVENTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON WEDNESDAY 14TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Ezekiel Kesendany	356
8. F. Mwanzia	133
9. Fatuma Halako Galgalo	239
10. Fibie Atieno Ochola	405
11. Gachara Muchiri	111
12. Joe Khamisi	054
13. John Serut	186
14. Julius Lalampaa	329
15. Kaaru Abdukadir Guleid	263
16. Kalembe Ndile	140
17. Kimani M. Ng'ang'a	598
18. Levi Ahindikha	379
19. Lumumba Odenda	458
20. M. Muthoni Mburu	312
21. Martha Rop	509
22. Mnene Othiniel J.	427
23. Mwailengo Haji Joel	246
24. Mwau Adelina Ndeto	218
25. C. Nyawira Ngari	306
26. Olweny P. Ayiecho	164
27. Peter E. Ejore Derick	323
28. Philip Ole Sironka	461
29. Philip Rotino	178
30. Praxedes N. Wambua	297
31. Raphael Wanjala	205
32. Samuel Mwaura	604
33. Wafula Sylvester	484
34. William S. Ole Yiaile	361
35. Amos Kimunya	063
36. Fatma Ibrahim Ali	506
37. William Omondi Opondo	167
38. Rhoda G. Kamanda	432
39. Moses Naimodu	358
40. Rajab Mwondi	440

41.	Wangari Maathai	084
42.	Andrew Ligale	083
43.	Jamila Mohammed	476
43.	Dr. Daniel W. Ichangi	481
44.	Mafunga Wambulwa	376
45.	William Lopetakou	325
46.	Opore Zebedeo	171
47.	Beatrice Nduta Kiarie	465
48.	Clare Omanga	423
49.	Robert Rukungah	621
50.	Ali Mwakwere	130

Absent:

1.	Archbishop Njeru Wambugu	527
2.	Dr. James Koske	371
3.	Koigi Wa Wamwere	204
4.	Lina Kilimo Jebii	059
5.	Mohamed Abdi Mohamed	106
6.	Mohamed Kuti	080
7.	Mwai Gakuyu Simon	576
8.	Mwandawiro Mghanga	131
9.	Njenga Karume	045
10.	Thomas Merengo	421
11.	Gideon Konchella	074
12.	Noah Wekesa	207
13.	Raphael Tuju	199
14.	Peter Kyalo Kaindi	035
15.	Bornice S. Cheleng'at	372

Observers Present:

1.	Lois Towon	084
2.	Fatuma Yussuf	011
2.	Nimrod Kipkemoi	124
3.	Omar Almustafa	125
5.	E.N. Omondi	128
7.	B.A. Andreasew	012
8.	Moses Leleu Laima	003

IN ATTENDANCE:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kibiru	-	Programme Assistant
3.	Grace Kaparo	-	Assistant Programme Officer
4.	Metrine Wakhungu	-	"
5.	Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/126/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 9.30 a.m. and prayers were led by Fibie Atieno Ochola (405).

MIN.NCC/LRE1/127/04: CONFIRMATION OF MINUTES

The minutes of the Sixteenth Sitting of the Committee held on Tuesday 13th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Ezekiel Kesendany (356) and seconded by William Lopetakou (325).

Thereafter the Committee observed one-minute silence in honour of the late Hon. Joab Omino, Delegate No.166.

MIN.NCC/LRE1/128/04: MATTERS ARISING

(i) **Under Minute No.MIN.CC/LRE1/ 122/04(ii)**, the Committee resolved that Lumumba Odenda (458) and Daniel Ichangi (481) should prepare justification notes on the inclusion of National Land Commission in Chapter 17 for onward transmission to the relevant Committee.

(ii) The Convenor requested the Committee to read the report of the Rapporteur General for Bomas II *vis-avis* the Interim Report and note the contradictions.

MIN.NCC/LRE1/129/04: ESTABLISHMENT OF NATIONAL LAND COMMISSION (CHAPTER 11)

Article 237(2)(d) - Amendment proposed.

That Article 237(2)(d) be amended to read as follows:

"Investigate and report on the observation of land rights and take steps to secure appropriate redress where land rights have been violated." (Lumumba Odenda - 458).

Debate interrupted on Tuesday 13th January, 2004 resumed.

Thereupon, the Member withdrew the proposed amendment.

Article 237(2)(d) - Agreed to without amendment.

(ii) **Article 237(2)(e) - Amendment proposed.**

That Article 237(2)(e) be amended to read as follows:

"Initiate investigations, conduct research and make recommendations to improve the functions of Government Ministries and agencies in charge of land and natural resources." (Lumumba Odenda - 458).

Debate arising.

The Committee resolved that Article 237(2)(e) be amended to read as follows:

"Conduct research and make recommendations to improve the functions of Government Ministries and agencies in charge of land and natural resources."

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

Article 237(2)(e) - Agreed to as amended.

(iii) **Article 237 (2)(f) - Amendment proposed.**

That Article 237(2)(f) be amended to read as follows:

"Receive complaints about abuse of power, unfair treatment, manifest injustices, corruption and unlawful, and unfair official conduct in land and natural resources matters." (Lumumba Odenda - 458).

Debate arising,

The Committee resolved that Article 237(2)(f) be amended to read as follows:

"Initiate investigations on its own, or upon a complaint from other person(s) or institutions on land injustices both present and historical and ensure appropriate redress."

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

Article 237(2)(f) - Agreed to as amended.

Article 237(2) - Amendment proposed.

That Article 237(2) be amended by inserting a new sub section 237(2)(g) to read as follows:

"Recognize customary law in land and let communities participate in enactment of relevant land laws." (Prof. Wangari Maathai - 084).

Debate arising.

The Committee resolved that a new Article 237(2)(g) be inserted to read as follows:

"Facilitate the participation of communities in the enactment of relevant land laws and adherence to customary law in land matters as long as such laws are not inconsistent with this Constitution."

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

New Article 237(2)(g) - Agreed to.

Article 237(2) - Amendment proposed.

That Article 237(2) be amended by inserting a new sub section 237(2)(h) to read as follows:

"Monitor and have oversight responsibilities over land use planning throughout the country." (Daniel Ichangi - 481).

Debate arising.

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

New Article 237(2)(h) - Agreed to.

MIN.NCC/LRE1/130/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceeding at 11.00 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/131/04: ESTABLISHMENT OF NATIONAL LAND COMMISSION (CHAPTER 11)

Article 237(2) - Amendment proposed.

That Article 237(2) be amended by inserting a new sub section 237(2)(i) to read as follows:

"Recognizing the special status of the City of Nairobi, the National Land Commission will hence forth administer through the National Unification Fund 10% of all land rates collected within the city to develop the most under privileged members of the Maasai community by providing social and other amenities through the devolved authorities." (William ole Yiaile - 361).

Debate arising.

The Committee resolved that the proposed amendment be forwarded to the Technical Committee on Affirmative Action.

Article 237 - Amendment proposed.

That Article 237(2) be amended by inserting a new sub section 237(2)(J):

"The Commission shall be vested with authority to alienate land and issue title deeds which can only be cancelled by a three judge bench high court and appeal thereof." (Gachara Muchiri - 111).

Debate arising.

The Committee resolved that the proposed amendment be incorporated as appropriate under Article 237(2)(b).

(viii) Article 237(3) - Agreed to without amendment.

(ix) Article 237 - Amendment proposed.

That Article 237 be amended by inserting a new sub section 237(4) as follows:

The Commission shall be independent in its operations.

All the affairs of the National Public Lands Commission shall be conducted in a transparent and accountable manner and where possible through public hearings. (S.C.M. Wafula - 484).

The Committee resolved that the proposed amendment shall be covered in the relevant Act of Parliament.

MIN.NCC/LRE1/133/04: ENVIRONMENT - CHAPTER 12

The Committee resolved to have general debate on Chapter 12 before deliberating on the specific Articles/Clauses in the Chapter.

MIN.NCC/LRE1/134/04: ADJOURNMENT OF THE MEETING

And the time being One O'clock, the Convenor adjourned the meeting until 3.00 p.m.

AFTERNOON SITTING

Resumption of debate interrupted at 3.00 p.m.

MIN.NCC/LRE1/135/04: ENVIRONMENT - (CHAPTER 12)

The Committee continued with the general debate on the Chapter.

MIN.NCC/LRE1/136/04 ADJOURNMENT

And the time being Five O'clock, the Convenor adjourned the meeting until Thursday 15th January, 2004 at 9.00 a.m.

SIGNED:

CONVERNOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

14th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 15th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1.09.00-10.30 a.m -	Prayers. Confirmation of minutes. Matters Arising. General Discussion Consideration of the Draft Bill Article 239
2.10.30-11.00 a.m -	TEA BREAK
3.11.00-01.00 a.m -	Consideration of the Bill Article 239
4.01.00-02.30 a.m -	LUNCH BREAK
5.02.30-05.00 a.m	- Consideration of the Draft Bill Article 239

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE EIGHTEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON THURSDAY 15TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Clare Omanga	423
6. Daniel W. Ichangi	481
7. Beatrice Mwaringa	233
8. Benjamin Gitoi	602
9. Ezekiel Kesendany	356
10. Fatuma Halako Galgalo	239
11. Fibie Atieno Ochola	405
12. Gachara Muchiri	111
13. Dr. James Koske	371
14. Joe Khamisi	054
15. John Serut	186
16. Julius Lalampaa	329
17. Kaaru Abdukadir Guleid	263
18. Kimani M. Ng'ang'a	598
19. Levi Ahindikha	379
20. Mafunga Wambulwa	376
21. Mnene Othiniel J.	427
22. Mwailengo Haji Joel	246
23. Mwau Adelina Ndeto	218
24. C. Nyawira Ngari	306
25. Martha Rop	509
26. Olweny P. Ayiecho	164
27. Opore Zebedeo	171
28. Peter E. Ejore Derick	323
29. Peter Kyalo Kaindi	035
30. Philip Ole Sironka	461
31. Philip Rotino	178
32. Praxedes N. Wambua	297
33. Raphael Wanjala	205
34. Robert Rukungah	621
35. Samuel Mwaura	604
36. Wafula Sylvester	484
37. William Lopetakou	325
38. Yahya Saad Swaleh	483
39. William Omondi Opondo	167

40.	Rhoda G. Kamanda	432
41.	Moses Naimodu	358
42.	Gideon Konchella	074
43.	Rajab Mwondi	440
44.	Beatrice Nduta Kiarie	465
45.	Wangari Maathai	084
46.	Andrew Ligale	083
47.	Jamila Mohammed	476
48.	William S. Ole Yiaile	361
49.	Fatma Ibrahim Ali	506
50.	Ali Mwakwere	130
51.	M. Muthoni Mburu	312

Absent:

1.	F. Mwanzia	133
2.	Kalembe Ndile	140
3.	Archbishop Njeru Wambugu	527
4.	Koigi Wa Wamwere	204
5.	Lina Kilimo Jebii	59
6.	Mohamed Abdi Mohamed	106
7.	Mohamed Kuti	080
8.	Mwai Gakuyu Simon	576
9.	Mwandawiro Mghanga	131
10.	Njenga Karume	045
11.	Noah Wekesa	207
12.	Raphael Tuju	199
13.	Bornice S. Cheleng'at	372
14.	Lumumba Odenda	458
16.	Amos Kimunya	063

Observers Present:

1.	Lois Towon	084
2.	Fatuma Yussuf	011
3.	Nimrod Kipkemoi	124
4.	Omar Almustafa	125
5.	Eunice S.S. Marima	176
6.	Rosemary Sawe	121

IN ATTENDANCE:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kibiru	-	Programme Assistant
3.	Grace Kaparo	-	Assistant Programme Officer
4.	Metrine Wakhungu	-	"
5.	Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/137/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Haji Joel Mwilengo (246).

MIN.NCC/LRE1/138/04: CONFIRMATION OF MINUTES

The minutes of the Seventeenth Sitting of the Committee held on Wednesday 14th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Wafula Sylvester (484) and seconded by Mwilengo Joel Haji (246).

MIN.NCC/LRE1/139/04: MATTERS ARISING

Moses Naimodu (358) brought to the attention of the Committee, the perpetual absenteeism of some of the Committee members especially Members of Parliament.

The Convenor informed the Committee that:-

- (i) Delegates who have not been attending Committee sittings regularly, have been noted and their parent bodies formally informed.
- (ii) The Committee's decisions are binding to absent committee members.
- (iii) The issue regarding members absenteeism will be referred to the Steering Committee again to re-visit.

MIN.NCC/LRE1/140/04: ENVIRONMENT - CHAPTER 12

The Committee resolved to constitute a Sub Committee comprising the following Members to prepare amendments to the Chapter.

(i)	Prof. Wangari Maathai	-	084
(ii)	Gachara Muchiri	-	111
(iii)	William Ole Yiaile	-	361
(iv)	Dr. James Koske	-	371
(v)	Lumumba Odenda	-	458
(vi)	Beatrice Nduta Kiarie	-	465
(vii)	Dr. Daniel Ichangi	-	481

The Terms of Reference of the Sub Committee are to:-

- (i) Propose amendments aimed at improving the focus, content and quality of Chapter 12 in light of recent policies and legislation, e.g. E.M.C.A., Forest Bills and Sessional Paper No.6/1999.

(ii) Address the question of natural resources and propose appropriate improvements in the context of Chapters 11 and 12.

(iii) Harmonize Chapters 11 and 12.

(iv) Consider and advise on draft articles in other Chapters which are relevant to land, natural resources and environment taking into account resolutions already made regarding Chapter 11.

The Sub Committee will present its report to the Committee on Monday 19th January, 2004.

MIN.NCC/LRE1/141/04 : INTERRUPTION OF DEBATE

The Convenor interrupted the proceeding at 11.45 a.m. to facilitate tea break.

Resumption of debate interrupted at 12.00 Noon.

MIN.NCC/LRE1/142/04: DEFERRED ARTICLES

Article 232(e).

The Committee resolved that Article 232(e) be considered under Chapter 12.

Article 232(f).

The Committee noted that Article 232(f) has been covered under Article 235(4)(a)(vi)

MIN.NCC/LRE1/143/04: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past One O'clock, the Convenor adjourned the meeting until 2.45 p.m.

AFTERNOON SITTING

Resumption of debate interrupted at 2.45 p.m.

MIN.NCC/LRE1/144/04: DEFERRED ARTICLES

(iii) Article 232(2)

The Committee resolved that Article 232(2) be amended by inserting a new sub section 232(2)(g) to read as follows:

"Communities should be encouraged to settle land disputes through recognized local community initiatives, provided that these shall not be against the Constitution."

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

New Article 232(2)(g) - Agreed to

(iv) **Article 234(2)(d) - Agreed to without amendment.**

(v) **Article 234(4)(d)**

The Committee resolved that Article 234(4)(d) be deleted.

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

Article 234(4)(d) - deleted.

MIN.NCC/LRE1/145/04: ADJOURNMENT

And the time being Four O'clock, the Convenor adjourned the meeting until Friday 16th January, 2004 at 9.00 a.m.

SIGNED:

CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

15th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 16th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the deferred Article
235 (4) (a) (ii) |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the deferred Article
235 (4) (a) (ii) |
| 4.01.00-02.30 a.m - | LUNCH BREAK |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE NINETEENTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON FRIDAY 16TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Clare Omanga	423
8. Daniel W. Ichangi	481
9. Ezekiel Kesendany	356
10. Fatuma Halako Galgalo	239
11. Fibie Atieno Ochola	405
12. Gachara Muchiri	111
13. Dr. James Koske	371
14. Julius Lalampaa	329
15. Kaaru Abdukadir Guleid	263
16. Kimani M. Ng'ang'a	598
17. Levi Ahindukha	379
18. M. Muthoni Mburu	312
19. Mafunga Wambulwa	376
20. Martha Rop	509
21. Mnene Othiniel J.	247
22. Mwailengo Haji Joel	246
23. Mwau Adelina Ndeto	218
24. Olweny P. Ayiecho	164
25. Peter E. Ejore Derick	323
26. Philip Ole Sironka	461
27. Praxedes N. Wambua	297
28. Robert Rukungah	621
29. Samuel Mwaura	604
30. Wafula Sylvester	484
31. William Lopetakou	325
32. William S. Ole Yiaile	361
33. Fatma Ibrahim Ali	506
34. William Omondi Opondo	167
35. Rhoda G. Kamanda	432
36. Bornice S. Cheleng'at	372
37. Moses Naimodu	358
38. Rajab Mwondi	440
39. Beatrice Nduta Kiarie	465
40. Wangari Maathai	084

41. Jamila Mohammed 476

Absent:

1. F. Mwanzia	133
2. Kalembe Ndile	140
3. Archbishop Njeru Wambugu	527
4. Koigi Wa Wamwere	204
5. Lina Kilimo Jebii	059
6. Mohamed Abdi Mohamed	106
7. Mohamed Kuti	080
8. Mwai Gakuya Simon	576
9. Njenga Karume	045
10.Noah Wekesa	207
11.Raphael Tuju	199
12.Joe Khamisi	054
13.John Serut	186
14.Lumumba Odenda	458
15.Amos Kimunya	063
16.Andrew Ligale	083
17.C. Nyawira Ngari	306
18.Opore Zebedeo	171
19.Peter Kyalo Kaindi	035
20.Philiph Rotino	178
21.Raphael Wanjala	205
22.Gideon Konchella	074
23.Ali Mwakwere	130

Observers Present:

1. Lois Towon	084
2. Fatuma Yussuf	011
3. Nimrod Kipkemoi	124
4. Omar Almustafa	125
5. Josephie Nashipae Sane	023
6. S.S. Ole Timoi	061
7. Eunice S.S. Marima	176
8. Joyce Kaendo	012
9. Faith Mwirigi	03

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/146/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Fatuma Halako Galgalo (239).

MIN.NCC/LRE1/147/04: RCOMMUNICATION FROM THE CHAIR

The Convenor conveyed to the Committee a congratulatory message from the under-listed missions who applauded Kenyans for their commitment to the Constitutional reform by convening for Bomas III.

The Australian High Commission
The British High Commission
The Cyprus High Commission
The Royal Danish Embassy
The Embassy of Finland
The Embassy of Greece
The Embassy of Czech Republic
The Embassy of Italy
The Embassy of Japan
The Embassy of Poland
The Embassy of Portugal
The Embassy of Spain
The Embassy Sweden
The Embassy of Switzerland
The Embassy of the Slovak Republic
The Embassy of the United States of America
The Delegation of the European Commission.

MIN.NCC/LRE1/148/04: CONFIRMATION OF MINUTES

The minutes of the Eighteenth Sitting of the Committee held on Thursday 15th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Benjamin Gitoi (602) and seconded by Martha Rop (509).

MIN.NCC/LRE1/149/04: MATTERS ARISING

Under Minute No. MIN.NCC/LEI/139/04, the Committee was informed that a meeting for Convenors has been scheduled for Friday afternoon to discuss the issue of Members' absenteeism among others.

MIN.NCC/LRE1/150/04: DEFERRED ARTICLES

Article 235(4)(a)(ii) - Agreed to without amendment.

MIN.NCC/LRE1/151/04 : INTERRUPTION OF DEBATE

The Convenor interrupted the proceeding at 10.45 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.15 a.m.

MIN.NCC/LRE1/152/04 : REPORT OF THE SUB-COMMITTEE

- (i) **Under Minute No.NCC/LRE1/100/03**, Hon. (Prof.) Wangari Maathai (084) presented the following definition by the Sub Committee mandated to define the term "community".

"A community means "indigenous" Kenyan citizens who reside in a specific geographical area irrespective of their ethnicity and culture."

Debate arising.

The Committee resolves to have the issue pending until the deliberations on Chapter 12 are concluded.

- (ii) **Under Minute No.NCC/LRE1/140/04**, the Committee resolved to adjourn to enable the Sub Committee dealing with Chapter 12 to commence its work and Members to attend the proceedings of other technical working committees.

MIN.NCC/LRE1/153/04: ADJOURNMENT OF THE MEETING

And the time being forty five minutes past Twelve O'clock, the Convenor adjourned the meeting until Monday 19th January, 2004 at 9.00 a.m.

SIGNED:

CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

16th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Monday, 19th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the Draft Bill
Article 239 |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Article 239 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 240 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTIETH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON MONDAY 19TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Ezekiel Kesendany	356
8. Clare Omanga	423
9. Daniel W. Ichangi	481
10. F. Mwanzia	133
11. Fatuma Halako Galgalo	239
12. Fibie Atieno Ochola	407
13. Dr. James Koske	371
14. Joe Khamisi	054
15. John Serut	186
16. Kaaru Abdukadir Guleid	263
17. Kimani M. Ng'ang'a	598
18. Levi Ahindikha	379
19. M. Muthoni Mburu	312
20. Mafunga Wambulwa	376
21. Martha Rop	509
22. Mnene Othiniel J.	247
23. Mwailengo Haji Joel	246
24. Mwau Adelina Ndeto	218
25. Opore Zebedeo	171
26. C. Nyawira Ngari	306
27. Praxedes N. Wambua	297
28. Philip Rotino	178
29. Samuel Mwaura	604
30. Wafula Sylvester	484
31. William Lopetakou	325
32. Rhoda G. Kamanda	432
33. Bornice S. Cheleng'at	372
34. Moses Naimodu	358
35. Rajab Mwondi	440
36. Beatrice Nduta Kiarie	465
37. Wangari Maathai	084
38. Andrew Ligale	083
39. Jamila Mohammed	476
40. William S. Ole Yiaile	361

41.	Julius Lalampaa	329
42.	Robert Rukungah	621
42.	Lina Kilimo Jebii	059

Absent:

1.	William Omondi Opondo	167
2.	Gachara Muchiri	111
3.	Olweny P. Ayiecho	164
4.	Peter E. Ejore Derick	323
5.	Philip Ole Sironka	461
6.	Fatma Ibrahim Ali	506
7.	Kalembe Ndile	140
8.	Archbishop Njeru Wambugu	527
9.	Koigi Wa Wamwere	204
10.	Mohamed Abdi Mohamed	106
11.	Mohamed Kuti	080
12.	jenga Karume	045
13.	Noah Wekesa	207
14.	Raphael Tuju	199
15.	Lumumba Odenda	458
16.	Amos Kimunya	063
17.	Peter Kyalo Kaindi	035
18.	Raphael Wanjala	205
19.	Gideon Konchella	074
20.	Ali Mwakwere	130

Observers Present:

1.	Lois Towon	084
2.	Nimrod Kipkemoi	124
3.	Omar Almustafa	125
4.	S.S. Ole Timoi	061
5.	Eunice S.S. Marima	176

IN ATTENDANCE:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kibiru	-	Programme Assistant
3.	Grace Kaparo	-	Assistant Programme Officer
4.	Metrine Wakhungu	-	"
5.	Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/154/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 9.30 a.m. and prayers were led by Dr. James Koske (371).

MIN.NCC/LRE1/155/04: CONFIRMATION OF MINUTES

The minutes of the Nineteenth Sitting of the Committee held on Friday 16th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Levi Ahindukha (379) and seconded by Fibie Atieno Ochola (405).

MIN.NCC/LRE1/156/04: MATTERS ARISING

(i) **Under Minute No. MIN.NCC/LEI/147/04**, the Committee noted with concern that none of the African Diplomatic Missions had commended Kenya for the on-going Constitutional reform.

(ii) **Under Minute No. MIN.NCC/LRE/149/04**,
The Convenor informed the Committee as follows:-

Members absenteeism is affecting all Technical Committees and there is very little the Commission can do apart from informing the parent bodies of the concerned Members.

The Commission is following up with relevant authorities as regards aircrafts over-flying Bomas of Kenya.

MIN.NCC/LRE1/157/04 : REPORT OF THE SUB COMMITTEE

Under Minute No.NCC/LRE1/140/04, the Chairman of the Sub Committee, Dr. Daniel W. Ichangi (481) presented the interim report as follows:

There is need to have two distinct Chapters as 11 and 12.

The title of Chapter 11 needs to be re-defined.

Chapter 12

The term "environment" has been defined by the Sub Committee but issues like- natural resources, habitat, and sustainable development should also be taken into account.

There are other crucial aspects, such as principles, which should be highlighted before focusing on environmental protection.

An aspect of environment should be included in the preamble of this Constitution. Therefore, a motion to that effect should be forwarded to the relevant technical committee on "Preamble."
Article 241 needs to be either re-written or deleted.

The Sub Committee sought the indulgence of the Committee to be given more time to conclude its work and report on Tuesday 20th January, 2004.

MIN.NCC/LRE1/158/04: ADJOURNMENT MOTION

The Committee resolved to adjourn the proceedings to enable the Sub Committee working on Chapter 12 to conclude its work and report on Tuesday 20th January, 2003.

A motion of adjournment was moved by Sylvester Wafula (484) and seconded by Beatrice Mwaringa (233).

Question put and agreed to.

MIN.NCC/LRE1/159/04: ADJOURNMENT OF THE MEETING

And the time being forty five minutes past Eleven O'clock, the Convenor adjourned the meeting until Tuesday 20th January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

19th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 20th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the Draft Bill
Article 239 |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Article 239 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 240 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY FIRST MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 11.30 A.M. ON TUESDAY 20TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

Name

Delegate No.

1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Clare Omanga	423
8. Daniel W. Ichangi	481
9. Ezekiel Kesendany	356
10. F. Mwanzia	133
11. Fatuma Halako Galgalo	239
12. Fibie Atieno Ochola	407
13. Gachara Muchiri	111
14. Dr. James Koske	371
15. Joe Khamisi	054
16. John Serut	186
17. Julius Lalampaa	329
18. Kaaru Abdukadir Guleid	263
19. Kimani M. Ng'ang'a	598
20. Levi Ahindikha	379
21. Lumumba Odenda	458
22. M. Muthoni Mburu	312
23. Mafunga Wambulwa	376
24. Martha Rop	509
25. Mnene Othiniel J.	247
26. Mwailengo Haji Joel	246
27. Mwau Adelina Ndeto	218
28. C. Nyawira Ngari	306
29. Olweny P. Ayiecho	164
30. Opore Zebedeo	171
31. Peter E. Ejore Derick	323
32. Philip Ole Sironka	461
33. Philip Rotino	178
34. Praxedes N. Wambua	297
35. Raphael Wanjala	205
36. Robert Rukungah	621
37. Samuel Mwaura	604
38. Wafula Sylvester	484
39. William Lopetakou	325
40. William S. Ole Yiaile	361

41. Fatma Ibrahim Ali	506
42. William Omondi Opondo	167
43. Rhoda G. Kamanda	432
44. Bornice S. Cheleng'at	372
45. Moses Naimodu	358
46. Rajab Mwondi	440
47. Beatrice Nduta Kiarie	465
48. Wangari Maathai	084
49. Andrew Ligale	083
50. Jamila Mohammed	476
51. Davis Nakitare	010

Absent:

1. Archbishop Njeru Wambugu	527
2. Kalembe Ndile	140
3. Koigi Wa Wamwere	204
4. Lina Kilimo Chebii	059
5. Mohamed Abdi Mohamed	106
6. Mohamed Kuti	080
7. Noah Wekesa	207
8. Raphael Tuju	199
9. Peter Kyalo Kaindi	035
10. Jenga Karume	045
11. Amos Kimunya	063
12. Ali Mwakwere	130
13. Gideon Konchella	074

Observers Present:

1. Nimrod Kipkemoi	124
2. Ummie Mavumba	025
3. Omar Almस्ताفا	
4. S.S. Ole Timoi	061
5. Eunice S.S. Marima	176
6. Francis G.M. Nalwa	033
7. Wasilwa S.E. Wekesa	034
8. Edward K. Holi	008

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Mitrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/160/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 11.30 a.m. and prayers were led by. Kaaru Abdulkadir Guleid (263).

MIN.NCC/LRE1/161/04: CONFIRMATION OF MINUTES

The minutes of the Twentieth Sitting of the Committee held on Monday 19th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Ezekiel Kasendany (356) and seconded by Nyawira Ngari (306).

MIN.NCC/LRE1/162/04: MATTERS ARISING

Under Minute No. MIN.NCC/LEI/157/04, the Chairman of the Sub Committee, Dr. Daniel Ichangi (481) presented the report as follows:

(i) The Sub Committee has done definitions and captured universal principles, concept of values, rights & duties of persons, and good governance in broad sense.

(ii)The Sub Committee has made the following proposals:

Introduction of three New Articles to Chapter 12.

Establishment of an institutional framework in the form of National Environmental Management Commission.

Establishment of a court dealing with environmental issues as the current court systems appears inadequate.

Re-writing of Articles 241 and 242 to refine the same.

MIN.NCC/LRE1/163/04 : DEFERRED DELIBERATION

Under Minute No.NCC/LRE1/152/04, the Committee further deliberated on appropriate definition of the term 'community'.

The Committee resolved to adopt the following definitions as formulated by the Sub Committee. *A community means, 'indigenous' Kenyan citizens who reside in a specific geographical area irrespective of their ethnicity and culture.*

Question put and **agreed to.**

The following Committee Members registered their contrary opinion to the definition:

Gachara Muchiri (111)
Benjamin Gitoi (602)

MIN.NCC/LRE1/164/04: ADJOURNMENT OF THE MEETING

And the time being forty-five minutes past Twelve O'clock, the Convenor adjourned the meeting until 2.30 p.m.

Afternoon Sitting
Resumption of debate interrupted at 2.30 p.m.

MIN.NCC/LRE1/165/04: REPORT OF THE SUB-COMMITTEE

The Report of the Sub Committee working on Chapter 12 was distributed to the Committee Members.

Members commended the Sub Committee for doing a good job.

MIN.NCC/LRE1/166/04: DELIBERATION ON CHAPTER 12

Title - Amendment proposed.

That, the title of Chapter 12 be amended by deleting the words "and Natural Resources" so as to read "Environment."

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

MIN.NCC/LRE1/167/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be given time to study the Sub Committee report *vis-avis* the Draft Bill.

Consequently, a motion of adjournment was moved by Philip Rotino (178) and seconded by Moses Naimodu (358).

Question put and agreed to.

MIN.NCC/LRE1/168/04: ADJOURNMENT OF THE MEETING

And the time being Four O'clock, the Convenor adjourned the meeting until Wednesday 21st January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

20th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 21st January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|--|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the Draft Bill
Article 239 |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Article 239 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 240 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY SECOND MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON WEDNESDAY 21ST DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Clare Omanga	423
8. Daniel W. Ichangi	481
9. Ezekiel Kesendany	356
10. F. Mwanzia	133
11. Fatuma Halako Galgalo	239
12. Fibie Atieno Ochola	407
13. Gachara Muchiri	111
14. Dr. James Koske	371
15. Joe Khamisi	054
16. John Serut	186
17. Julius Lalampaa	329
18. Kaaru Abdukadir Guleid	263
19. Kimani M. Ng'ang'a	598
20. Levi Ahindukha	379
21. Lumumba Odenda	458
22. M. Muthoni Mburu	312
23. Mafunga Wambulwa	376
24. Martha Rop	509
25. Mnene Othiniel J.	247
26. Mwailengo Haji Joel	246
27. Mwau Adelina Ndeto	218
28. C. Nyawira Ngari	306
29. Olweny P. Ayiecho	164
30. Opore Zebedeo	171
31. Peter E. Ejore Derick	323
32. Philip Ole Sironka	461
33. Philip Rotino	178
34. Praxedes N. Wambua	297
35. Raphael Wanjala	205
36. Robert Rukungah	621
37. Samuel Mwaura	604
38. Wafula Sylvester	484
39. William Lopetakou	325
40. William S. Ole Yiaile	361

41. Fatma Ibrahim Ali	506
42. William Omondi Opondo	167
43. Rhoda G. Kamanda	432
44. Bornice S. Cheleng'at	372
45. Moses Naimodu	358
46. Rajab Mwondi	440
47. Beatrice Nduta Kiarie	465
48. Wangari Maathai	084
49. Andrew Ligale	083
50. Jamila Mohammed	476
51. Davis Nakitare	010

Absent:

1. Archbishop Njeru Wambugu	527
2. Kalembe Ndile	140
3. Koigi Wa Wamwere	204
4. Lina Kilimo Chebii	059
5. Mohamed Abdi Mohamed	106
6. Mohamed Kuti	080
7. Noah Wekesa	207
8. Raphael Tuju	199
9. Peter Kyalo Kaindi	035
10. Jenga Karume	045
11. Amos Kimunya	063
12. Ali Mwakwere	130
13. Gideon Konchella	074

Observers Present:

1. Nimrod Kipkemoi	124
2. Ummie Mavumba	025
3. Omar Almस्ताفا	
4. S.S. Ole Timoi	061
5. Eunice S.S. Marima	176
6. Francis G.M. Nalwa	033
7. Wasilwa S.E. Wekesa	034
8. Edward K. Holi	008

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Mitrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/169/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 11.30 a.m. and prayers were led by Mafunga Wambulwa (376).

MIN.NCC/LRE1/170/04: CONFIRMATION OF MINUTES

The minutes of the Twenty First Sitting of the Committee held on Tuesday 20th January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Moses Naimodu (356) and seconded by Fibie Atieno Ochola (405).

MIN.NCC/LRE1/171/04: REPORT OF THE SUB COMMITTEE

Under Minute No. MIN.NCC/LEI/165/04, the Chairman of the Sub Committee, Dr. Daniel Ichangi (481) took the members through the report and the amendments proposed therein.

The Committee deliberated on the Sub Committee report and resolved as follows:

- (i) To adopt the report as an alternative to the Draft Bill.
- (ii) Natural resource be defined either under Chapter 11 on interpretation or both under Chapters 11 and 12.
- (iii) Forward an explanatory letter to the Rappoorteur General to include an aspect of environment in the preamble of this Constitution.

MIN.NCC/LRE1/163/04 : DEFERRED DELIBERATION

Under Minute No.NCC/LRE1/152/04, the Committee further deliberated on appropriate definition of the term 'community'.

The Committee resolved to adopt the following definitions as formulated by the Sub Committee.

A community means, 'indigenous' Kenyan citizens who reside in a specific geographical area irrespective of their ethnicity and culture.

Question put and **agreed to**.

The following Committee Members registered their contrary opinion to the definition:

Gachara Muchiri (111)
Benjamin Gitoi (602)

MIN.NCC/LRE1/164/04: ADJOURNMENT OF THE MEETING

And the time being forty five minutes past Twelve O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

Resumption of debate interrupted at 2.30 p.m.

MIN.NCC/LRE1/165/04: REPORT OF THE SUB-COMMITTEE

The Report of the Sub Committee working on Chapter 12 was distributed to the Committee Members.

Members commended the Sub Committee for doing a good job.

MIN.NCC/LRE1/166/04: DELIBERATION ON CHAPTER 12

Title - Amendment proposed.

That, the title of Chapter 12 be amended by deleting ,the words "and Natural Resources" so as to read "Environment."

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

MIN.NCC/LRE1/167/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be given time to study the Sub Committee report *vis-avis* the Draft Bill.

Consequently, a motion of adjournment was moved by Philip Rotino (178) and seconded by Moses Naimodu (358).

Question put and agreed to.

MIN.NCC/LRE1/168/04: ADJOURNMENT OF THE MEETING

And the time being Four O'clock, the Convenor adjourned the meeting until Wednesday 21st January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

21st January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 22nd January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the Draft Bill
Deferred Articles - 240 (3)
- 240 (6) (i) & (ii)
- 240 (8) |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Articles 241- 242 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |
| 5.02.30-05.00 a.m | - Consideration of the Draft Bill
Article 243 |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY THIRD MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON THURSDAY 22ND DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Amos Kimunya	063
5. Augustine Saina	343
6. Beatrice Mwaringa	233
7. Benjamin Gitoi	602
8. Bornice S. Cheleng'at	372
9. C. Nyawira Ngari	306
10. Dr. Daniel W. Ichangi	481
11. Davis Nakitare	010
12. Ezekiel Kesendany	356
13. F. Mwanzia	133
14. Fatma Ibrahim Ali	506
15. Fatuma Halako Galgalo	239
16. Fibie Atieno Ochola	405
17. Gachara Muchiri	111
18. Dr. James Koske	371
19. Joe Khamisi	054
20. John Serut	186
21. Julius Lalampaa	329
22. Kaaru Abdukadir Guleid	263
23. Kimani M. Ng'ang'a	598
24. Levi Ahindikha	379
25. Lumumba Odenda	458
26. M. Muthoni Mburu	312
27. Mafunga Wambulwa	376
28. Martha Rop	509
29. Moses Naimodu	358
30. Mnene Othiniel J.	247
31. Mwailengo Haji Joel	246
32. Nduta Beatrice Kiari	465
33. Opore Zebedeo	171
34. Peter E. Ejore Derick	323
35. Philip Ole Sironka	461
36. Philip Rotino	178
37. Praxedes N. Wambua	297
38. Rajab Mwondi	440
38. Raphael Wanjala	205
39. Robert Rukungah	621

40. Samuel Mwaura	604
41. Wafula Sylvester	484
42. William Lopetakou	325
43. William S. Ole Yiaile	361
44. Rhoda G. Kamanda	432
45. Clare Omanga	423
46. Jamila Mohammed	476
47. Konchella Gideon	074
48. Prof. Wangari Maathai	084
49. Kalembe Ndile	140
50. Mwau Adelina Ndeto	218
51. Peter Kyalo Kaindi	035

Apology

Ligale Andrew	083
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Absent:

1. Koigi Wa Wamwere	204
2. Ali Mwakwere	130
3. Olweny P. Ayiecho	164
4. William Omondi Opondo	167
5. Archbishop Njeru Wambugu	527
6. Lina Kilimo Chebii	059
7. Mohamed Abdi Mohamed	106
8. Mohamed Kuti	080
9. Njenga Karume	045
10. Noah Wekesa	207
11. Raphael Tuju	199

Observers Present:

1. Ummie Mavumba	025
2. Lois Towon	084
3. Nimrod Kipkemoi	124
4. Omar Almustafa	125
5. Josephine Nashipae Sane	016
6. S.S. Ole Timoi	061

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/177/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 9.30 a.m. and prayers were led by Clare Omanga (423).

MIN.NCC/LRE1/178/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Second Sitting of the Committee held on Wednesday 21st January, 2004 were confirmed by the members present and signed by the Convenor.

They were proposed by Beatrice Mwaringa (233) and seconded by Benjamin Gitoi (602).

MIN.NCC/LRE1/179/04: DEFERRED ARTICLES

Article 240(3)

Debate interrupted on Wednesday 21st January, 2004 resumed.

The Committee resolved that the New Article 240(3) be amended to read as follows:

Article 240(3) - The State shall:

Develop and enact legislation for the protection and promotion of sustainable development and utilization of our natural resources.

Domesticate international and bilateral agreements and treaties relating to the protection of the environment.

Review current international and bilateral treaties and agreements to ensure the sovereignty, integrity and welfare of Kenyans.

Review contracts entered into with multinational organizations for the utilization of natural resources, to ensure the sovereignty, integrity and welfare of Kenyans and that benefits accrue to the local communities.

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

New Article 240(3) - Agreed to.

(ii) Article 240(8)

Debate interrupted on Wednesday 21st January, 2004 resumed.

The Committee resolved that the New Article 240(8) be amended to read as follows:

"The State shall ensure that every landowner maintain a tree cover of at least 10% equivalent to 50 trees per hectares of land held with appropriate trees to ensure land reclamation, rehabilitation and sustainable utilization of natural resources".

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

New Article 240(8) - Agreed to.

MIN.NCC/LRE1/181/04: DELIBERATION ON CHAPTER 12 - ENVIRONMENT

Article 240 - Amendment proposed. That the following New Article 240(9) be inserted:

Article 240(9) - The State shall allocate adequate resources to ASAL areas to make those areas habitable and productive. (Kaaru Abdukadir Guleid (263)

Debate arising.

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

New Article 240(9) - Agreed to.

Hon (Prof.) Wangari Maathai 084 registered her contrary opinion as follows:

"The current state of the environment is in a crisis level and needs priority attention nationally. Paying special attention to ASAL areas is not a permanent situation, therefore it should be addressed under affirmative action."

(ii) Article 241 - Amendment proposed.

The Sub Committee proposed that Article 241 be deleted and the following New Article 241 be inserted in place thereof.

Article 241(1) - Every person has a right to a clean and healthy environment.

Article 241(2) - Every person has a right to participate in the conservation and protection of the environment.

Article 241(3) - Every person has a right to access and enjoyment of the environment.

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

New Article 241 - Agreed to.

MIN.NCC/LRE1/182/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.15 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/183/04: DELIBERATION ON CHAPTER 12 -ENVIRONMENT

Article 242(I) - Amendment proposed:

The Sub Committee proposed that the following New Article 242(1) be inserted.

Article 242(1) - The State at all levels of Government exercising power or performing a function involving the management and sustainable development of the environment shall be guided by the need to:

- (a) Ensure the participation and involvement of the public.
- (b) Protect genetic resources and biological diversity including wildlife and intellectual property related to them.
- (c) Protect and enhance the intellectual property and indigenous knowledge of communities.
- (d) Practice, encourage and require waste minimization and recycling.
- (e) Establish and ensure the effective functioning of a system of environmental impact assessment that:
 - (i) applies to any project or combination of projects, including government projects.
 - (ii) Is open and gives adequate opportunity for active public participation.
 - (iii) Is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project and ensure adequate remedies.
- (f) Establish systems of environmental audit and monitoring; and
- (g) Ensure that environmental standards enforced in Kenya are the accepted internationally developing standards.

Debate arising.

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

New Article 242(1) - Agreed to.

(iv) Article 242(2) - Amendment proposed.

The Sub Committee proposed that the following New Article 240(2) be inserted: Parliament shall enact legislation to protect the intellectual property rights and indigenous knowledge of local communities in bio diversity and genetic resources ensuring prior informed consent of the communities and benefit sharing arrangements through devolved governments.

Debate arising.

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

New Article 242(2) - Agreed to.

Article 243 - Amendment proposed.

The Sub Committee proposed that the following New Article 243(1)(a) be inserted.

Article 243(1)(a) There is established the National Environment Commission consisting of a Chairperson, Deputy Chairperson, and eight (8) other members nominated and appointed in accordance with the provisions of Chapter 17 of this Constitution.

Debate arising.

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

New Article 243(1)(a) - Agreed to.

Article 243 - Amendment proposed:

The Sub Committee proposed that the following New Article 243(1)(b) be inserted:

Article 243(1)(b) - The National Environment Commission shall be devolved to the lowest level of Government.

Debate arising.

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

New Article 243(1)(b) - Agreed to.

Article 243 - Amendment proposed:

The Sub Committee proposed that the following: New Article 243(2)(a) be inserted:

Article 243(2)(a) - The National Environment Commission shall:

(a)Ensure the protection, conservation and management of the environment.

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

New Article 243(2)(a) - Agreed to.

MIN.NCC/LRE1/184/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be allowed to attend the requiem mass for the late Hon. J.H.O. Omino (166) scheduled for 2.00 p.m. at Uhuru Park, Nairobi.

Consequently, a motion of adjournment was moved by William Ole Yiaile (361) and seconded by Benjamin Gitoi (602).

Question put and **agreed to.**

MIN.NCC/LRE1/184/04: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past One O'clock, the Convenor adjourned the meeting until Friday 23rd January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

22nd January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 23rd January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

- | | |
|---------------------|---|
| 1.09.00-10.30 a.m - | Prayers.
Confirmation of minutes.
Matters Arising.
General Discussion
Consideration of the Draft Bill
Articles 243-245 |
| 2.10.30-11.00 a.m - | TEA BREAK |
| 3.11.00-01.00 a.m - | Consideration of the Bill
Articles 243- 245 |
| 4.01.00-02.30 a.m - | LUNCH BREAK |

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY FOURTH MEETING OF THE TECHNICALWORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON FRIDAY 23RD DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Bornice S. Cheleng'at	372
8. C. Nyawira Ngari	306
9. Dr. Daniel W. Ichangi	481
10. Ezekiel Kesendany	356
11. Fatma Ibrahim Ali	506
12. Fatuma Halako Galgalo	239
13. Fibie Atieno Ochola	405
14. Gachara Muchiri	111
15. Dr. James Koske	371
16. Joe Khamisi	054
17. John Serut	186
18. Julius Lalampaa	329
19. Kaaru Abdukadir Guleid	263
20. Kimani M. Ng'ang'a	598
21. Levi Ahindukha	379
22. M. Muthoni Mburu	312
23. Mafunga Wambulwa	376
24. Martha Rop	509
25. Moses Naimodu	358
26. Mnene Othiniel J.	247
27. Mwailengo Haji Joel	246
28. Nduta Beatrice Kiarie	465
29. 30. Peter E. Ejore Derick	323
30. 31. Peter Kyalo Kaindi	035
31. 32. Praxedes N. Wambua	297
32. 33. Rajab Mwondi	440
33. 34. Robert Rukungah	621
34. 35. Samuel Mwaura	604
35. 36. Wafula Sylvester	484
36. 37. William Lopetakou	325
37. 38. William S. Ole Yiaile	361
38. 39. Rhoda G. Kamanda	432
39. 40. Clare Omanga	423
40. 41. Jamila Mohammed	476

41. 42. Prof. Wangari Maathai 084

Absent:

1. Davis Nakitare	010
2. Lumumba Odenda	458
3. Opore Zebedeo	171
4. William Omondi Opondo	167
5. Philip Ole Sironka	461
6. Philip Rotino	178
7. Raphael Wanjala	205
8. F. Mwanzia	133
9. Koigi Wa Wamwere	204
10. Ali Mwakwere	130
11. Olweny P. Ayiecho	164
12. Archbishop Njeru Wambugu	527
13. Lina Kilimo Chebii	059
14. Mohamed Abdi Mohamed	106
15. Mohamed Kuti	080
16. Njenga Karume	045
17. Ligale Andrew	083
18. Konchella Gideon	074
19. Mwau Adelina Ndeto	218
20. Noah Wekesa	207
21. Raphael Tuju	199
22. Kalembe Ndile	140
23. Amos Kimunya	063

Observers Present:

1. Lois Towon	084
2. Nimrod Kipkemoi	124
3. Omar Almustafa	125
4. Josephine Nashipae Sane	018
5. 6. Eunice S. S. Marima	176

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/185/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 9.30 a.m. and prayers were led by Martha Rop (509).

MIN.NCC/LRE1/186/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Third Sitting of the Committee held on Thursday 22nd January, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by Dr. Daniel W. Ichangi (481) and seconded by Clare Omanga (423).

MIN.NCC/LRE1/187/04: DELIBERATION ON CHAPTER 12 - ENVIRONMENT

Article 243 - Amendment proposed.

The Sub Committee proposed that the following New Article 243(2) be inserted:

The National Environment Commission shall:

- a) Monitor and have oversight responsibilities on the administration of the environment and land use planning.
- b) Audit and produce for the public, bi-annual reports on the state of the environment.
- c) Promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring proper management and rational utilization of the environment and its natural resources.
- d) Formulate, monitor and evaluate the implementation of the National Environment Policy.
- e) Examine new and emerging technologies and inventions to determine their impact on the environment and put in place the institutional framework for operationalization of such functions.
- f) Conduct research in consultation with other stakeholders and make recommendations to improve the functions of Government Ministries and Agencies in charge of the environment and natural resources.
- g) (h)Initiate investigations on its own, or upon a complaint from other person(s) or institution(s) and ensure appropriate redress.
- (i)Examine resource use patterns and practices to determine their impact on the quality of the environment and to take remedial measures.

Question of the amendment proposed, put and agreed to.

New Article 243(2) (b)-(i) - Agreed to.

Article 243(2) - Amendment proposed.

That the following New Sub Sections be inserted:

Article 243(2)(j) - Promote environmental education and ensure access to information and public participation.

Article 243(2)(k) - Promote peaceful and harmonious co-existence among communities through just, equitable and rational sharing and utilization of the environment and its natural resources. (Dr. Daniel W. Ichangi - 481).

Debate arising.

Question of the amendment proposed, put and agreed to.

New Sub Sections 243(2)(j) &(k) - Agreed to.

MIN.NCC/LRE1/188/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.15 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/189/04: DELIBERATION ON CHAPTER 12

Article 243(2) - Amendment proposed.

That the following New Sub Section 243(2)(L) be inserted:

243(2)(L) - Recommend to Parliament effective and efficient policies and programmes to protect and promote sustainable management and utilization of the environment and its natural resources. (Fatma Ibrahim Ali - 506).

Debate arising.

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

New Sub Section 243(2)(L) - Agreed to.

Article 243(2) - Amendment proposed.

That the following New Sub Section 243(2)(m) be inserted:

243(2)(m) - Perform any other function as provided for by law or are incidental and conducive to the exercise of its duties as provided for in this Constitution (Jamila Mohamed - 476).

Debate arising.

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

New Sub Section 243(2)(m) - Agreed to.

Article 243(3) - Amendment proposed.

The Sub Committee proposed that the following New Article 243(3) be inserted.

Article 243(3) - The Commission with approval of Parliament shall promote and facilitate public participation, discussion and input before international conventions, treaties and agreements that have consequences on the environment are ratified.

Debate arising.

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

New Article 243(3) - Agreed to

Article 244(1) - Amendment proposed.

The Sub Committee proposed that the following New Article 244(1) be inserted.

Article 244(1) - Every person whose environmental rights are being or are likely to be contravened has the right and duty to seek redress to:

- (a) Prevent, stop or discontinue any act or omission which is harmful to the environment.
- (b) Compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment.
- (c) Compensation for any victim of such violations of environmental rights and other losses.

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

New Article 244(1) - Agreed to.

Article 244(2) - Amendment proposed.

The Sub Committee proposed that the following New Article 244(2) be inserted.

Article 244(2) - Every person bringing an action under this Article has a right to seek redress even if the person cannot show that the act, omission or infringement has caused or is likely to cause that person any personal loss or injury.

Debate arising.

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

New Article 244(2) - Agreed to.

Article 244(3) - Amendment proposed.

The Sub Committee proposed that the following New Article 244(3) be inserted.

Article 244(3) - There is established a special court for the environment.

Debate arising.

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

New Article 244(3) - Agreed to.

Article 245 - Amendment proposed.

The Sub Committee proposed that the following New Article 245 be inserted:

Article 245 - Upon the coming into force of this Constitution, Parliament shall enact legislation to give effect to the provisions of this Chapter.

Debate arising.

Further amendment proposed.

That upon the coming into force of this Constitution, Parliament shall enact legislation to provide the executing authority to carry out the duties as and when directed by the Commission (Sylvester Wafula - 484).

Debate arising.

Thereupon, the Member withdrew the amendment.

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

New Article 245 - Agreed to.

MIN.NCC/LRE1/190/04: ADJOURNMENT OF THE MEETING

And the time being One O'clock, the Convenor adjourned the meeting until Monday 26th January 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

23rd January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Monday, 26th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. General Discussion
5. Consideration of the Bill
6. Deferred Article 240 (6) (i) & (ii)
7. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY FIFTH MEETING OF THE TECHNICAL WORKING GROUP ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON MONDAY 26TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Beatrice Mwaringa	233
5. Benjamin Gitoi	602
6. C. Nyawira Ngari	306
7. Dr. Daniel W. Ichangi	481
8. Fatuma Halako Galgalo	239
9. Fibie Atieno Ochola	405
10. Dr. James Koske	371
11. Joe Khamisi	054
12. John Serut	186
13. Julius Lalampaa	329
14. Kaaru Abdukadir Guleid	263
15. Kimani M. Ng'ang'a	598
16. Levi Ahindikha	379
17. M. Muthoni Mburu	312
18. Mafunga Wambulwa	376
19. Martha Rop	509
20. Moses Naimodu	358
21. Mnene Othiniel J.	247
22. Mwailengo Haji Joel	246
23. Nduta Beatrice Kiarie	465
24. Peter E. Ejore Derick	323
25. Peter Kyalo Kaindi	035
26. Praxedes N. Wambua	297
27. Robert Rukungah	621
28. Samuel Mwaura	604
29. Wafula Sylvester	484
30. William Lopetakou	325
31. William S. Ole Yiaile	361
32. Rhoda G. Kamanda	432
33. Clare Omanga	423
34. Jamila Mohammed	476
35. Prof. Wangari Maathai	084
36. Lumumba Odenda	458
37. William Omondi Opondo	167
38. Philip Ole Sironka	461
39. Ali Mwakwere	130
40. Archbishop Njeru Wambugu	527

Apology

Ezekiel Kesendany 356

Absent:

1. Rajab Mwondi	440
2. Gachara Muchiri	111
3. Fatma Ibrahim Ali	506
4. Bornice S. Cheleng'at	372
5. Augustine Saina	343
6. Davis Nakitare	010
7. Opore Zebedeo	171
8. Philip Rotino	178
9. Raphael Wanjala	205
10. F. Mwanzia	133
11. Koigi Wa Wamwere	204
12. Olweny P. Ayiecho	164
13. Lina Kilimo Chebii	059
14. Mohamed Abdi Mohamed	106
15. Mohamed Kuti	080
16. Njenga Karume	045
17. Ligale Andrew	083
18. Konchella Gideon	074
19. Mwau Adelina Ndeto	218
20. Noah Wekesa	207
21. Raphael Tuju	199
22. Kalembe Ndile	140
23. Amos Kimunya	063

Observers Present:

1. Lois Towon	084
2. Nimrod Kipkemoi	124
3. Omar Almustafa	125
4. Fatuma Yusuf	018
5. Eunice S. S. Marima	176
6. Wycliffe Muema	132

IN ATTENDANCE

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Assistant Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/192/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Dr. James Koske (371).

MIN.NCC/LRE1/193/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Fourth Sitting of the Committee held on Friday 23rd January, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by Fibie Atieno Ochola (405) and seconded by Levi Ahindukha (379).

MIN.NCC/LRE1/194/04: MATTERS ARISING

Under Minute No.NCC/LRE1/187/04(II), William Ole Yiaile (361) raised concern that New Article 243(k) is likely to marginalize the poor hence the need to have the following safeguard:

"Subject to the rights of the local communities."

MIN.NCC/LRE1/195/04: GENERAL DISCUSSION

Martha Rop (509) informed Members that Embakasi Administration Police Training College has extended invitation to the Technical Committee on Land Rights and Environment.

The purpose of the invitation is for the Committee to join the College during a tree planting session to be undertaken on Wednesday 28th January, 2004 at the College.

The Committee acceded to the request and agreed to participate.

MIN.NCC/LRE1/196/04: DELIBERATION ON DEFERRED ARTICLE

The Committee resolved that Article 240(6) be amended to read as follows:

Article 240(6) - Upon enactment of this Constitution, Parliament shall:

240(6)(i) - Enact laws requiring reclamation, rehabilitation and sustainable utilization of beaches, flood prone areas, degraded areas including ASALS and any other such threatened environments.

240(6)(ii) - Enact laws for the conservation of forests, wildlife parks, reserves and sanctuaries, beaches and water catchment areas, promote ecotourism, stop further excision of conservation areas unless such excision is consistent with principles to enhance sustainable management and community benefit.

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

Article 240(6)(i)&(ii) - Agreed to.

MIN.NCC/LRE1/197/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.30 a.m. to facilitate tea.

Resumption of debate interrupted at 12.00 noon.

MIN.NCC/LRE1/198/04: DELIBERATION ON DEFERRED ARTICLE

Article 240(6)

Debate interrupted resumed.

The Committee resolved that Article 240(6) be amended to read as follows:

Upon enactment of this Constitution, Parliament shall:-

240(6)(iii) - Ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation.

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

Article 240(6)(iii) - Agreed to.

MIN.NCC/LRE1/199/04: DELIBERATION ON CHAPTER - 12

(i) Article 240(6) - Amendment proposed.

That the following New Sub Sections be inserted:

240(6)(iv) - Enforce the polluter-pays principle and ensure that the disposal and storage of environmentally undesirable substances including hazardous waste and munitions take into account the requirements for a clean, safe and healthy environment.

240(6)(v) - Emission of harmful radiation and noise into the environment shall be regulated to meet the requirements for a safe and healthy environment.

240(6)(vi) - To ensure that planning and utilization of the environment shall take into account the needs of disadvantaged minority persons including people with disabilities.

(Dr. James Koske - 371)

Debate arising.

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

New Sub Sections 240(6)(iv), (v) & (vi) - Agreed to.

(ii) Article 240(6) - Amendment proposed.

That a New Sub Section 240(6)(vii) be inserted as follows:

240(6)(vii) - Put in place an urbanization policy to promote the orderly development of urban areas and other human settlement for the benefit of all residents.

(Dr. Daniel W. Ichangi - 481).

Debate arising.

The Committee resolved that the proposed New Sub Section be amended to read as follows:

"Put in place an urban environmental policy to regulate human settlement.

New Sub Section 240(6)(vii) - Agreed to as amended.

MIN.NCC/LRE1/2004: ANY OTHER BUSINESS

Prof. Wangari Maathai (084) proposed that:

In accordance with Article 288(e), one of the Commissioners be an environmental expert/commissioner.

Question put and **agreed to.**

The Committee resolved to do a write up to the Rapporteur General to consider the proposal among other cross cutting issues.

MIN.NCC/LRE1/201/04: ADJOURNMENT MOTION

The Committee having completed its deliberation on Chapters 11 and 12 resolved to adjourn its proceedings until Tuesday 27th January, 2004.

Consequently, a motion of adjournment was moved by Levi Ahindukha (379) and seconded by Fibie Atieno Ochola (405).

MIN.NCC/LRE1/202/04: ADJOURNMENT OF THE MEETING

And the time being forty minutes past One O'clock, the Convenor adjourned the meeting until Tuesday 27th January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

26th January 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 27th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of the Rapporteur General Communication of 23rd January 2004
 - Reproduction of an accurate record of all decisions made on each article
 - Production and rationalization of Committee Drafts.
 - Reconsideration (where desirable) of decisions already taken.
 - Resolution, within and across committees, of cross- cutting issues or those which require mainstreaming, and
 - Preparation and approval of reports in readiness for consideration by the Committee of the Whole Conference.
5. Any Other Business

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY SIXTH MEETING OF THE TECHNICAL WORKING GROUP "J" ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON TUESDAY 27TH DAY OF JANUARY, 2004 AT TENT NO.10, BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. 4. Gachara Muchiri	111
5. 5. Fatma Ibrahim Ali	506
6. 6. Ezekiel Kesendany	356
7. Bornice S. Cheleng'at	372
8. Augustine Saina	343
9. Beatrice Mwaringa	233
10. 10. Benjamin Gitoi	602
11. 11. C. Nyawira Ngari	306
12. 12. Dr. Daniel W. Ichangi	481
13. 13. Fatuma Halako Galgalo	239
14. 14. Fibie Atieno Ochola	405
15. 15. Dr. James Koske	371
16. 16. Davis Nakitare	010
17. 17. John Serut	186
18. 18. Julius Lalampaa	329
19. 19. Kaaru Abdukadir Guleid	263
20. 20. Kimani M. Ng'ang'a	598
21. 21. Levi Ahindukha	379
22. 22. M. Muthoni Mburu	312
23. 23. Mafunga Wambulwa	376
24. 24. Moses Naimodu	358
25. 25. Mnene Othiniel J.	247
26. 26. Mwailengo Haji Joel	246
27. 27. Nduta Beatrice Kiarie	465
28. 28. Peter E. Ejore Derick	323
29. 29. Praxedes N. Wambua	297
30. 30. Robert Rukungah	621
31. 31. Samuel Mwaura	604
32. 32. Wafula Sylvester	484
33. 33. William Lopetakou	325
34. 34. William S. Ole Yiaile	361
35. 35. Rhoda G. Kamanda	432
36. 36. Clare Omanga	423
37. Jamila Mohammed	476
38. 38. Raphael Wanjala	205
39. 39. Lumumba Odenda	458
40. 40. William Omondi Opondo	167

41. 41. Philip Ole Sironka	461
42. 42. Ali Mwakwere	130
43. 43. Archbishop Njeru Wambugu	527
44. 44. Olweny P. Ayiecho	164
45. 45. Amos Kimunya	063
46. 46. Ligale Andrew	083
47. 47. Mwau Adelina Ndeto	218
48. 48. Gideon Konchella	074
49. 49. Joe Khamisi	054
50. 50. Peter Kyalo Kaindi	035
51. 51. Martha Rop	509

Absent:

1. Rajab Mwondi	440
2. Opore Zebedeo	171
3. Philiph Rotino	178
4. F. Mwanzia	133
5. Koigi Wa Wamwere	204
6. Mohamed Abdi Mohamed	106
7. Mohamed Kuti	080
8. Njenga Karume	045
9. Noah Wekesa	207
10. Raphael Tuju	199
11. Lina Kilimo Chebii	059
12. Kalembe Ndile	140
13. Prof. Wangari Maathai	084

Observers Present:

7. Lois Towon	084
8. Fatuma Yusuf	018
9. Nimrod Kipkemoi	124
10. Ummie Mavumba	025
11. Omar Almustafa	125
12. Eunice S.S. Marima	176

IN ATTENDANCE:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Grace Kaparo	-	Programme Officer
4. Metrine Wakhungu	-	"
5. Florence Abonyo	-	Clerk Assistant

MIN.NCC/LRE1/202/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Mr. Mafunga Wambulwa (376).

MIN.NCC/LRE1/203/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Fifth Sitting of the Committee held on Monday 26th January, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by C. Nyawira Ngari (306) and seconded by William Ole Yiaile (361).

MIN.NCC/LRE1/204/04: MATTERS ARISING

(i) Article 243(k)

Under Minute No.NCC/LRE1/194/04(II), the Committee resolved to include the following words under Article 243(k):

"Subject to the rights of the local communities".

(ii) Tree Planting Session

Under Minute No.NCC/LRE1/195/04, Members were informed that the tree planting session will take place as scheduled and that the Committee is also liaising with the Convenor for Defence and National Security Committee to join Members during the session.

(iii) Article 240(6)(ii)

Members expressed concern that community interest should be taken into account with regard to accessibility to the beaches, national parks and other tourist attractions.

The Committee resolved that the matter be referred to the Transitional Technical Committee.

MIN.NCC/LRE1/205/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.15 a.m. to facilitate tea. Resumption of debate interrupted at 11.45 a.m.

MIN.NCC/LRE1/206/04: CONSIDERATION OF THE RAPPORTEUR GENERAL'S COMMUNICATION

Members were informed that the Secretariat is already working on the Committee Drafts for all the decisions made on each Article for Chapters 11 and 12.

The Secretariat was impressed upon to take cognizance of the following:

- Njonjo Commission of Inquiry Report.
- The various Acts governing land.
- Current Kenya Constitution *vis-avis* the Draft Bill and the views presented to the Commission.

Members were requested to prepare a list of issues which need to be captured in the two Chapters so as to be discussed with pending issues that require mainstreaming.

MIN.NCC/LRE1/207/04: ADJOURNMENT MOTION

The Committee having completed its deliberation on Chapters 11 and 12 resolved, to adjourn its proceedings to enable the Secretariat to prepare the Committee's Drafts, reports and proceedings.

Consequently, a Motion of Adjournment was moved by Ezekiel Kesandany (356) and seconded by Gachara Muchiri (111).

MIN.NCC/LRE1/208/04: ADJOURNMENT OF THE MEETING

And the time being fifteen minutes past One O'clock, the Convenor adjourned the meeting until Friday 30th January, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

27th January, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 30th January 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of the Rapporteur General Communication of 23rd January 2004
 - Reproduction of an accurate record of all decisions made on each article
 - Production and rationalization of Committee Drafts.
 - Reconsideration (where desirable) of decisions already taken.
 - Resolution, within and across committees, of cross- cutting issues or those which require mainstreaming, and
 - Preparation and approval of reports in readiness for consideration by the Committee of the Whole Conference.
5. Any Other Business

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY SEVENTH MEETING OF THE TECHNICAL WORKING GROUP "J" ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON FRIDAY 30TH DAY OF JANUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M. A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Beatrice Mwaringa	233
7. Benjamin Gitoi	602
8. Bornice S. Cheleng'at	372
9. Clare Omanga	423
10. Dr. Daniel W. Ichangi	481
11. Dr. James Koske	371
12. Ezekiel Kesendany	356
13. F. Mwanzia	133
14. Fatma Ibrahim Ali	506
15. Fatuma Halako Galgalo	239
16. Fibie Atieno Ochola	405
17. Jamila Mohammed	476
18. John Serut	186
19. Julius Lalampaa	329
20. Kaaru Abdukadir Guleid	263
21. Kimani M. Ng'ang'a	598
22. Levi Ahindikha	379
23. Andrew Ligale	083
24. Lumumba Odenda	458
25. M. Muthoni Mburu	312
26. Mafunga Wambulwa	376
27. Martha Rop	509
28. Moses Naimodu	358
29. Mnene Othiniel J.	247
30. Mwailengo Haji Joel	246
31. Mwau Adeline Ndeto	218
32. Nduta Beatrice Kiarie	465
33. Olweny P. Ayiecho	164
34. Opore Zebedeo	171
35. Peter E. Ejore Derick	323
36. Peter Kyalo Kaindi	035
37. Philip Ole Sironka	461
38. Philip Rotino	178
39. Praxedes N. Wambua	297
40. Prof. Wangari Maathai	084

41.	Rhoda G. Kamanda	432
42.	Robert Rukungah	621
43.	Samuel Mwaura	604
44.	Wafula Sylvester	484
45.	William Lopetakou	325
46.	William Omondi Opondo	167
47.	William S. Ole Yiaile	361

Absent:

1.	Rajab Mwondi	440
2.	Gachara Muchiri	111
3.	Koigi Wa Wamwere	204
4.	Mohammed Abdi Mohammed	106
5.	Mohammed Kuti	080
6.	Njenga Karume	045
7.	Noah Wekesa	207
8.	Raphael Tuju	199
9.	Lina Kilimo Chebii	059
10.	Kalembe Ndile	140
11.	Joe Khamisi	054
12.	C. Nyawira Ngari	306
13.	Davis Nakitare	010
14.	Raphael Wanjala	205
15.	Ali Mwakwere	130
16.	Amos Kimunya	063
17.	Gideon Konchella	074

Observers Present:

1.	Lois Towon	084
2.	Fatuma Yusuf	018
3.	Nimrod Kipkemoi	124
4.	Ummie Mavumba	025
5.	Omar Almustafa	125
6.	Moses Leleu Laima	003
7.	Eunice S. S. Marima	176
8.	Wycliffe Muema	132

In Attendance:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kibiru	-	Programme Assistant
3.	Grace Kaparo	-	Assistant Programme Officer
4.	Metrine Wakhungu	-	"
5.	Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/209/04: COMMENCEMENT OF BUSSINE

The Convenor called the meeting to order at 9.30 a.m. and prayers were led by Kaaru Abdukadir Guleid (263).

MIN. NCC/LRE1/210/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Sixth Sitting of the Committee held on Monday 26th January, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by Beatrice Mwaringa (233) and seconded by Phoebe Atieno Ochola (405)

MIN. NCC/LRE1/211/04: MATTERS ARISING

Under Minute No.NCC/LRE1/204/04, the Committee was informed that:

The tree planting session was attended by over 70 members which included the CKRC Chairman and members from other Technical Committees and

A total of 3000 tree seedlings were to be planted during the session.

The Committee expressed its gratitude to the management of the Institute for the noble course and for accepting on request to promote one of the officers (Ms. Grace Anyona) to the position of Senior Serjeant.

MIN. NCC/LRE1/212/04: PREAMBLE

Amendment proposed;

That, the following two paragraphs be incorporated in the base text of the Preamble.

CELEBRATING this beautiful land that has given birth to us as a nation, shapes our diverse cultures, sustains us as part of the community of life on Earth.

CONSCIOUS of our common and sacred responsibility to the present and future generations of humans and other species to protect and care for all the living communities in Kenya and to ensure that we maintain and strengthen the integrity of the natural systems that support us all

(Prof. Wangari Maathai – 084)

Debate arising.

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

The Committee resolved to forward the proposal to the Technical Committee “A” on Preamble.

MIN. NCC/LRE1/213/04: CONSIDERATION OF THE COMMITTEE’S DRAFTS REPORTS ON CHAPTER 11 AND 12

The Secretariat presented the Committee’s Draft reports on Chapters 11 and 12 with the following proposals:

Chapter 11 be titled “**Land and Property**” and to include the proposed aspect on property under chapter 11.

Chapter 12 be devoted to natural resources and environment. Therefore, all the sections on natural resources under Chapter 11 be transferred to Chapter 12.

The Secretariat informed the Committee that an analysis of the views as presented to the Commission reveals that the following issues have not been addressed adequately in the Draft Bill.

Chapter 11

Land ceiling for large and small scale farmers and what to do with idle land.

Status of squatters who live on land for a long period.

Constitution and composition of Land Boards.

Methods and laws regarding land transfer including simplification of the procedures.

Time limit for concluding land cases.

Survey of land-costs, fees, frequency of carrying out.

Land ownership anywhere in the country by Kenyans.

Chapter 12

Felling of trees.

Cultivation on river banks.

Ownership of natural resources.

Legislation on Coconut growing.

MIN. NCC/LRE1/214/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.00 a.m. to facilitate tea.

Resumption of debate interrupted at 11.30 a.m.

MIN. NCC/LRE1/215/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be given time to study the Committee’s Draft reports on Chapters 11 and 12.

Consequently, a Motion of Adjournment was moved by Ezekiel Kesendany (356) and seconded by Lumumba Odenda (458).

MIN. NCC/LRE1/216/04: ADJOURNMENT OF THE MEETING

And the time being Twelve O’clock, the Convenor adjourned the meeting until Monday 2nd February, 2004.

SIGNED:

CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

30th January, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Monday, 2nd February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of Committee Drafts on Chapters 11 and 12
5. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY EIGHTH MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON MONDAY, 2ND FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M. A. Swazuri	Rapporteur
3. Archbishop Njeru Wambugu	527
4. Augustine Saina	343
5. Beatrice Mwaringa	233
6. Benjamin Gitoi	602
7. Clare Omanga	423
8. Dr. Daniel W. Ichangi	481
9. Dr. James Koske	371
10. Ezekiel Kesendany	356
11. F. Mwanzia	133
12. Fibie Atieno Ochola	405
13. Jamila Mohammed	476
14. John Serut	186
15. Julius Lalampaa	329
16. Kaaru Abdukadir Guleid	263
17. Kimani M. Ng'ang'a	598
18. Levi Ahindukha	379
19. Ligale Andrew	083
20. M. Muthoni Mburu	312
21. Mafunga Wambulwa	376
22. Martha Rop	509
23. Moses Naimodu	358
24. Mnene Othinie J.	247
25. Mwailengo Haji Joel	- 246
26. Mwau Adeline Ndeto	218
27. Nduta Beatrice Kiarie	465
28. Peter E. Ejore Derick	323
29. Peter Kyalo Kaindi	035
30. Philip Ole Sironka	461
31. Philip Rotino	178
32. Praxedes N. Wambua	297
33. Prof. Wangari Maathai	084
34. Robert Rukungah	621
35. Samuel Mwaura	604
36. Wafula Sylvester	484
37. William Lopetakou	325
38. William Omondi Opondo	167
39. William S. Ole Yiaile	361
40. C. Nyawira Ngari	306

41. Raphael Wanjala 205

Absent:

1. Rajab Mwondi	440
2. Gachara Muchiri	111
3. Koigi Wa Wamwere	204
4. Mohammed Abdi Mohammed	106
5. Mohammed Kuti	080
6. Njenga Karume	045
7. Noah Wekesa	207
8. Raphael Tuju	199
9. Lina Kilimo Chebii	059
10. Kalembe Ndile	140
11. Joe Khamisi	054
12. Davis Nakitare	010
13. Ali Mwakwere	130
14. Amos Kimunya	063
15. Gideon Konchella	074
16. Fatma Ibrahim Ali	506
17. Fatuma Halako Galgalo	239
18. Bornice S. Cheleng'at	372
19. Lumumba Odenda	458
20. Olweny P. Ayiecho	164
21. Opore Zebedeo	171
22. Rhoda G. Kamanda	432

Observers Present:

1. Lois Towon	084
2. Fatuma Yusuf	011
3. Omar Almustafa	125
4. Wycliffe Muema	132

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kabiru	-	Programme Assistant
3. Metrine Wakhungu	-	Assistant Programme Officer
4. Grace Kaparo	-	“
5. Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/217/04: COMMENCEMENT OF BUSSINE

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Archbishop Njeru Wambugu (527).

MIN. NCC/LRE1/218/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Seventh Sitting of the Committee held on Friday 30th January, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by Levy Ahindukha (379) and seconded by Benjamin Gitoi (602).

MIN. NCC/LRE1/219/04: MATTERS ARISING

Under Minute No.NCC/ LRE1/212/04, the Convenor informed the Committee that the proposal by Hon. (Prof.) Wangari Maathai (084) has been forwarded to the Technical Committee on Preamble.

Under Minute No. NCC/LRE1/213/04, Levi Ahindukha (379) proposed that the Committee should consider issues not addressed adequately in Chapters 11 and 12 of the Draft Bill before finalizing its report.

MIN. NCC/LRE1/220/04: CONSIDERATION OF THE COMMITTEE'S DRAFT REPORT ON CHAPTER 11

The Committee considered and adopted the Draft Report on Chapter 11 with the following amendments:-

All sections concerning environmental issues be transferred accordingly to Chapter 12 (Fibie Atieno Ochola – 405)

Article 232(1) – The word “vegetation” be included in the definition of “Land” (Prof. Wangari Maathai – 084)

Article 235(4) (b) (iii) - The word “Current” be included in view of the proposed devolution.

The following proposed new section on property be inserted accordingly in Chapter 11 as adopted.

The State shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development (investment) and management of property.

Property development and management shall take into consideration the requirements of sustainable physical planning and land use, including safeguarding the environment.

(i)Parliament shall enact laws to;

(a)compel the State and relevant organizations including devolved authorities to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials, innovations and methods in the property sector provided that such are not harmful and injurious to persons and the physical environment.

(b)Ensure that major investments in property by foreigners shall be geared to benefiting local Kenyans and their economy.

- (i) All public properties shall be held, managed and disposed of according to the legislation specifying the nature and terms of that holding, management and disposal.
- (ii) The State shall regulate the use of any right and interest in property in the public interest in so far as such regulation shall not violate the principles set out in this Constitution.
- (iii) The State shall develop and constantly review a national housing policy with a view of increasing, regulating and maintaining the national housing stock.
- (iv) The State shall encourage the construction and ownership of both public and private housing in so far as such housing shall adhere to the principles and standards of sustainable land utilization, physical planning and environmental safeguards as outlined in this Constitution.
- (v) There is established a housing development fund to enable Kenyans gain access to more and better housing.

The State shall establish a property and housing research organization.

MIN. NCC/LRE1/221/04 : INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 12.00 O'clock to facilitate tea.

Resumption of debate interrupted at 12.30 p.m.

MIN. NCC/LRE1/222/04: CONSIDERATION OF THE COMMITTEE'S DRAFTS REPORTS ON CHAPTER 12

The Committee considered and adopted the Draft Report on Chapter 12 with following amendments:-

Articles 240 (1) and 240 (2) on principles be harmonised. (Beatrice Nduta Kiarie – 465).

Article 240 (6) (i) be incorporated under Article 240 (9) (Beatrice Nduta Kiarie – 465).

Article 242 (1) (c) - The words “research findings” be included. (William ole Yiaile – 361)

Articles 244 (1) and 244 (2) be combined. (Beatrice Nduta Kiarie – 465).

MIN. NCC/LRE1/223/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be given time to study the proposed new section on major natural resources under Chapter 12.

Consequently, a Motion of Adjournment was moved by Benjamin Gitoi (602) and seconded by Peter Derick Ejore (323).

MIN. NCC/LRE1/224/04: ADJOURNMENT OF THE MEETING

And the time being Forty five minutes past One O'clock the Convenor adjourned the meeting until Tuesday 3rd February, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

2nd February, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 3rd February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of Committee Drafts on Chapters 12
5. Draft on Culture
6. Any Other Business.
7. Date of the Next Sitting

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE TWENTY NINTH MEETING OF THE TECHNICAL WORKING GROUP "J" ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON TUESDAY, 3RD FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M. A. Swazuri	Rapporteur
3. Augustine Saina	343
4. Beatrice Mwaringa	233
5. Benjamin Gitoi	602
6. Clare Omanga	423
7. Dr. Daniel W. Ichangi	481
8. Dr. James Koske	371
9. Fibie Atieno Ochola	405
10. John Serut	186
11. Julius Lalampaa	329
12. Kaaru Abdukadir Guleid	263
13. Levi Ahindikha	379
14. Mafunga Wambulwa	376
15. Martha Rop	509
16. Moses Naimodu	358
17. Mnene Othiniel J.	247
18. Mwailengo Haji Joel	246
19. William Lopetakou	325
20. William S. Ole Yiaile	361
21. 21. Gachara Muchiri	111
22. 22. Davis Nakitare	010
23. 23. Fatuma Halako Galgalo	239
24. 24. Bornice S. Cheleng'at	372
25. 25. Olweny P. Ayiecho	164
26. Rhoda G. Kamanda	432
27. Archbishop Njeru Wambugu	527
28. Ezekiel Kesendany	356
29. F. Mwanzia	133
30. Jamila Mohammed	476
31. Kimani M. Ng'ang'a	598
32. M. Muthoni Mburu	312
33. Mwau Adeline Ndeto	218
34. Nduta Beatrice Kiarie	465
35. Peter E. Ejore Derick	323
36. Peter Kyalo Kaindi	035
37. Philip Ole Sironka	461
38. Philip Rotino	178
39. Praxedes N. Wambua	297
40. Robert Rukungah	621
41. Samuel Mwaura	604

42. Wafula Sylvester	484
43. William Omondi Opondo	167
44. C. Nyawira Ngari	306

Absent:

1. Rajab Mwondi	440
2. Koigi Wa Wamwere	204
3. Mohammed Abdi Mohammed	106
4. Mohammed Kuti	080
5. Njenga Karume	045
6. Noah Wekesa	207
7. Raphael Tuju	199
8. Lina Kilimo Chebii	059
9. 9. Kalembe Ndile	140
10. 10. Joe Khamisi	054
11. Ali Mwakwere	130
12. Amos Kimunya	063
13. Gideon Konchella	074
14. Fatma Ibrahim Ali	506
15. Lumumba Odenda	458
16. Opore Zebedeo	171
17. Andrew Ligale	083
18. Prof. Wangari Maathai	084
19. Raphael Wanjala	205

Observers Present:

1. Lois Towon	084
2. Fatuma Yusuf	011
3. Omar Almustafa	125
4. Wycliffe Muema	132
5. Nimrod Kipkemoi	124
6. Eunice Marima	176
7. Ummie Mavumba	025

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kabiru	-	Programme Assistant
3. Metrine Wakhungu	-	Assistant Programme Officer
4. Grace Kaparo	-	“
5. Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/225/04: COMMENCEMENT OF BUSINESS

The Rapporteur (Dr. M. A. Swazuri) called the meeting to order at 10.00 a.m. and prayers were led by Mwailengo Haji Joel (246).

The Committee was informed that the Convenor was preparing for the retreat in Mombasa hence would be reporting late.

Consequently, Members resolved to elect an Acting Convenor to enable the Committee transact its business procedurally.

Thereupon, Dr. Daniel W. Ichangi (481) was unanimously elected to act after having been proposed by William Ole Yiaile (361) and seconded by Beatrice Mwaringa (233).

MIN. NCC/LRE1/226/04: CONFIRMATION OF MINUTES

The minutes of the Twenty Eighth Sitting of the Committee held on Monday, 2nd February, 2004 were confirmed by the Members present and signed by the Convenor.

They were proposed by Fibie Atieno Ochola (405) and seconded by Martha Rop (509).

MIN. NCC/LRE1/227/04: MATTERS ARISING

Under Minute No.NCC/LRE1/220/04, the Committee noted that the following amendments were inadvertently omitted.

Article 234 (2) (e); The phrase “or in any other law” be harmonized (Dr. James Koske – 371).

Article 235 (4) (vii); “The settlement of the landless and squatters including the rehabilitation of spontaneous settlement in urban and rural areas through devolved units until solution is found” (Mwailengo Haji Joel - 246) .

MIN. NCC/LRE1/228/04: CONSIDERATION OF THE COMMITTEE’S DRAFT REPORT ON CHAPTER 12

The Committee considered the following proposed new section on important natural resources and products:-

The State shall ensure that important national resources and products, including but not limited to agriculture, fisheries, livestock, energy, minerals and tourism are:

- (i) Protected, promoted and sustainably developed to increase their output and profits;
- (ii) Subjected to strategic research to ensure their enhancement;
- (iii) Protected against unfair trade practices in their production, distribution and marketing from both local and outside/foreign forces;
- (iv) Regulated in terms of their exportation and importation;
- (v) Regulated in terms of their origin, quality, methods of production, harvesting and processing;

- (vi) Protected against processes and activities that are likely to endanger them or curtail their existence altogether;
- (vii) Emphasis shall be on the interests and benefits to the Kenyans and communities involved.

Debate Arising

The Committee adopted the proposed new section on important natural resources and products subject to the inclusion of the following aspects:-

- (i) provision of a National Agricultural Marketing Board for all produce;
- (ii) protection against use of harmful chemicals;
- (iii) protection against genetically modified food;
- (iv) user rights for wildlife vis-avis human conflict;
- (v) inclusions of mineral oils, water, fossils, solar, wind energy, eco-tourism;
- (vi) licenses of mineral prospectors to be carefully evaluated and the mineral resources industry be closely monitored to eliminate dishonest practices and procedures to ensure accountability in production and utilization of our mineral resources;
- (vii) processing and value addition to raw materials locally; and
- (viii) sharing of the benefits from the natural resources as follows:- 50% Community, 30% Investor; and 20% Government.

MIN. NCC/LRE1/229/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 12.00 O'clock to facilitate tea.

Resumption of debate interrupted at 12.30 p.m.

MIN. NCC/LRE1/230/04: CONSIDERATION OF THE DRAFT REPORT BY THE TECHNICAL COMMITTEE ON CULTURE

The Committee was informed that the Technical Committee on Culture has considered Chapters 11 and 12 and suggested cultural issues to be mainstreamed in these Chapters.

It was observed that the Committee on Culture had addressed the Draft Bill whereas our Committee had progressed and almost finalized its work on Chapters 11 and 12.

The Committee noted that it had covered the cultural aspects under the following Articles:-

- (i) 232 (6)(f) and (g)

- (ii) 235 (2) (a)
- (iii) 237 (2)(g)
- (iv) 242 (1) (c)
- (v) 243 (2) (k)

The Committee recommended that the Technical Committee on Culture should produce a distinct Chapter on Culture in addition to the suggested mainstreaming of cultural aspects in other chapters of the Draft Bill.

MIN. NCC/LRE1/231/04: ADJOURNMENT OF THE MEETING

And the time being one O'clock, the Acting Convenor (Dr. Daniel W. Ichangi – 481) adjourned the meeting until 2.00 p.m.

AFTERNOON SITTING

Resumption of business at 2.00 p.m.

MIN. NCC/LRE1/232/04: CONSIDERATION OF THE DRAFT REPORT BY THE TECHNICAL COMMITTEE ON CULTURE

The Rapporteur (Dr. M. A. Swazuri) took the Committee through the draft report on Chapters 11 and 12 on the suggested mainstreaming of cultural aspects by the Technical Committee on Culture.

The Committee considered the proposed amendments by the Technical Committee on Culture and observed that the proposals have been adequately addressed by the Committee save for language and drafting.

MIN. NCC/LRE1/233/04: PENDING ISSUES

The Committee was informed that the Secretariat is preparing a list of issues that were either indirectly addressed or inadequately covered in the Draft Bill with a view to making specific recommendations for either legislation or inclusion in the Draft Constitution.

MIN. NCC/LRE1/234/04: ANY OTHER BUSINESS

William Ole Yiaile (361) proposed that a Steering Committee comprising the following members be constituted: -

- | | | |
|-------------------------|---|------------|
| Prof. Yahya Saad Swaleh | - | Convenor |
| Dr. M. Swazuri | - | Rapporteur |
| Prof. Wangari Maathai | - | 084 |
| Dr. James Koske | - | 371 |
| Jamila Mohammed | - | 476 |

The Steering Committee was mandated to register a Trust to monitor the implementation of the recommendations of the Technical Working Committee "J" and to champion environmental issues in future.

MIN. NCC/LRE1/235/04: ADJOURNMENT OF THE MEETING

And the time being Four O'clock the Acting Convenor (Dr. Daniel W. Ichangi – 481) adjourned the meeting until Tuesday 17th February, 2004.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

17th February, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 17th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of the Zero Draft
 - Summary of Comments /Suggestions
 - Template for Cross Cutting Issues
 - Committee’s Report to Plenary.
5. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTIETH MEETING OF THE TECHNICAL WORKING GROUP "J" ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON TUESDAY, 17TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Dr. Daniel W. Ichangi	481- Acting Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Ali Mwakwere	130
5. Archbishop Njeru Wambugu	527
6. Augustine Saina	343
7. Beatrice Mwaringa	233
8. Benjamin Gitoi	602
9. Bornice S. Chelang'at	372
10. C. Nyawira Ngari	306
11. Clare Omanga	423
12. Davies Nakitare	010
13. Dr. James Koske	371
14. Ezekiel Kesendany	356
15. Fatma Ibrahim Ali	506
16. Fatuma Halako Galgalo	239
17. Fibie Atieno Ochola	405
18. Jamila Mohammed	476
19. John Serut	186
20. Julius Lalampaa	329
21. Kaaru Abdukadir Guleid	263
22. Kalembe Ndile	140
23. Kimani M. Ng'ang'a	598
24. Levi Ahindikha	379
25. Lumumba Odenda	458
26. M. Muthoni Mburu	312
27. Mafunga Wambulwa	376
28. Martha Rop	509
29. Moses Naimodu	358
30. Munene Othiniel J.	247
31. Mwailengo Haji Joel	246
32. Rajab Mwondi	440
33. Mwau Adeline Ndeto	218
34. Nduta Beatrice Kiarie	465
35. Peter E. Ejore Derick	323
36. Peter Kyalo Kaindi	035
37. Philip Ole Sironka	461
38. Philip Rotino	178
39. Praxedes N. Wambua	297
40. Prof. Wangari Maathai	084

The Ag. Convenor (Dr. Daniel W. Ichangi - 481) called the meeting to order at 9.00 a.m. and prayers were led by Fibie Ochola (405).

MIN. NCC/LRE1/237/04: BRIEFING ON MOMBASA RETREAT

The Rapporteurs (Dr. A. Nunow and Dr. M. Swazuri) briefed the Committee on the work undertaken during the retreat in Mombasa.

The Rapporteurs informed the Members that a "Zero Draft" was prepared during the retreat for all the Chapters reflecting the respective Committees decisions prior to the retreat.

Members raised concern regarding allegation that the Land Chapter had been "doctored" during the retreat. The Rapporteurs assured Members that the "Zero Draft" is a reflection of the Committee's decisions.

MIN. NCC/LRE1/238/04: DISTRIBUTION OF DOCUMENTS

The Rapporteurs informed the Committee that the following five (5) documents would be distributed to them:-

- (i) Zero Draft.
- (ii) Summary of Comments and suggestions by participants in Mombasa.
- (iii) Template for cross cutting issues.
- (iv) Reactions to issues raised in Mombasa.
- (v) Committee's Report to the Plenary.

MIN. NCC/LRE1/239/04: ADJOURNMENT MOTION

The Ag. Convenor (Dr. Daniel Ichangi) informed the Committee that there was need to adjourn the meeting to enable the Secretariat to make copies of the documents to be distributed to the Members.

Consequently, a Motion of Adjournment was moved by Rajab Mwondi (440) and seconded by Beatrice Mwaringa (233).

MIN. NCC/LRE1/240/04: ADJOURNMENT OF THE MEETING

And the time being thirty minutes past ten O'clock, the Ag. Convenor (Dr. Daniel Ichangi) adjourned the meeting until this afternoon at 2.30 p.m.

AFTERNOON SITTING

Resumption of debate interrupted at 2.30 p.m.

MIN. NCC/LRE1/241/04: DISTRIBUTION OF DOCUMENTS

The five documents were distributed to the Committee Members and the Ag. Convenor advised the Members to study the documents thoroughly.

MIN. NCC/LRE1/242/04: SUB COMMITTEE

Dr. James Koske brought to the attention of the Committee that the external boundaries of Kenya as depicted in the First Schedule of the Zero Draft are erroneous.

Consequently, the Committee resolved to constitute a Sub Committee comprising the following Members:

- 1. Dr. James Koske (371)
- 2. Lumumba Odenda (458)
- 3. Julius Lalampaa (329)
- 4. Philip Rotino (178)
- 5. Peter Derick Ejore (323)
- 6. Levi Ahindikha (379)
- 7. Fatuma Ibrahim Ali (506)
- 8. Fatuma Halako Galgalo (239)
- 9. Othiniel Munene (247)

The Terms of Reference of the Sub Committee were:-

- (i) Consider the current boundaries as stated in the First Schedule.
- (ii) Identify the gray areas/anomalies of the current external boundaries, and the specific places where these are in dispute.
- (iii) Recommend the actual boundaries of the Republic of Kenya as envisaged today.

The Sub committee was supposed to report within a week.

MIN. NCC/LRE1/243/04: ADJOURNMENT MOTION

Members sought the indulgence of the Committee to be given time to study the documents distributed.

Consequently a Motion of Adjournment was moved by Benjamin Gitoi (602) and seconded by Martha Rop (509).

MIN. NCC/LRE1/244/04: ADJOURNMENT OF MEETING

And the time being four O'clock the Ag. Convenor (Dr. Daniel Ichangi) adjourned the meeting until Wednesday 18th February, 2004 at 9.00 a.m.

SIGNED:

CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

17th February, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 18th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of the Zero Draft
 - Summary of Comments /Suggestions
 - Template for Cross Cutting Issues
 - Committee’s Report to Plenary.
5. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY FIRST MEETING OF THE TECHNICAL WORKING GROUP "J" ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON WEDNESDAY, 18TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Dr. Daniel W. Ichangi	481- Acting Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Ali Mwakwere	130
5. Archbishop Njeru Wambugu	527
6. Augustine Saina	343
7. Bornice S. Chelang'at	372
8. Beatrice Mwaringa	233
9. Benjamin Gitoi	602
10. Clare Omanga	423
11. C. Nyawira Ngari	306
12. Davies Nakitare	010
13. Dr. James Koske	371
14. Ezekiel Kesendany	356
15. F. Mwanzia	133
16. Fibie Atieno Ochola	405
17. Fatuma Halako Galgalo	239
18. Gachara Muchiri	111
19. Jamila Mohammed	476
20. Julius Lalampaa	329
21. Kaaru Abdukadir Guleid	263
22. Kimani M. Ng'ang'a	598
23. Levi Ahindikha	379
24. Ligale Andrew	083
25. Lumumba Odenda	458
26. M. Muthoni Mburu	312
27. Mafunga Wambulwa	376
28. Martha Rop	509
29. Moses Naimodu	358
30. Munene Othinie J.	247
31. Mwailengo Haji Joel	246
32. Mwau Adeline Ndeto	218
33. Olweny P. Ayiecho	164
34. Opore Zebedeo	171
35. Peter E. Ejore Derick	323
36. Rajab Mwondi	440
37. Philip Ole Sironka	461
38. Praxedes N. Wambua	297
39. Rhoda G. Kamanda	432
40. Robert Rukungah	621

41. Philip Rotino	178
42. Prof. Wangari Maathai	084
43. Samuel Mwaura	604
44. William Lopetakou	325
45. William S. Ole Yiaile	361
46. John Serut	186

Absent with apology:

Prof. Saad Saleh Yahya Convenor

Absent:

1. Amos Kimunya	063
2. Nduta Beatrice Kiarie	465
3. Raphael Wanjala	205
4. Fatma Ibrahim Ali	506
5. Kalembe Ndile	140
6. William Omondi Opondo	167
7. Koigi Wa Wamwere	204
8. Peter Kyalo Kaindi	035
9. Wafula Sylvester	484
10. Mohammed Abdi Mohammed	106
11. Mohammed Kuti	080
12. Njenga Karume	045
13. Noah Wekesa	207
14. Raphael Tuju	199
15. Lina Kilimo Chebii	059
16. Joe Khamisi	054
17. Gideon Konchella	074

Observers Present:

1. Lois Towon	082
2. Fatuma Yussuf	011
3. Nimrod Kipkemoi	124
4. Ummie Mavumba	025
5. Omar Almustafa	125
6. S.S. Ole Timoi	- 061

I

n Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kabiru	-	Programme Assistant
3. Metrine Wakhungu	-	Assistant Programme Officer
4. Valerie Wanjau	-	Verbatim Recorder
5. Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/245/04: COMMENCEMENT OF BUSINESS

The Ag. Convenor (Dr. Daniel W. Ichangi - 481) called the meeting to order at 9.30 a.m. and prayers were led by Kaaru Abdukadir Guleid (263).

MIN. NCC/LRE1/246/04: CONSIDERATION OF ZERO DRAFT REPORT

The Rapporteurs walked the Committee through the following reports:

- (i) Chapters 11 and 12 of the Zero Draft.
- (ii) Comments and suggestions by participants during the retreat in Mombasa.

Prof. Knight, a Constitutional Lawyer, made the following comments on the Zero Draft report:

- (i) Both Chapters 11 and 12 have an aspect on Rights which should be carefully harmonized with the Bill of rights that has a limitation clause.
- (ii) Foundation policy for freehold title as indicated in article 233 is inconsistent with the transitional clause and will deprive some people of their rights.
- (iii) Corporate land ownership is inadequately addressed and can have legal and economic consequences.
- (iv) Implementability of the 10% trees per hectare of land held is doubtful.

MIN. NCC/LRE1/247/04: INTERRUPTION OF BUSINESS

At 11.45 a.m., the Ag. Convenor adjourned the meeting to facilitate tea break.

Resumption of debate interrupted at 12.15 p.m.

MIN. NCC/LRE1/248/04: CONSIDERATION OF THE REPORT ON REACTIONS TO COMMENTS

The Rapporteurs took Members of the Committee through the report on "Reactions to Issues/Comments" raised in Mombasa.

MIN. NCC/LRE1/249/04: ADJOURNMENT OF MEETING

And the time being ten minutes past One O'clock, the Ag. Convenor (Dr. Daniel W. Ichangi) adjourned the meeting until this afternoon at 2.30 p.m.

AFTERNOON SITTING

Resumption of debate interrupted at 2.30 p.m.

MIN. NCC/LRE1/250/04: CONSIDERATION OF THE REPORT ON TEMPLATE FOR CROSS CUTTING ISSUES

The Rapporteurs took the Committee through the Report on Template for Cross Cutting issues and conflicting provisions of the Draft Bill based on the recommendations and decisions of the Committee.

MIN. NCC/LRE1/251/04: ADJOURNMENT MOTION

Having been taken through the five reports, Members sought the indulgence of the Committee to be given time to study the reports thoroughly.

Consequently, a Motion of adjournment was moved by Levi Ahindikha (379) and seconded by Mwilengo Haji Joel (246).

MIN. NCC/LRE1/252/04: ADJOURNMENT OF THE MEETING

The time being Four O'clock, the Ag. Convenor (Dr. Daniel W. Ichangi) adjourned the meeting until Thursday 19th February, 2004.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

18th February, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 19th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of:
 - The Two Chapters as per the documents and discussions.
 - The Committee’s Report to Plenary.
5. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY SECOND MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.30 A.M. ON THURSDAY, 19TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Dr. Daniel W. Ichangi	481- Acting Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Bornice S. Chelang'at	372
7. Beatrice Mwaringa	233
8. Benjamin Gitoi	602
9. Clare Omanga	423
10. C. Nyawira Ngari	306
11. Davis Nakitare	010
12. Dr. James Koske	371
13. Ezekiel Kesendany	356
14. F. Mwanzia	133
15. Fibie Atieno Ochola	405
16. Fatuma Halako Galgalo	239
17. Gachara Muchiri	111
18. Jamila Mohammed	476
19. Julius Lalampaa	329
20. Kaaru Abdukadir Guleid	263
21. Kimani M. Ng'ang'a	598
22. Levi Ahindikha	379
23. Ligale Andrew	083
24. M. Muthoni Mburu	312
25. Mafunga Wambulwa	376
26. Martha Rop	509
27. Moses Naimodu	358
28. Munene Othiniel J.	247
29. Mwailengo Haji Joel	246
30. Mwau Adeline Ndeto	218
31. Nduta Beatrice Kiarie	465
32. Olweny P. Ayiecho	164
33. Opore Zebedeo	171
34. Peter E. Ejore Derick	323
35. Peter Kyalo Kaindi	035
36. Philip Rotino	178
37. Rajab Mwondi	440
38. Praxedes N. Wambua	297
39. Rhoda G. Kamanda	432
40. Robert Rukungah	621

41.	Prof. Wangari Maathai	084
42.	Samuel Mwaura	604
43.	William Lopetakou	325
44.	William S. Ole Yiaile	361
45.	John Serut	186

Absent with Apology:

1.	Prof. Saad Saleh Yahya	Convenor
2.	Philip Ole Sironka	461

Absent:

1.	Ali Mwakwere	130
2.	Amos Kimunya	063
3.	Raphael Wanjala	205
4.	Fatma Ibrahim Ali	506
5.	Kalembe Ndile	140
6.	William Omondi Opondo	167
7.	Koigi Wa Wamwere	204
8.	Wafula Sylvester	484
9.	Mohammed Abdi Mohammed	106
10.	Mohammed Kuti	080
11.	Njenga Karume	045
12.	Noah Wekesa	207
13.	Raphael Tuju	199
14.	Lumumba Odenda	458
15.	Lina Kilimo Chebii	059
16.	Joe Khamisi	054
17.	Gideon Konchella	074

Observers Present:

1.	Lois Towon	082
2.	Fatuma Yussuf	011
3.	Nimrod Kipkemoi	124
4.	Ummie Mavumba	025
5.	Omar Almustafa	125
6.	Josephine Nashipae Sane	016
7.	Monica Opole	055
8.	S.S. Ole Timoi	- 061

In Attendance:

1.	Lucy Masua	-	Draftsperson
2.	Jane Kabiru	-	Programme Assistant
3.	Metrine Wakhungu	-	Assistant Programme Officer
4.	Valerie Wanjau	-	Verbatim Recorder

5. Florence Abonyo - Clerk Assistant

MIN. NCC/LRE1/253/04: COMMENCEMENT OF BUSSINESS

The Ag. Convenor (Dr. Daniel W. Ichangi - 481) called the meeting to order at 9.30 a.m. and prayers were led by William Lopetakou (325).

MIN. NCC/LRE1/254/04: CONFIRMATION OF THE MINUTES

The Minutes of the following previous sittings of the Committee were confirmed by the Members present and signed by the Ag. Convenor (Dr. Daniel W. Ichangi – 481).

(i) The Twenty Ninth Sitting held on Tuesday 3rd February, 2004 were proposed by C. Nyawira Ngari (306) and seconded by Fibie Atieno Ochola (405).

(ii)The Thirtieth Sitting held on Tuesday 17th February, 2004 were proposed by Archbishop Njeru Wambugu (527) and seconded by Fatuma Halako Galgalo (239).

(iii)The Thirty First Sitting held on Wednesday 18th February, 2004 were proposed by Fibie Atieno Ochola (405) and seconded by Moses Naimodu (358).

MIN. NCC/LRE1/255/04: MATTERS ARISING

(i) It was noted that the Convenor was marked absent without apology in the previous minutes, yet he was absent with apology.

(ii) **Under Minute No. Min. NCC/LREI/234/04**, Members sought to know the progress made by the Steering Committee on “Trust”.

Members were informed that the Steering Committee is yet to meet and would report thereafter.

MIN. NCC/LRE1/256/04: REMARKS BY THE RAPPORTEUR GENERAL

The Rapporteur General informed the Committee as follows:-

1. The Zero Draft Report is a reflection of the respective Technical Committees decisions. However, the Zero Draft will be re-organized to avoid duplication and to rationalize the Draft Constitution.
2. All definitions will not be included in every Chapter but will be transferred to the relevant Chapter 19 on Interpretation.
3. Chapters 11 and 12 are proposed to be re-organized as follows:-
 - (i) Chapter 11 to be devoted to Land and Natural Resources while Chapter 12 will be devoted to Environment.
 - (ii) Article 234(2) – inclusion of private lease.

- (iii) Article 234(2)(f) – the following sentence to be transferred to Article 235(1)(c):

“all such beaches be allowed unfettered access to the public”.

- (iv) Article 235(1)(a) –the apparent contradiction with Article 237 to be resolved.
- (v) Article 236(2) – to be merged with Article 54 under general protection of property.
- (vi) Articles 239 and 241 – to be transferred under a New Article 237 on Development and Management of land.

MIN. NCC/LRE1/257/04: INTERRUPTION OF BUSINESS

At 11.30 a.m., the Ag. Convenor adjourned the meeting to facilitate tea break. Resumption of debate interrupted at 11.45 a.m.

MIN. NCC/LRE1/258/04: CONSIDERATION OF THE TWO CHAPTERS AS PER THE FIVE DOCUMENTS DISTRIBUTED

The Rapporteurs informed the Committee that the revised Draft on the two Chapters would reflect the following:-

- a) An addendum for provisions on Articles on land use and ownership being moved from Chapter 11 to 12 and vice versa.
- b) An annexure for provisions on environmental rights and duties under under the Bill of Rights be transferred to Chapter 12 on Environment.
- c) A rationalized draft reflecting the harmonized and reorganized draft on Chapters 11 and 12.

The Rapporteurs further informed the Committee as follows:

Notwithstanding the Rapporteur General's remarks, the sub-committee on external boundaries would carry on with its mandate.

Under Article 233, there is need for qualification of the rights and re-negotiation of lease terms on case basis.

Decision should be made on cross cutting ssues.

MIN. NCC/LRE1/259/04: ADJOURNMENT MOTION

Having been walked through the five reports, the Committee resolved to adjourn its Sitting to enable the drafts person to re-organize the two Chapters and prepare the Committee's First Discussion Draft,

Consequently, a motion of adjournment was moved by Andrew Ligale (083) and seconded by Benjamin Gitoi (602)

MIN. NCC/LRE1/260/04: ADJOURNMENT OF THE MEETING

The time being One O'clock, the Ag. Convenor (Dr. Daniel W. Ichangi) adjourned the meeting until Friday 20th February, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

19th February, 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 20th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY THIRD MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.15 A.M. ON FRIDAY, 20TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. Daniel W. Ichangi	481- Acting Convenor
3. Dr. M.A. Swazuri	Rapporteur
4. Dr. A. Nunow	Rapporteur
5. Archbishop Njeru Wambugu	527
6. Augustine Saina	343
7. Bornice S. Chelang’at	372
8. Benjamin Gitoi	602
9. Clare Omanga	423
10. C. Nyawira Ngari	306
11. Davis Nakitare	010
12. Dr. James Koske	371
13. Ezekiel Kesendany	356
14. Fibie Atieno Ochola	405
15. Kaaru Abdukadir Guleid	263
16. Kimani M. Ng’ang’a	598
17. Levi Ahindikha	379
18. Ligale Andrew	083
19. Gachara Muchiri	111
20. Jamila Mohammed	476
21. Julius Lalampaa	329
22. Beatrice Mwaringa	233
23. William Omondi Opondo	167
24. F. Mwanzia	133
25. Mwailengo Haji Joel	246
26. M. Muthoni Mburu	312
27. Mafunga Wambulwa	376
28. Martha Rop	509
29. Moses Naimodu	358
30. Munene Othinie J.	247
31. Rajab Mwondi	440
32. Peter E. Ejore Derick	323
33. Praxedes N. Wambua	297
34. Prof. Wangari Maathai	084
35. Philip Rotino	178
36. Rhoda G. Kamanda	432
37. Robert Rukungah	621
38. Rajab Mwondi	440
39. William Lopetakou	325
40. William S. Ole Yiaile	361

41. John Serut 186

Absent with Apology:

Philip Ole Sironka 461

Absent:

1. Ali Mwakwere	130
2. Amos Kimunya	063
3. Samuel Mwaura	604
4. Mwau Adeline Ndeto	218
5. Nduta Beatrice Kiarie	465
6. Olweny P. Ayiecho	164
7. Opore Zebedeo	171
8. Peter Kyalo Kaindi	035
9. Fatuma Halako Galgalo	239
10. Raphael Wanjala	205
11. Fatma Ibrahim Ali	506
12. Kalembe Ndile	140
13. Koigi Wa Wamwere	204
14. Wafula Sylvester	484
15. Mohammed Abdi Mohammed	106
16. Mohammed Kuti	080
17. Njenga Karume	045
18. Noah Wekesa	207
19. Raphael Tuju	199
20. Lumumba Odenda	458
21. Lina Kilimo Chebii	059
22. Joe Khamisi	054
23. Gideon Konchella	074

Observers Present:

1. Lois Towon	082
2. Nimrod Kipkemoi	124
3. Ummie Mavumba	025
4. Omar Almustafa	125
5. Josephine Nashipae Sane	016
6. Eunice S.S. Marima	176

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kabiru	-	Programme Assistant
3. Metrine Wakhungu	-	Assistant Programme Officer
4. Grace Kaparo	-	Assistant Programme Officer
5. Valerie Wanja	-	Verbatim Recorder

MIN. NCC/LRE1/261/04: COMMENCEMENT OF BUSSINESS

The Ag. Convenor (Dr. Daniel W. Ichangi - 481) called the meeting to order at 9.15 a.m. and prayers were led by William Ole Yiaile (361).

MIN. NCC/LRE1/262/04: WELCOMING OF THE CONVENOR (PROF.YAHYA)

The Convenor Prof. Saad Yahya who had been away was back. The Acting Convenor, Dr. Daniel W. Ichangi - 481 briefed him on what transpired in the Committee while he was away.

He further informed him of the day's agenda namely; the confirmation of the minutes of the thirty second sitting. Hon. William Ole Yiaile(361) commended the Acting Convenor for the good work done when the Convenor was away and was seconded by Moses Naimodu (358)

MIN. NCC/LRE1/263/04: CONFIRMATION OF THE MINUTES

The Minutes of the thirty second sitting of the Committee were confirmed by the Members present and signed by the Ag. Convenor (Dr. Daniel W. Ichangi – 481).

The Minutes were proposed by Augustine Saina - 343 and seconded by Dr. James Koske - 371.

MIN. NCC/LRE1/264/04: MATTERS ARISING

(i) Under Minute No. Min. NCC/LREI/258/04, Hon. Prof. Wangari Maathai - 084 sought clarification on the position of the Environmental Rights for the reason that the minutes reflected that Environmental Rights will be covered under the Bill of Rights.

Dr. Nunow made clarification that the Rapporteur General had addressed the Environmental Rights and Duties in the previous sitting whereby he proposed that foregoing should be maintained in Chapter 12 on Environment to make them specifically enforceable.

(ii) A Member sought clarification on the Rapporteur General's position on article 63 in the Bill of Rights concerning property.

Dr. Nunow in response clarified that the initial position by the Rapporteur General was to cover all property under the Bill of Rights, however the Committee persuaded him that the rights in Land are unique and therefore ought to remain within the Land Chapter.

MIN. NCC/LRE1/265/04: COMMENTS ON HUMAN-WILDLIFE CONFLICT

Hon. William ole Yiaile (361) reminded the Committee that although the Committee had deliberated at length the issue of human-wildlife conflict and compensation for damage caused by wildlife, the Zero Draft did not reflect that position. It was agreed that a clause to cover damage to both humans and property caused by wildlife had to be included in Chapter 12.

MIN. NCC/LRE1/266/04: ANNOUNCEMENT

Prof. Yahya made an announcement that women delegates had been invited to attend the Women Conference on HIV/AIDS at Kasarani on that day and transport would be available at 12.45 p.m.

MIN. NCC/LRE1/267/04: ADJOURNMENT OF THE MEETING

The time being forty five minutes past Ten O'clock, the Convenor adjourned the meeting until Monday 23rd February, 2004 at 9.00 a.m. (Adjournment Motion not moved).

SIGNED:

CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

20th February 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Monday, 23rd February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Approval of the Committee’s Report to Plenary of the Conference.
5. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY FOURTH MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 9.15 A.M. ON MONDAY, 23RD FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Benjamin Gitoi	602
7. Beatrice Mwaringa	233
8. Clare Omanga	423
9. C. Nyawira Ngari	306
10. Dr. James Koske	371
11. Dr. Daniel W. Ichangi	481
12. Ezekiel Kesendany	356
13. Fatuma Halako Galgalo	239
14. Fatma Ibrahim Ali	506
15. Kaaru Abdukadir Guleid	263
16. Kimani M. Ng'ang'a	598
17. Levi Ahindikha	379
18. Ligale Andrew	083
19. Gachara Muchiri	111
20. Jamila Mohammed	476
21. Julius Lalampaa	329
22. William Omondi Opondo	167
23. F. Mwanzia	133
24. Mwailengo Haji Joel	246
25. M. Muthoni Mburu	312
26. Mafunga Wambulwa	376
27. Martha Rop	509
28. Moses Naimodu	358
29. Munene Othiniel J.	247
30. Nduta Beatrice Kiarie	465
31. Rajab Mwondi	440
32. Peter E. Ejore Derick	323
33. Praxedes N. Wambua	297
34. Prof. Wangari Maathai	084
35. Philip Rotino	178
36. Rhoda G. Kamanda	432
37. Robert Rukungah	621
38. Lumumba Odenda	458
39. Samuel Mwaura	604
40. Lumumba Odenda	458

41. William Lopetakou	325
42. William S. Ole Yiaile	361
43. Wafula Sylvester	484
44. John Serut	186
45. 45. Philip ole Sironka	461
46. 26.Rajab Mwondi	440

Absent with Apology:

Fibie Atieno Ochola	405
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Absent:

1. Ali Mwakwere	130
2. Amos Kimunya	063
3. Bornice S. Chelang'at	372
4. Mwau Adeline Ndeto	218
5. Davis Nakitare	010
6. Olweny P. Ayiecho	164
7. Opore Zebedeo	171
8. Peter Kyalo Kaindi	035
9. Raphael Wanjala	205
10. Kalembe Ndile	140
11. Koigi Wa Wamwere	204
12. Mohammed Abdi Mohammed	106
13. Mohammed Kuti	080
14. Njenga Karume	045
15. Noah Wekesa	207
16. Raphael Tuju	199
17. Lina Kilimo Chebii	059
18. Joe Khamisi	054
19. Gideon Konchella	074

Observers Present:

1. Lois Towon	082
2. Nimrod Kipkemoi	124
3. Ummie Mavumba	025
4. Omar Almustafa	125
5. Josephine Nashipae Sane	016
6. Eunice S.S. Marima	176

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Metrine Wakhungu	-	Programme Assistant
4. Grace Kaparo	-	Programme Assistant
5. Valerie Wanja	-	Verbatim Recorder

6. Mrs. Florence Abonyo - Clerk Assistant

MIN. NCC/LRE1/268/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 9.55 a.m. and prayers were led by William Ole Yiaile (361).

MIN. NCC/LRE1/269/04: CONFIRMATION OF THE MINUTES

The Minutes of the Thirty Third sitting of the Committee held on Friday 20th February, 2004 were confirmed by the Members present and signed by the Convenor.

The Minutes were proposed by William ole Yiaile (361) and seconded by Clare Omanga (423).

MIN. NCC/LRE1/270/04: MATTERS ARISING

Under Minute No. Min. NCC/LREI/266/04, Hon. Martha Rop (509) briefed the Committee on the Women Conference on HIV/AIDS held at Kasarani in Nairobi.

MIN. NCC/LRE1/271/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.20 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.55 a.m.

MIN. NCC/LRE1/272/04: CONSIDERATION OF THE COMMITTEE'S REPORT TO THE PLENARY

The Rapporteurs gave the Committee an overview of the Report on the re-organized Chapters 11 and 12.

The Rapporteurs also briefed the Committee on the progress made by the Consensus Building Group and informed the Committee that the Group has dropped the proposal on the establishment of the National Environment Commission.

MIN. NCC/LRE1/273/04: ADJOURNMENT MOTION

The time being One O'clock, the Convenor adjourned the meeting until 2.15 p.m.

AFTERNOON SITTING

Resumption of debate at 2.15 p.m.

MIN. NCC/LRE1/274/04: CONSIDERATION OF THE COMMITTEE'S REPORT TO THE PLENARY

The Committee's re-organised Report on Chapters 11 and 12 was distributed to the Members. Members sought indulgence of the Committee to be given time to study the Report.

Consequently, a Motion of Adjournment was moved by William ole Yiaile (361) and seconded by Moses Naimodu (358).

MIN. NCC/LRE1/275/04: ADJOURNMENT OF THE MEETING

The time being Three O'clock, the Convenor adjourned the meeting until Tuesday 24th February, 2004 at 9.00 a.m.

SIGNED:
CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

23rd February 2004

TECHNICAL WORKING COMMITTEE ‘J’ ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee “j” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 24th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY FIFTH MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 10.00 A.M. ON TUESDAY, 24TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Benjamin Gitoi	602
7. Beatrice Mwaringa	233
8. Clare Omanga	423
9. Dr. James Koske	371
10. Dr. Daniel W. Ichangi	481
11. Davis Nakitare	010
12. Ezekiel Kesendany	356
13. Fibie Atieno Ochola	405
14. Fatma Ibrahim Ali	506
15. John Serut	186
16. Kaaru Abdukadir Guleid	263
17. Kimani M. Ng'ang'a	598
18. Gachara Muchiri	111
19. Levi Ahindikha	379
20. Ligale Andrew	083
21. Lumumba Odenda	458
22. Jamila Mohammed	476
23. Julius Lalampaa	329
24. Mwailengo Haji Joel	246
25. M. Muthoni Mburu	312
26. Mafunga Wambulwa	376
27. Martha Rop	509
28. Moses Naimodu	358
29. Munene Othiniel J.	247
30. Nduta Beatrice Kiarie	465
31. Olweny P. Ayiecho	164
32. Peter E. Ejore Derick	323
33. Praxedes N. Wambua	297
34. Prof. Wangari Maathai	084
35. Philip Rotino	178
36. Philip ole Sironka	461
37. Peter Kyalo Kaindi	035
38. Rhoda G. Kamanda	432
39. Robert Rukungah	621
40. William Lopetakou	325

41. William S. Ole Yiaile	361
42. Wafula Sylvester	484
43. William Omondi Opondo	167
44. Rajab Mwondi	440

Absent:

1. Ali Mwakwere	130
2. Amos Kimunya	063
3. C. Nyawira Ngari	306
4. Bornice S. Chelang'at	372
5. Mwau Adeline Ndeto	218
6. Fatuma Halako Galgalo	239
7. F. Mwanzia	133
8. Opore Zebedeo	171
9. Raphael Wanjala	205
10. Kalembe Ndile	140
11. Koigi Wa Wamwere	204
12. Mohammed Abdi Mohammed	106
13. Mohammed Kuti	080
14. Njenga Karume	045
15. Noah Wekesa	207
16. Raphael Tuju	199
17. Lina Kilimo Chebii	059
18. Joe Khamisi	054
19. Samuel Mwaura	604
20. Gideon Konchella	074

Observers Present:

1. Lois Towon	082
2. Nimrod Kipkemoi	124
3. Ummie Mavumba	025
4. Omar Almustafa	125
5. Josephine Nashipae Sane	016

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Metrine Wakhungu	-	Programme Assistant
4. Grace Kaparo	-	Programme Assistant
5. Valerie Wanja	-	Verbatim Recorder
6. Mrs. Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/276/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 10.00 a.m. and prayers were led by Kaaru Abdukadir Guleid (263) and Martha Rop (509).

MIN. NCC/LRE1/277/04: CONFIRMATION OF THE MINUTES

The Minutes of the Thirty Fourth sitting of the Committee held on Monday 23rd February, 2004 were confirmed by the Members present and signed by the Convenor.

The Minutes were proposed by Beatrice Mwaringa (233) and seconded by Levi Ahindukha (379).

MIN. NCC/LRE1/278/04: MATTERS ARISING

Under Minute No. Min. NCC/LREI/272/04, the committee reiterated its position to include the National Environmental Commission as one of the Constitutional Offices.

The Committee was informed that:

- (i) The Consensus Building Group is finalizing its work and compiling the report to Plenary of the Conference.
- (ii) The provisional programme for the Plenary is scheduled to commence on Thursday 26th February 2004.

MIN. NCC/LRE1/279/04: CONSIDERATION OF COMMITTEE'S REPORT TO PLENARY

The Rapporteur walked Members through the Committee's Discussion Draft on Chapter 11 detailing the re-organisation of the Articles therein.

MIN. NCC/LRE1/280/04: INTERRUPTION OF DEBATE

The Convenor interrupted the proceedings at 11.20 a.m. to facilitate tea break.

Resumption of debate interrupted at 11.55 a.m.

MIN. NCC/LRE1/281/04: CONSIDERATION OF THE COMMITTEE'S REPORT TO THE PLENARY

The Rapporteurs walked Members through the Committee's Discussion Draft detailing the re-organised Articles in Chapter 12.

MIN. NCC/LRE1/282/04: GENERAL COMMENTS ON THE COMMITTEE'S DISCUSSION DRAFT

Members considered the Committee's Discussion Draft and made the following comments:

- (i) The language and grammar used is complicated and should be simplified for ease of understanding and interpretation by "Wanjiku".
- (ii) The principle of devolution appears lost in the rationalized Draft given the numerous reference to the "state"

- (iii) Under Chapter II the word "property" is omitted in the Title.
- (iv) Under Article 233(A)(I), the provision is likely to commercialize the marriage institution. Therefore, the right of a surviving spouse to inherit estate should be subject to a will.

The Article does not also mention the dependants, which are very important.

- (v) Under Article 234(2)(d) Land Boards are not incorporated with regard to land disputes.

MIN. NCC/LRE1/283/04: ADJOURNMENT OF THE MEETING

The time being One O'clock, the Convenor adjourned the meeting until 2.30 p.m.

AFTERNOON SITTING

Resumption of debate at 2.30 p.m.

MIN. NCC/LRE1/284/04: GENERAL COMMENTS ON THE COMMITTEE'S DISCUSSION DRAFT

Members further made the following comments on the Discussion Draft:

- (i)The Discussion Draft is a completely new version or structured draft of Chapter 11 and 12 instead of reflecting the re-organization of the Zero Draft in totality.
- (ii) Under Article 239(2), the domestication of agreements and treaties does not serve intended the purpose without the reviewing aspect.
- (iii)Under Article 249(A)(1), agreements relating to Natural Resources prior to the enactment of this Constitution shall not be subjected to parliamentary ratification.
- (iv)Under Article 242(c), the application of the "polluter pays principle" should be Under Article 239 on Principles and not under Legislation.
- (v)Aspects on land law consolidation, revision of sectoral land laws, tenure of land, change of status of national parks, that were in the Zero Draft have been omitted in the Discussion Draft.

In view of the apparent disparity between the Discussion Draft and the Zero Draft, the Committee noted the Discussion Draft.

Consequently, the Committee resolved to adopt the Zero Draft as the basis of its report to the Plenary of the Conference.

MIN. NCC/LRE1/285/04: SUB COMMITTEE

Members resolved that a Sub Committee comprising the following be constituted to harmonize the Zero Draft with the Rapporteurs and report the following day.

Dr. Daniel W. Ichangi-	481
Dr. James Koske	- 371
Fibie Atieno Ochola	- 405
Fatuma Ibrahim Ali	- 506
Gachara Muchiri	- 111
William ole Yiaile	- 361

The Sub Committee's focus shall be:-

- (i) To devote Land ownership, policy, classification and tenure under Chapter 11 on Land and Property.
- (ii) Chapter 12 to be devoted to Environment and Natural Resources with emphasis on the use of natural resources including land; environmental rights, duties and inclusion of Article 64 under Bill of Rights.
- (iii) Consider outstanding motions including a clause on human wildlife conflict under the appropriate section of the two chapters.

MIN. NCC/LRE1/286/04: ADJOURNMENT OF THE MEETING

The time being thirty minutes past Four O'clock, the Convenor adjourned the meeting until Wednesday 25th February, 2004 at 9.00 a.m.

SIGNED:

CONVENOR

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

25th February 2004

TECHNICAL WORKING COMMITTEE 'J' ON LAND RIGHTS AND ENVIRONMENT.

The convenor presents his compliments to Members of the Technical Working Committee "j" and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 26th February 2004 in the Tent No. 10, Bomas of Kenya at 9.00a.m.**

AGENDA

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Approval of the Committee's Report to Plenary of the Conference.
4. Any Other Business.

Approved for circulation- Convenor

Date.....

Time.....

MINUTES OF THE THIRTY SIXTH MEETING OF THE TECHNICAL WORKING GROUP “J” ON LAND RIGHTS AND ENVIRONMENT HELD AT 11.00 A.M. ON THURSDAY, 26TH FEBRUARY, 2004 AT TENT NO. 10 BOMAS OF KENYA

Present

<u>Name</u>	<u>Delegate No.</u>
1. Prof. Saad Saleh Yahya	Convenor
2. Dr. M.A. Swazuri	Rapporteur
3. Dr. A. Nunow	Rapporteur
4. Archbishop Njeru Wambugu	527
5. Augustine Saina	343
6. Benjamin Gitoi	602
7. Beatrice Mwaringa	233
8. Clare Omanga	423
9. Dr. James Koske	371
10. Dr. Daniel W. Ichangi	481
11. Davis Nakitare	010
12. Ezekiel Kesendany	356
13. Fibie Atieno Ochola	405
14. Fatma Ibrahim Ali	506
15. John Serut	186
16. Kaaru Abdukadir Guleid	263
17. Kimani M. Ng'ang'a	598
18. Levi Ahindikha	379
19. Ligale Andrew	083
20. Jamila Mohammed	476
21. Mwailengo Haji Joel	246
22. M. Muthoni Mburu	312
23. Mafunga Wambulwa	376
24. Martha Rop	509
25. Moses Naimodu	358
26. Munene Othinie J.	247
27. Nduta Beatrice Kiarie	465
28. Olweny P. Ayiecho	164
29. Peter E. Ejore Derick	323
30. Praxedes N. Wambua	297
31. Prof. Wangari Maathai	084
32. Philip ole Sironka	461
33. Peter Kyalo Kaindi	035
34. Rhoda G. Kamanda	432
35. William Lopetakou	325
36. William S. Ole Yiaile	361
37. Rajab Mwondi	440
38. C. Nyawira Ngari	306
39. Bornice S. Chelang'at	372
40. Fatuma Halako Galgalo	239

41. Samuel Mwaura 604

Absent:

1. Ali Mwakwere	130
2. Amos Kimunya	063
3. Mwau Adeline Ndeto	218
4. F. Mwanzia	133
5. Opore Zebedeo	171
6. Raphael Wanjala	205
7. Kalembe Ndile	140
8. Koigi Wa Wamwere	204
9. Mohammed Abdi Mohammed	106
10. Mohammed Kuti	080
11. Njenga Karume	045
12. Noah Wekesa	207
13. Raphael Tuju	199
14. Lina Kilimo Chebii	059
15. Joe Khamisi	054
16. Gideon Konchella	074
17. Gachara Muchiri	111
18. Lumumba Odenda	458
19. Julius Lalampaa	329
20. Philip Rotino	178
21. Robert Rukungah	621
22. Wafula Sylvester	484
23. William Omondi Opondo	167

Observers Present:

1. Lois Towon	082
2. Nimrod Kipkemoi	124
3. Christopher Lonyala	139
4. Omar Almustafa	125
5. Eunice Marima	176

In Attendance:

1. Lucy Masua	-	Draftsperson
2. Jane Kibiru	-	Programme Assistant
3. Metrine Wakhungu	-	Programme Assistant
4. Grace Kaparo	-	Programme Assistant
5. Valerie Wanja	-	Verbatim Recorder
6. Mrs. Florence Abonyo	-	Clerk Assistant

MIN. NCC/LRE1/287/04: COMMENCEMENT OF BUSINESS

The Convenor called the meeting to order at 11.00 a.m. and prayers were led by Dr. Daniel W. Ichangi (481).

MIN. NCC/LRE1/288/04: CONFIRMATION OF THE MINUTES

The Minutes of the Thirty Fifth sitting of the Committee held on Tuesday 24th February, 2004 were confirmed by the Members present and signed by the Convenor.

The Minutes were proposed by Benjamin Gitoi (602) and seconded by Beatrice Mwaringa (233).

MIN. NCC/LRE1/289/04: REPORT OF THE SUB COMMITTEE

Under Minute No. NCC/LRE1/285/04, the Chairman of the Sub-Committee (Dr. Daniel W. Ichangi - 481), presented the Sub-Committee's Report.

The Chairman informed the Committee that the Report is basically a re-organised and harmonized Zero Draft with emphasis to incorporate "Wanjiku's" views and usage of desirable language.

The Chairman further informed the Members that the format of the Sub-Committee's revised Zero Draft is as follows:-

Chapter Eleven

- Primacy of land
- Ownership of land
- Classification of land
- Tenure of land
- Protection of Rights in land
- Protection of Rights in property
- The National Land Commission
- Definitions

Chapter Twelve

- Principles
- Obligations
- Environmental Rights and Duties
- Natural Resources
- The Natural Environmental Commission
- Environmental Legislation
- Definitions

MIN. NCC/LRE1/290/04: ADOPTION OF THE COMMITTEE'S REPORT TO PLENARY

The Committee considered and adopted by consensus the revised Zero Draft presented by the Sub-Committee as the Committee's Report to Plenary.

The Motion adopting the Committee's Report to Plenary was moved by Andrew Ligale (083) and seconded by Ezekiel Kesendany (356).

MIN. NCC/LRE1/291/04: ANY OTHER BUSINESS

Under Minute No. NCC/LRE1/225/04, Members were informed that the Steering Committee will be meeting soon to map out the way forward. Meanwhile, interested Members were requested to register with the Steering Committee.

Members emphasized that important issues not covered in the Draft Constitution should be appended.

Members agreed to take a group photograph.

MIN. NCC/LRE1/292/04: ADJOURNMENT OF THE MEETING

The time being One O'clock, the Convenor adjourned the meeting *sine die*.

SIGNED:
CONVENOR

DATE:

APPENDIX E: RECOMMENDATIONS AND DECISIONS ON THE DRAFT BILL AS AGREED BY TECHNICAL WORKING COMMITTEE “J”

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
232(1)	<p>Land policy framework</p> <p>Land, being Kenya’s primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.</p>	.		
			None	There was no definition of community in the draft bill hence the need to define it
232A(1)		<p>Primacy of land</p> <p>Land is Kenya's primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.</p>	None	The previous article 232 (1) was renumbered as article 232(4).

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(2)The State shall define and keep constantly under review a national land policy directed at ensuring among others, the following –	(2)The State shall define and keep constantly under review a national land policy directed at ensuring among others, the following:		The original 232 (2) was renumbered as article 232(5)
	(a) equitable access to land and associated resources;	(a) Equitable access to land and associated resources;		
	(b)security of land rights for all land holders, users and occupiers in good faith;	(b) Security of land rights for all land holders, users and occupiers in good faith;		
	(c)sustainable and productive management of land resources;	(c) Sustainable and productive management of land resources;		
	(d) transparent and cost effective administration of land;	(d)Transparent and cost effective administration of land;		
	(e) sound conservation and protection of ecologically sensitive areas; and	(e) sound conservation and protection of ecologically sensitive areas;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(f) socially acceptable management and resolution of land disputes.	(f) encouragement of communities to settle land disputes through recognized local community initiatives, provided that these shall not be against the Constitution;		
		(g) elimination of gender discriminatory laws, regulations, customs and practices related to land and other property.		To eliminate discriminatory provisions on gender.
233	<u>Ownership of land</u> (1) All land in Kenya belongs to the people of Kenya collectively as communities and as individuals.	Ownership of land (1)All land in Kenya belongs to the people of Kenya collectively as communities and as individuals;		
	(2)Subject to this Constitution no person other than a citizen of Kenya shall have the right to acquire any interest or right in land in Kenya	(2)Subject to this Constitution no person other than a citizen of Kenya shall have the right to acquire any freehold interest or right in land in Kenya;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(3)Non-citizens of Kenya may hold or use land on the basis of leasehold tenure only and such leases however granted shall not exceed ninety-nine years.	(3)Non-citizens may hold or use land on the basis of leasehold tenure only and such leases however granted shall not exceed ninety-nine years.		
		(4) Where on the coming into force of this constitution, any person not being a Kenyan citizen had a freehold interest in any land in Kenya, that interest or right shall revert back to the Republic of Kenya to hold on behalf of the people of Kenya, and the state shall grant to that person a lesser right or interest at a peppercorn rent not exceeding a ninety-nine year lease.		
Article 234(1)	Classification of Land (1) All land in Kenya is designated as public, community or private land.	Classification of Land Article 234 (1) All land in Kenya is designated as public, community or private land.		
	(2)The following description of land is public land (a)land which at the commencement of this Constitution was held as	(2)The following is public land: (a) land which at the commencement of this Constitution was held as unalienated Government land in terms		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	unalienated Government land in terms of the Government Lands Act, Cap 280;	of the Government Lands Act, Cap 280;		
	(b)land held, used or occupied by any Ministry, Department or agency of the Government or local authority, except where such land is used or occupied on the basis of a lease;	(b)land held, used or occupied by any Ministry, Department or agency of the Government or local authority, except where such land is held, used or occupied on the basis of a private lease or trust;		
	(c)all land ceded to the people of Kenya by way of reversion, or surrender; land in respect of which no individual or community ownership can, by process of law, be established including land declared to be vacant and land in respect of which no heir can, by ordinary process of law be identified;	(c) all land ceded to the people of Kenya by way of reversion, or surrender;		The words” declared to be vacant” could be mis interpreted and abused by the government to declare any land vacant.
		(d) land in respect of which no individual or community ownership can, by process of law be established;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		(e) land in respect of which no heir can, by ordinary process of law be identified;		
	(d)all roads and thoroughfares to which the Public Roads and Roads of Access Act Cap 399 apply;	(f) all roads and thoroughfares to which the Public Roads and Roads of Access Act, Cap 399 apply;		
	(e)all rivers, lakes and water bodies as defined in the Rivers and Lakes Act, (Cap 409) or in any other law; and	(g) all rivers, lakes and water bodies as defined in the Rivers and Lakes Act, Cap 409 or in any other law; and		
	(f)the territorial sea and sea-bed	(h) the territorial sea and sea-bed, including all beach land between the high and low water marks.		To include use of beaches.
		3 (i) In this chapter, “Community” means indigenous Kenyans citizens who reside in a specific geographical area irrespective of their ethnicity and culture.		
	(3)The following description of land is community land. (a)all land currently held as trust land	(ii)The following is community land: (a) all land currently held as trust land under the Trust Lands Act, Cap.288;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	under the Trust Lands Act Cap.288;			
	(b)all land registered in the name of group representatives in terms of the provisions of the Land (Group Representatives) Act Cap. 287;	(b) all land registered in the name of group representatives in terms of the provisions of the Land (Group Representatives) Act, Cap. 287;	Group ranches with title deeds should be private land.	The group ranch members have title deeds; hence the classification of group ranches as community land violates property ownership rights.
	(c)all land held, managed or used by specific communities as community forests, water sources, grazing areas or shrines and identified by them as such whether or not such land is, but for this provision, classified as public land; and	(c) all land held, managed or used by specific communities as community forests, water sources, grazing areas or shrines and identified by them as such whether or not such land is, but for this provision, classified as public land; and		
	(d)any land hereinafter ceded to a specific community by way of any process of alienation, transmission or conversion;	(d) any land hereinafter ceded to a specific community by way of any process of alienation, transmission or conversion;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		<i>(e)land currently held as government forest and is occupied by hunter-gatherer minority communities as their ancestral land.</i>		Some communities have lived in some of these forests for over 400-500 years and have no other land.
		<i>(4) Any unregistered community land shall be held in trust by devolved governments on behalf of the communities.</i>		
	(4)The following description of land is private land: (a)any land held under freehold tenure and registered under the Registration of Titles Act Cap.281 and the Land Titles Act Cap. 282;	(5) The following is private land: (a) any land held under freehold tenure and registered under the Registration of Titles Act, Cap.281 and the Land Titles Act, Cap. 282;		
	(b)land held as absolute property under the Registered Land Act, Cap 300, not being land to which the Land (Group Representatives) Act, Cap 287 applies;	(b) land held as absolute property under the Registered Land Act, Cap 300, not being land to which the Land (Group Representatives) Act, Cap 287 applies;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(c)land the subject of a leasehold grant whether or not the lease is in respect of public or community land and so long only as the lease remains in force.	(c) land the subject of a leasehold grant whether or not the lease is in respect of public or community land and so long only as the lease remains in force.		
	(d) any land acquired by mechanisms under any law which confers upon any person exclusive ownership or occupation of land.			Clause (d) was deleted to seal the loophole of people acquiring land through dubious mechanisms
235(1)	<p>Tenure of Land</p> <p>(a)Public land is the Collective property of present and future generations and shall vest in and be held by National Land Commission in trust for the people; and</p>	<p>Article 235</p> <p>Tenure of land</p> <p>(1)(a)Public land is the collective property of present and future generations and shall vest in and be held by devolved levels of government in trust for the people under the oversights of the National Land Commission as the Ombudsman office for the promotion, protection and fulfillment of the enjoyment of rights in public land.</p>		There has been mis management of public land hence the need to involve the devolved authorities.

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(b)Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that trust.	(b) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.		
	(2)(a)Community land shall vest in and be held by communities identified on the basis of ethnicity,culture, or community of interest.	(2) (a)Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or community of interest.		
	(b)Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.	(b) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.		
	(3)Private land shall vest in and be held by individuals or other jural persons in terms of legislation specifying the nature and extent of rights in respect to private land.	(3)Private land shall vest in and be held by individuals or other jural persons in terms of legislation specifying the nature and extent of rights in respect to private land.		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(4) Within two years of the coming into force of this Constitution, Parliament shall: (a) Enact law for	(4) Within two years of the coming into force of this Constitution, Parliament shall: (a) Enact law for:		
	(i) the revision, consolidation, and rationalization of existing land laws;	(i) the revision, consolidation, and rationalization of existing land laws;		
	(ii) The revision of all sectoral land use law in accordance with the national land policy;	(ii) The revision of all sectoral land use law in accordance with the national land policy;		
	(iii) the manner in which any land may be converted from one category to another;	(iii) the manner in which any land may be converted from one category to another;		
	(iv) the protection of dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;	(iv) the protection of dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(v) the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;	(v) the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;		
	(vi) the establishment of an efficient and cost effective physical planning and land administration system including the management and expeditious settlement of land disputes;	(vi) the establishment of an efficient and cost effective physical planning and land administration system;		The current physical planning Act is not being reinforced.
		(vii) the establishment of land courts in the context of devolved authorities;		
	(vii)the resettlement of landless people including spontaneous settlement of communities in urban areas;	(viii) the settlement of the landless and squatters including the rehabilitation of spontaneous settlements in urban and rural areas until a solution is found;		The settlement of squatters was seen as a way of poverty reduction.
	viii)the establishment of a land fund to enable Kenyans gain access to land on an equitable basis; and	(ix) the establishment of a land fund to enable Kenyans gain access to land on an equitable basis;		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(ix)the ascertainment and adjudication of any land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it.	(x) the establishment of a land bank to facilitate availability and accessibility of land for research and development;		The need to provide land required in the future for development for both local and foreign investors.
		(xi) the ascertainment and adjudication of any land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it.;		
		<i>(xii) setting of the maximum and minimum sustainable land holding in arable areas bearing in mind the productive potential and location of the land;</i>		To redistribute “extra” unused land ;and stop un economical sub division of land.
		<i>(xiii) the protection, conservation and unfettered access to all public lands such as riparian, road reserves and beaches for leisure and enjoyment; and</i>		The local people have been denied access to beaches hence to open them up and protect them.

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
235 (4) (b)	Establish mechanisms for- (i)the review of all grants or dispositions of government or other public land to establish their propriety and legality and to determine whether or not such grants or dispositions should be revoked;	(b) <i>Enact laws for:</i> (i) the review of all grants or dispositions of government or other public land to establish their propriety and legality and to determine whether or not such grants or dispositions should be revoked;		To compel parliament to pass laws on these matters instead of relying on mechanisms.
	(ii)the review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, and Rift Valley provinces or elsewhere whether arising from historical or other causes in order to establish their validity and how best they can be justly, peacefully and equitably resolved; and	(ii)the review of boundaries and management of national parks and animal sanctuaries with a view to creating opportunities and benefits for the local people in the context of devolved government;		The local communities do not benefit from the revenue accruing from national parks located in their localities. The need to involve the devolved government in management of national parks.
		(iii) the review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, and Rift Valley provinces as known before the		The current boundaries of provinces may change with the new regions

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		commencement of this Constitution, or elsewhere whether arising from historical or other causes in order to establish their validity and how best they can be justly, peacefully and equitably resolved.		proposed.
	(c)Parliament shall determine the cut-off date with reference to which the review is required in paragraph (b) is to be conducted.	(c) Parliament, in consultation with devolved authorities, shall determine the cut-off date with reference to which the review required in paragraph (b)(iii) is to be conducted.		The need to involve the devolved government in the review of unjust expropriation of land.
236	Protection of property in land (1)Subject to this Constitution, property rights in land lawfully acquired shall be protected and may be freely alienated without discrimination on the basis of gender or any other cause.	Article 236 Protection of Rights in Land (1) Subject to this Constitution, rights in land and property lawfully acquired shall be protected and may be freely alienated without discrimination on the basis of gender or any other cause.		The previous title was mis-leading.

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	<p>(2)The State has the power to take possession of or acquire any right or interest in land where the following conditions are satisfied:</p> <p>(a)The acquisition and or taking is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit;</p>	<p>(2) The State has the power to take possession of or acquire any right or interest in land where the following conditions are satisfied:</p> <p>(a) The acquisition and or taking is necessary in the interest of defence, public safety, public order, public morality, public health, environmental conservation including conservation of indigenous species, town and country planning or the development or utilization of property so as to promote the public benefit;</p>		<p>People have neglected the indigenous seeds and plants that are being exploited by foreigners.</p>
	<p>(b)The necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and</p>	<p>(b)The acquisition should not result in hardship to any person(s) or community having an interest or right over the property;</p>		
	<p>(c)Provision is made by a law applicable to that acquisition or taking of possession, for the prompt payment of full compensation prior to</p>	<p>(c) Provision is made by a law applicable to that acquisition or taking of possession, for the prompt payment, prior to occupation of such land of;</p>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	occupation of such land.			
		<i>(i) full and fair compensation in the form of comparable land or equivalent monetary compensation and;</i>		Affected persons have to be put in almost the same position as they were before acquisition, therefore there was need to specify the level of compensation. Many people whose lands are acquired do not necessarily have title deeds and the government does not recognize them.
		<i>(ii) a disturbance allowance equivalent to 80% of the market value of the land, provided that bonafide occupants of the land acquired will also be entitled to compensation even if they do not have title deeds.</i>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(3)The state has the power to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property so as to provide the mutual benefit as long as such regulation does not amount to an acquisition of or taking of possession in terms of clause (2)	(3) The State has the power to: (a) Regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property so as to provide the mutual benefit as long as such regulation does not amount to acquisition of or taking of possession in terms of Clause (2);		
		<i>(b) Regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten (10) years in consultation with devolved governments;</i>		To control unplanned land uses in urban areas.
		<i>(c)Provide for surplus land or land no longer needed for public purposes after acquisition, to be offered to the original owner on first refusal basis.</i>		To give original owners the chance to regain their land if they so wish.

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		(4) Any person who owns private land has a right to hold a title document for his/her land and to have an appropriate entry in a land registry.		To ensure proper records of title to land.
		<p>A. Article 237 B. Protection of Rights in Property</p> <p><i>(1)The state shall encourage and provide conducive, social, economic, political and legal atmosphere for the creation, development (investment) and management of property.</i></p>		The previous chapter did not cover any aspect of property other than land
		<p><i>(2)Property development and management shall take into consideration the requirements of sustainable physical planning and land use, including safeguarding the environment.</i></p> <p>C.</p>		
		<i>(3)All public properties shall be held, managed and disposed of according to legislation specifying the nature and terms of that holding, management and</i>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		<i>disposal.</i>		
		<i>(4) The state shall regulate the use of any right and interest in property in the public interest in so far as such regulations shall not violate the principles set out in this Constitution.</i>		
		<i>(5)The State shall ensure the following: (i) The establishment of a housing development fund to enable Kenyans gain access to more and better housing;</i>		
		<i>(ii) The development and review of a national housing policy with a view to increasing, regulating and maintaining the national housing stock;</i>		
		<i>(iii) The promotion of construction and ownership of both public and private housing in so far as such housing shall adhere to the principles and standards of sustainable land utilization, physical planning and environmental</i>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		<i>safeguards as outlined in this Constitution.</i>		
		<i>(6) The state shall establish a property and housing research organization.</i>		
		<i>(7)Parliament shall enact laws to : (a)Compel the State and relevant organizations including devolved authorities to encourage the use of acceptable, affordable and reasonable technologies, building materials, innovations and methods in the property sector provided that such are not harmful and injurious to persons and the environment;</i>		
		<i>(b)Ensure that major investments in property by foreigners shall be geared to benefiting local communities and the Kenyan economy.</i>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
237(1)	Establishment of National Land Commission	Article 237 A The National Land Commission		
	(1)There is established a National Land Commission consisting of a chairperson, a deputy chairperson and eight other members nominated and appointed in accordance with the provisions of Chapter Seventeen of this Constitution.	(1) There is established a National Land Commission consisting of a chairperson, a deputy chairperson and eight other members nominated and appointed in accordance with the provisions of Chapter Seventeen of this Constitution.		
		<i>(2)The National Land Commission shall be devolved to the lowest level of Government.</i>		The district land commission has not been effective; the need to involve the local people in formulation of laws in land matters.
	(2)The functions of the National Land Commission are to:	(3)The functions of the National Land Commission, in addition to the functions provided in Chapter Seventeen, are to:		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(a) Hold title to public land in trust for use by the people of Kenya;	(a) hold title to public land in trust for use by the people of Kenya;		
	(b)Administer public land on behalf of the government and local authorities;	monitor and have oversight responsibilities on the administration and management of public land;		To give the commission overall powers in the administration and management of public land.
	(c) define and keep constantly under review the national land policy;	(c) define and keep constantly under review the national land policy;		
	(d) Consolidate and from time to time review all laws relating to land;	(d) Consolidate and from time to time review all laws relating to land;		
	(e)Exercise residual land administration function on behalf of local authorities; and	<i>(e) conduct research and make recommendations to improve the functions of Government Ministries and agencies in charge of land;</i>		To get beneficial research on land.
	(f) Perform such other functions as may be entrusted to it by law.	institute investigations on its own, or upon a complaint from other person(s) or institutions on land injustices both		To give power to the commission to prosecute and

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		present and historical and ensure appropriate redress;		recommend on land injustices.
		<i>(g) facilitate the participation of communities in the enactment of relevant land laws and adherence to customary law in land matters as long as such laws are not inconsistent with this Constitution;</i>		To ensure participation of communities in formulation of land laws, and make their customary law to conform to the constitution
		<i>(h) monitor and have oversight responsibilities over land use planning throughout the country;</i>		There should be a land use policy.
		(i) perform such other functions as may be entrusted to it by law;		
		(j) facilitate the execution of a comprehensive programme for registration of title of land throughout Kenya.		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
Article 238	(3) Parliament shall enact a law to define the organization and powers of the Commission.	(4) Parliament shall enact a law to define the organization and powers of the Commission.		
		<p>Article 232 Definitions</p> <p>(1) In this chapter, “Land” means the soil, bio-diversity on it, sub-soil, rocks on or beneath it, lake or marine waters in the territorial sea and exclusive economic zone as defined in the First Schedule of this Constitution, and airspace immediately above it.</p>		
		<p>(2) “Property” means land as defined in Article 232(1), permanent fixtures thereon and such rights, interest and restrictions therein, personal properties comprising but not limited to movable chattels, financial instruments, livestock, fisheries, crops, plant and machinery and registered intellectual inventions, innovations and rights.</p>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
239	<p>Environmental Protection</p> <p>(1) Every person in Kenya has a duty to safeguard and enhance the environment.</p>			
	<p>(2)All State officials exercising a power or performing a function involving the administration, protection or exploitation of land or natural resources, shall have regard to the following principles of sustainable development -</p>			
	<p>(a)Public participation shall be encouraged and facilitated in the development and execution of policies, plans and processes for the management of the environment.</p>			
	<p>(b)The cultural and social principles for the management of the environment or natural resources traditionally applied by any community within Kenya shall</p>			

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	be applied, in so far as - (i)they are relevant; and			
	(ii)not repugnant to justice and morality, or inconsistent with other constitutional principles.			
	(3)All State officials exercising power or performing a function involving the administration, protection or exploitation of land or resources shall be guided by the need to –			
	(a) protect the wildlife, genetic resources and biological diversity of Kenya;			
	(b) protect forests and encourage and carry out re-afforestation;			
	(c) practise, encourage and, where practicable, require waste, minimization and recycling;			

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(d) practice, encourage and where practicable require water conservation, and specifically to protect water catchment areas, water bodies and groundwater conservation areas;			
	(e) practise, encourage and, where practicable require the use and development of energy efficient technology and the use of renewable energy sources;			
	(f)protect the environment, giving priority to prevention of environmental damage and degradation, but also providing for restoration in case of existing or unavoidable damage, and for compensation;			
	(g)establish and ensure the effective functioning of a system of environmental impact assessment that –			

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
	(i) applies to any project or combination of projects, including government projects, likely to have a significant impact on the environment or natural resources;			
	(ii) is open and gives adequate opportunity for public comment; and			
	(iii) is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project;			
	(h) to establish systems of environmental audit and monitoring; and			
	(i)to ensure that environmental standards enforced in Kenya reflect the best of developing standards internationally.			

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
240	<p>National Environment Management Commission (1) There is established the National Environment Management Commission.</p>	<p>Article 239A <i>Principles.</i> <i>(1) The State shall:</i> <i>(a) respect the integrity of natural process and ecological communities, and the intrinsic value of all forms of life including conservation of habitats and species;</i></p>		<p>Compelling the state to conserve natural processes and give prominence too survival of all forms of life.</p>
		<p>(b) in consultation with devolved authorities shall manage the environment based on principles of good governance to ensure conservation and sustainable utilization of the environment and its natural resources;</p>		
		<p>(c) ensure that social and cultural values traditionally applied by communities in Kenya for the sustainable management of the environment and natural resources are observed in so far as they are not repugnant to justice and morality and are not in conflict with this Constitution;</p>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		(d) ensure that environment considerations and all aspects of natural resources management, such as protection, conservation and sustainable use shall be incorporated in the ownership and title of land;		
		<i>(2) All natural resources shall be vested in the Republic of Kenya and shall sustainably be developed for the benefit of Kenya as a whole and for the benefit of inhabitants of the region where these resources occur;</i>		Ownership of natural resources officially vested in the state. Inhabitants of areas with these resources should benefit as a priority to curb exploitation of resources by people outside the area and from outside Kenya.
		<i>(3) All natural resources under local authorities and communities shall be owned and managed by them for the benefit of the communities and future generations;</i>		Give devolved authorities power and trust over resources on behalf of the community.

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		<i>(4) Planning and utilization of the environment shall take into account the needs of marginalized areas and disadvantaged minority persons including people with disabilities.</i>		
	(2)The Commission shall- (a) exercise general supervision and coordination over all matters relating to the environment and shall be the principal instrument of the Government in the implementation of all policies relating to the environment;	Article 239B Obligations The state shall: (1) Develop and enact legislation for the protection and promotion of sustainable development and utilization of natural resources;		To emphasize protection and sustainable use of resources.
	(b) promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable basis;	<i>(2)Domesticate international and bilateral agreements and treaties relating to the protection of the environment;</i>		Concern that such agreements may not be made known to Kenyans. These treaties must be seen to benefit Kenyans.

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	(c) examine land use patterns to determine their impact on the quality and quantity of natural resources; and	(3) review current international and bilateral treaties and agreements to ensure the sovereignty, integrity and welfare of Kenyans;		
	(d) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of the environment.	(4) Review contracts entered into with multinational organizations for the utilization of natural resources, to ensure the sovereignty, integrity and welfare of Kenyans and that benefits accrue to the local communities;		
		(5) Put in place an urban environmental policy to regulate human settlement;		
		(6) Ensure that every landowner maintains a tree cover of at least 10% equivalent to 50 trees per hectare of land held with appropriate trees to ensure land reclamation, rehabilitation and sustainable utilization of natural resources;		

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		(7) Allocate adequate resources to reclaim and rehabilitate degraded areas and those prone to disasters to make them habitable and productive.		
	<p style="text-align: center;">Enforcement of Environmental Rights.</p> <p>(1) If a person alleges that the right to a clean and healthy environment recognized and protected under this chapter has been, is being or is likely to be contravened in relation to that person, then, in addition to any other legal remedies which are available in respect to the same matter, that person may apply to the High Court for redress.</p>	<p>Article 239C Environmental Rights and Duties</p> <p>(1) Every person has a right to:</p> <p>(a) a clean and healthy environment;</p>		Give every body the right to enjoy and safeguard the environment.
	<p>(2) On an application by a person under clause (1), the High Court may make such orders, or give such directions as it may consider appropriate, to –</p> <p>(a) Prevent, stop or discontinue any act or omission which is harmful to the environment;</p> <p>(b) Compel any public officer to take measures to prevent or discontinue any</p>	<p>(b) participate in the conservation and protection of the environment;</p>		

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	act or omission which is harmful to the environment; and			
	(c) Provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.			
	(3) A person bringing an action under this Article has the capacity to bring the action in court even if the person cannot show that the defendant's act or omission has caused or is likely to cause that person any personal loss or injury.	<p><i>(d) access and enjoyment of the environment;</i></p> <p><i>(e) free access to information on the environment.</i></p>		
		<p><i>(1) Every person has a duty to:</i></p> <p><i>(a) respect, protect and safeguard the environment for the benefit of present and future generations of human and other species;</i></p> <p><i>(b) promote environmentally sustainable development.</i></p>		

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242	<p>Environmental legislation</p> <p>Parliament shall enact legislation to give effect to the provisions of this chapter.</p>	<p>Article 239 D Environmental protection</p> <p>(1)The State at all levels of Government exercising power or performing a function involving the management and sustainable development of the environment shall be guided by the need to:</p> <p>(a)Ensure the participation and involvement of the public;</p>		<p>No management of the environment should be done without involving the public, some noble policies may simply fail.</p>
		<p><i>(b)Protect genetic resources and biological diversity including wildlife and intellectual property related to them;</i></p>		<p>These had been neglected in the past, allowing foreigners to exploit Kenyan innovations and indigenous knowledge.</p>
		<p><i>(c)Protect and enhance the intellectual property and indigenous knowledge of communities;</i></p>		

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		<i>(d)Practice, encourage and require waste minimization and recycling;</i>		Wastes need to be controlled because they pollute our environment especially rivers, lakes and all ASALS.
		<p>(e)Establish and ensure the effective functioning of a system of environmental impact assessment that:</p> <p>(i) applies to any project or combination of projects, including government projects;</p> <p>(ii)is open and gives adequate opportunity for active public participation;</p>		To cover all projects, because every project is likely to affect the immediate environment
		(iii) is scrutinized by a body which is independent of the project proponent and the views of which shall be taken into consideration when deciding whether to grant approval for the project and ensure adequate remedies;		Compel proponents of offending projects to offer remedies for their action.

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		<p>(f) Establish systems of environmental audit and monitoring; and</p> <p>(g) Ensure that environmental standards enforced in Kenya are the accepted internally developing standards.</p>		
242(2)		<p><i>(2) Parliament shall enact legislation to:</i></p> <p><i>(a) protect the intellectual property rights and indigenous knowledge of local communities in bio diversity and genetic resources ensuring prior informed consent of the communities and benefits sharing arrangements through devolved governments.</i></p>		<p>Previously, Kenyans unknowingly lost the innovations to foreigners, at times their innovations were taken without their consent.</p>
		<p><i>(b) ensure equitable sharing of the benefits accruing from public or private utilization of natural resources between the local communities, devolved authorities and the central government.</i></p>		<p>Concern that benefits accruing from private and public utilization of resources rarely reach the local communities hence the need to share out these between all levels.</p>

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		<p>Article 240 Enforcement of Environmental Rights (1) There is established a special court for the environment.</p>		<p>People feel that such a court will speed up environmental cases/ to free general courts of such specific issues.</p>
243		<p>(2) Every person whose environmental rights are being or are likely to be contravened has the right to seek redress to:</p> <p><i>(a) Prevent, stop or discontinue any act or omission, which is harmful to the environment;</i></p>		<p>Gives rights to persons to seek redress.</p>
		<p>(b) Compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment.</p>		

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC	AS FORMULATED BY MINORITY (IF ANY)	EXPLANATORY NOTES
		(c)Demand compensation for any victim of such violations of environmental rights and other losses.		
		(3)Every person bringing an action under this Article has a right to seek redress even if the person cannot show that the act, omission or infringement has caused or is likely to cause that person any personal loss or injury.		
244		Article 241 Natural Resources. <i>The state shall ensure that important natural resources and products including but not limited to agriculture, fisheries, livestock, wildlife, energy, minerals, mineral oils, fossils, water and tourism are:</i>		These are very important national resources yet they have not been catered for directly in the current constitution.
		<i>(i)Protected, managed, promoted and sustainably developed;</i> <i>(ii)Subjected to strategic research to ensure enhanced benefits to</i>		

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		<p><i>Kenyans;</i></p> <p><i>(iii) Protected against unfair external trade practices in their production, distribution and marketing;</i></p>		
		<p><i>(iv) Regulated in terms of their exportation and importation;</i></p> <p><i>(v) Regulated in terms of their origin, quality, methods of production, harvesting and processing;</i></p> <p><i>(vi) Protected against processes and activities that are likely to endanger them or curtail their existence altogether;</i></p> <p><i>(vii) Utilized in the interest and benefit of Kenyans.</i></p>		
245(1) (a)		<p>Article 242A The National Environment Commission</p>		

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		<p>(1)(a) There is established the National Environment Commission consisting of a Chairperson, Deputy Chairperson, and eight (8) other members nominated and appointed in accordance with the provisions of Chapter 17 of this Constitution.</p> <p>(b)The National Environment Commission shall be devolved to the lowest level of Government.</p>		<p>A commission at the national level is considered far removed from the people. This article is to bring the commission closer to the people and areas that have the resources.</p>
245		<p>(2) The National Environment Commission shall:</p> <p>(a)Ensure the protection, conservation and management of the environment;</p>		

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		<p><i>(b) Monitor and have oversight responsibilities on the administration of the environment and land use planning;</i></p> <p><i>(c) Audit and produce for the public reports on the state of the environment every two years;</i></p>		<p>A commission needs to oversee environmental matters and land use planning.</p> <p>Public need regular information on the state of the environment.</p>
		<p><i>(d) Promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring proper management and rational utilization of the environment and its natural resources;</i></p>		<p>All development phases need to take account of the environment.</p>
		<p><i>(e) Formulate, monitor and evaluate the implementation of the National Environment Policy;</i></p>		<p>Kenya lacks such a policy and there is need to monitor its implementation.</p>

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		<i>(f)Examine new and emerging technologies and inventions to determine their impact on the environment and put in place the institutional framework for operationalization of such functions;</i>		Kenya should not just accept any new emerging technology, it must be examined first.
		<i>(g)Conduct research in consultation with other stakeholders and make recommendations to improve the functions of Government Ministries and Agencies in charge of the environment and natural resources;</i> <i>(h)Initiate investigations on its own, or upon complaint from other person(s) or institution(s) and ensure appropriate redress;</i>		Research is essential, has been left to academic institutions. Courts alone are not adequate to handle environmental cases the commission will supplement the work of courts.
		<i>(i)Examine resource use patterns and practices to determine their impact on the quality of the environment and to take remedial measures;</i> <i>(j)Promote environmental education and ensure access to information and public</i>		

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		participation;		Many members of the public often do not have information on the environment, hence cannot participate with full knowledge.
		<i>(k) Promote peaceful and harmonious co-existence among communities through just, equitable and rational sharing and utilization of the environment and its natural resources, taking into account the rights of the local communities;</i>		Communities should not fight over resources because of inequitable sharing of resources, especially where local people are not able to benefit from their own resources.
		<i>(l) Recommend to Parliament effective and efficient policies and programmes to protect sustainable management and utilization of the environment and its natural resources;</i>		The commission shall be the expert and watch dog over the environment and its better placed to advise parliament on environmental policies and

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				programmes.
		<i>(m)Perform any other functions as provided for by law or are incidental and conducive to the exercise of its duties as provided for in this Constitution.</i>		
		(3)The commission, with approval of parliament shall promote and facilitate public participation, discussion and in put before international conventions, treaties and agreements that have consequences on the environment are ratified.		The public needs to be involved and informed of any matters that are going to affect their environment; even of treaties and international agreements.
246		Article 242 B Environmental legislation. (1) Upon the coming into force of this constitution, parliament shall enact legislation to give effect to the		

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		provisions of this chapter, and in particular to: (i) Conserve forests, wildlife parks, reserves and sanctuaries, beaches and water catchment areas, and promote ecotourism;		
		(ii) stop further excision of conservation areas unless such excision is consistent with principles that enhance sustainable management and provide benefits to the community;		
		(iii) ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation;		
		(iv) enforce the principle that the polluter takes responsibility for all consequences arising there from and pays for damages and rehabilitation;		
		(v) ensure that the disposal and storage of environmentally undesirable substances including hazardous wastes and munitions take into account the		

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		requirements for a clean, safe and healthy environment;		
		(vi) ensure that emission of harmful radiation and noise into the environment shall be regulated to meet the requirements for safe and healthy environment;		
		(vii) minimize human-wildlife conflicts;		
		(viii) Provide exemplary compensation for loss of human life, injury to persons, loss and destruction of private property.		
		<p>Article 239 Definition</p> <p>(1) <i>Environment is the totality of nature and includes physical and biological components and factors, which exist, operate and interact within it; shapes our cultural diversity and supports all forms of life.</i></p>		

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		<p><i>(2)“Natural resources” means the biological and physical non- human factors and components of the natural environment, which include, but are not limited to, both renewable and non renewable natural land, river, lake and marine resources, comprising, but not limited to, land, soils, air sunlight, surface and ground waters, forests, bio-diversity, genetic resources, rocks, minerals, fossil fuels and other energy resources.</i></p>		