

**NATIONAL CONSTITUTIONAL CONFERENCE  
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “A” ON THE  
PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC  
AND NATIONAL VALUES, GOALS AND PRINCIPLES**

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

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# **FINAL REPORT OF THE TECHNICAL WORKING GROUP ON THE PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES**

## **1. INTRODUCTION**

The Drafts' Chapters on the preamble, sovereignty of the people, supremacy of the Constitution, the republic and national values, goals and principles define the constitutive character of the Constitution. They lay the foundation of the Republic and its citizenry and the underlying principle of governance the same being that power emanates from the people to be exercised as defined in the Constitution.

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

### **2.1 Committee's Method of Work**

Technical Working Group "A" has thirty-six members and held thirty meetings during which it substantively debated the Draft Bill's preamble and Articles 1-15 as mandated. Consequently, it has made recommendations to each of these provisions.

The working group in its proceedings was guided by the Regulations to the Conference and the guidelines for the NCC adhoc and technical working groups. In particular, the Committee examined the issues raised during the general debate touching on the subject matter and proposed amendments or changes to the Draft on matters of its specific mandate.

In the meetings, all debate and questions were addressed by the Convenor. The Rapporteur to the Committee would explain to the members the rationale behind the provisions in the Draft and did in a number of cases make reference to the main report and the annotated texts of the Constitution of Kenya Review Commission. The annotated text was only however made reference to as a working document and where there was feeling that an aspect of the annotated text needed to be incorporated, members had to move motions as though they were independent motions. The Draft Person assigned to the Committee, was present to take amendment instructions and advise the Committee. The Committee also did get to call an expert, Prof Walter Oyugi, to advise on the theory of Government following a motion tabled to amend Article 1 to provide that Kenya shall be a parliamentary democracy.

The Committee began its work by discussing the NCC Regulations of the Technical Working Committees during which members were able to deliberate on the method of work and understand the procedure of the working committees. The Convenor indicated that the Committee would not be too rigid in its deliberations. Upon considering the provisions members were able to reconsider them again against the Draft prepared by the drafts person.

### **3. THE COMMITTEE DEBATE**

#### **3.1 General Issues Raised About the Committee's Work**

Whereas members observed that it was preferable to have motions for amendments presented by way of writing, the working group resolved that members would also be allowed to move amendment motions on the floor. There was no limitation on the time that members could air their views. Members confirmed all the minutes as a true reflection of the proceedings. A list of the committee's Draft, formal motions, minutes and list of members is annexed hereto.

#### **3.2 Issues Relating to the Report**

There were no specific issues raised in relation to the report.

#### **3.3 Issues Relating to specific Articles, Sub-Articles and Clauses of the Draft Bill**

The following issues rose as relates to the Draft Bill;

##### ***3.3.1 Preamble***

###### ***Paragraph 1***

The following issues rose appertaining to this Paragraph

- Expansion of the paragraph to cover all the ethnic groups of Kenya
- Recognising the sovereignty of the people
- Recognition of other communities of life

A motion was raised to the effect that the paragraph should be expanded by having a schedule to it that lists all the ethnic groups of Kenya. On the understanding that listing the ethnic groups would open up avenue for debate for example where a certain group or sub-group felt left out, members resolved not to include the schedule.

The suggestion to insert the word, "sovereign" to this paragraph was discussed and owing to the fact that the aspect of sovereignty was covered in the second paragraph members resolved that there was no reason to capture it in this paragraph.

It was resolved that provision for other communities and other forms of life would be left to be covered in the chapter on the environment.

###### ***New paragraph 2***

A motion was advanced to insert a new paragraph 2 to the preamble that recognizes God. Upon the rationale that Kenya is a God-fearing nation members resolved that there be a paragraph that recognizes God. The suggested formulation was;

*"RECOGNISING the supremacy of the Almighty God of all creation."*

### ***New paragraph 3***

Members accepted the idea that we ought not forget our history and our heroes and resolved that there be a paragraph reflecting the struggle for independence and the heroes.

### ***Old paragraph 2***

A number of issues arose from this paragraph;

- The inclusion of other diversities such as the civilization diversity.
- The reference to “indivisible sovereign nation;”

It was argued that the civilization diversity is one that is above ethnic, cultural and religious diversities and should be recognized. It was also argued that Kenya was not strictly speaking a sovereign nation as it exists in a global society and has been subject to outside forces such as the World Bank, the EAC and the UN among others. Members however resolved that the paragraph be left intact without any amendments.

### ***Old paragraph 3***

The only issue arising from this paragraph was;

- Definition of family

The argument was advanced that “family” must be understood as that of a marriage between a man and woman (women). Upon debate members resolved that the preamble was not the place to put definitions.

### ***Old paragraph 4***

The following issues were discussed relating to this paragraph;

- Deleting the reference to ‘women and men.’
- Replacing “women and men” with “people.”
- Retaining reference to “women and men” and expanding the article to include other sections of the society.
- Capturing historical injustices suffered by all sectors of the society.
- Replacing “our women and men” with “all Kenyans.”

Members had a strong feeling that in the past the word ‘people’ has been used to connote ‘men’ hence leaving out women. Those who called for the deletion of reference to ‘women and men’ asked that a general all-inclusive word such as ‘our’ be used instead. It was resolved that each sector ought to be included in the preamble as these are the sections of humanity that the constitution should apply to. A drafted formulation replacing “our women and men” with “all Kenyans” was adopted.

### ***New paragraph 5***

There was great concern that the environment was under great risk and ought to be protected. Members resolved to have a paragraph recognising and protecting the environment.

### ***Old paragraph 5***

There were no issues arising from this paragraph. Nevertheless a drafted formulation inserting “making of this” before the word “Constitution” and deleting “making process” appearing at the end of the paragraph was approved and adopted.

#### ***Old paragraph 6***

The issue of the appropriateness of the paragraph was raised owing to that fact that the paragraph was more of a declaration that Kenyans were “adopting” the constitution.

As a consequence to the change in the old paragraph 5, this paragraph was rephrased to allow good flow, by deleting “do” and placing the words “this Constitution” appearing at the end of the paragraph between the words “give” and “to.”

#### ***Old paragraph 7***

A motion was forwarded to amend the paragraph to, “GOD BLESS OUR COUNTRY KENYA” on the basis that this was more specific and qualified what Kenya was. It was also seen as bringing Kenya closer to the people in that it gave a sense of belonging.

This was negated as having the word “our” would lead to some people feeling left out thus the clause was retained as in the draft bill.

### **3.3.2 *Article 1***

#### ***Article 1(1)***

As appertains this clause, there was the concern that it should be made obligatory by substituting “may” with “shall.” Members were made to understand that the clause provides for the exercise of power, an aspect that cannot be made compulsory since power is discretionary. It was understood that the emphasis of this clause is in the phrase “in accordance with the Constitution” and so the motion to move the word “only” to fall after the word “may” was defeated.

#### ***Article 1(2)***

No issues arose relating to this clause.

#### ***New clause 1(3) and 1(4)***

- Theory of government and system of government.  
The Technical Working Group felt that as their mandate extended to articles that covered the constitutive process, these articles ought to provide for the theory of government. Upon discussing the various systems of government, members resolved that there be inserted new clauses reflecting that Kenya shall be a parliamentary democracy and that the people of Kenya shall govern through their parliament.

#### ***Old clause 1(3) and 1(4)***

That Articles 1(3) and 1(4) of the Draft be renumbered and reworked in a manner that is consistent with additional clauses and reformulated to recognise the role of devolved levels of government, but in a manner that notes that judicial authority is not to be devolved.

### **3.3.3 Article 2**

#### **Article 2 (1)**

It was sought to amend clause 2(1) to provide that “Kenya is founded on the Supremacy of God, and the rule of law and shall be governed in accordance with the Constitution and the rule of law.”

Upon discussion, it was resolved that inclusion of God in this Article would be repetition as this was already covered in the preamble.

The issue of inconsistency between clause 2(1) and clause 2(2) raised in the general debate of the Conference was raised and discussed. Members resolved to have clause (2)(1) and (2) be combined and the subsequent clauses renumbered. Reference to the rule of law was deleted as this is adequately covered under article 6(2), which deals with the foundation of the republic.

#### **Old Clause 2(3)**

There was concern that the wording of clause 2(3) jeopardizes one’s right to challenge the constitution. It was resolved that the Article be restructured to cater for the individual’s right to challenge the constitution in legitimate circumstances. The clause is also reworded on the basis that upon enactment the procedure cannot be challenged, as the constitution shall be in force.

#### **Old Clause 2(4)**

- Expansion of the clause by inserting the word “null.”

#### **Old Clause 2(5)**

- Simplifying the wording of Article 2(5).  
It was indicated for example that the word “creative” was ambiguous and needed to be qualified or deleted altogether.

#### **Old Clause 2(6)**

- Enumerating materials and matters that the courts should refer to.
- Simplifying of the Article.

### **3.3.4 Article 3**

Issues arising relating to this Article were-

- Complexity in wording. Members in particular noted that words such as “enactment” and “action” were fairly complex and should be replaced with words like “laws” and “regulations.”
- Giving groups the locus to approach courts. There was expressed concern that the use of the phrase “a person” was limiting and could be use against organized groups of people desirous to seek the courts intervention in enforcement of the constitutions. Members expressed concern that the use of the phrase “person” was limiting and could bar groups of people or organizations that wish to approach the courts.

### 3.3.5 *Article 4*

#### Clause 4(1)

- Concern was raised that the defence of the Constitution was being left to two institutions, i.e. the Government and Parliament. It was resolved that this should be expanded to provide that all individuals have the obligation to defend the Constitution.
- That the custodian of the Constitution should rest with the people.
- Tying of the defence of the constitution with the amendment provisions and that the percentages required on parliament be increased from the present 65% and that there be allowed for amendment by way of referendum.

#### Clause 4(2)

- The clause to be deleted, as it is incorrect since each time the government or its representatives enters into agreements with other nations, it yields some of its sovereignty. Retaining the clause would mean that such acts are unconstitutional

### 3.3.6 *Article 5*

As appertains this Article, questions were raised as to whether it was intended to provide for the sources of law of Kenya or whether it merely sought to describe the body of Kenyan law.

The following issues arose relating to this Article

- Deletion of Article 5 entirely.
- Title of article to be amended to reflect that the article narrows down to providing for the sources of law.
- It was argued that the Article be deleted entirely on the basis that it should be left to the Judicature Act to provide for the laws of Kenya.
- Enumeration of sources of law.
- Contradiction of Article with Article 10  
It was also observed that Hindu and Islamic laws were religious laws and this contradicted Article 10 and undermined the feeling of equality.
- Deleting clause 5(1)(c and d) and replacing it with “*Personal Laws of the peoples of Kenya.*”

It was argued the “personal laws of the peoples of Kenya” would cater for all persons. It was indicated that as a consequence clause (c) would have to be deleted as well as it provided for a personal law.

- Insertion of a new clause to reflect any law that is part of the laws of Kenyan at the effective date of enactment of the constitution.

### 3.3.7 *Article 6*

- The concept of devolved government to be incorporated as it lays the foundation of the republic.

### 3.3.8 *Article 7*

The following issues arose on this Article:



- Deletion of Article 7(1). The arguments advanced were that the Kenyan-Ugandan border has not been agreed on entirely by the two nations and if Article 7(1) is retained the Ugandan government may legitimize the existing boundaries and Kenya will lose out. The schedule should consequently be deleted.
- Amending Article 7(1) in terms of the annotated text. After members were directed to the annotated text, which provides, “*The territory of the Republic of Kenya shall be determined under international law and international agreements,*” they resolved to amend the Draft accordingly. The rationale was that the Kenya Uganda boundary was to be resolved first so as to define Kenya’s territory adequately.
- On Article 7(2), on the information that the devolution working group may recommend that the Republic of Kenya be divided into regions or units that are not necessarily districts and provinces, members resolved that the words “districts and provinces” deleted and replaced with a word that is in harmony with the recommendation of the devolution committee.

There were no issues on clause 7(3).

- Deletion of Article 7 (4). The rationale being that the patriotic notion of Kenyans was being taken away. Members resolved to delete the clause.
- That the Article should provide for self-determination. The argument was advanced that Kenyans should have the right to secede and decide to be Kenyans. Members overwhelmingly resolved that Kenya should remain one indivisible nation and that the aspect of secession was not the ambit of this Article.

### **3.3.9 Article 8**

Issues arising relating to Article 8 were-

- Providing for Nairobi as the commercial capital of Kenya and Kisumu as the administrative capital.
- It was argued that in the spirit of devolution there should be decentralization of administration from Nairobi. Members however negated this proposal.
- Making the language of clause 8 mandatory.
- Harmonising Article 8(3) to reflect the recommendation under Article 7 by deleting “provinces.”
- Substituting the word “government” with “governance”.
- Clause 8(2) deleted as it is addressed in article 214.

### **3.3.10 Article 9**

The following issues arose on this Article-

- The order of clause (1) and (2) reversed to recognise the national language first.
- Recognition of other indigenous languages as national languages so that the Article read-

*“The national languages of Kenya are Kiswahili and all other indigenous languages spoken by the Kenyan.”*

Members discussed this issue and resolved that the place on other national languages was the ambit of clause 3.

- Deleting the word “Kiswahili” from clause 3.  
Members resolved that Kiswahili was emphasized under clause 2 and so there was no reason to have it under clause 3.
- Deleting the words “and Braille” from clause 3.
- Insertion of a new clause providing that the state shall promote the development of Braille language and allow for new developments in the area of communication aids.

### **3.3.11 Article 10**

The following issue arose on this Article:-

- Deleting Article 10 (1).  
It was argued that this clause should be deleted as it imposes Christianity on Kenyans, which is the only religion that dictates that state and religion shall be separate. The motion to delete the clause was negated with the mover of the motion recording a strong minority opinion.
- No issues arose on the other clauses and the Article was adopted without amendments.

### **3.3.12 Article 11**

Issues arising on this Article were:

- 11(a): - Providing for the description of the National Flag i.e. its colours and what they stand for. Members overwhelmingly felt that such a description should be left for subsidiary legislation, that a description would cause disharmony among the peoples of Kenya as some may feel left out if for example black was taken to mean the colour of the peoples of Kenya.
- 11(c): - Deleting the word “HARAMBEE” from the coat of arms.  
It was argued that the word HARAMBEE is a religious slogan and should not be used on the coat of arms. Members however resolved that it was not in their mandate to prescribe the coat of arms or even the national anthem or the flag for the country but to merely have them recognized under the Constitution. The motion was withdrawn.
- 11(d): - that the words “of the Republic” be inserted after the word “seal.”
  - that the words “of Kenya” on this clause be deleted
  - that the words “of the Sovereign Republic” be inserted after the word “seal.”

Upon deliberations members resolved that the clause be amended by simply deleting the words “of Kenya” as they were repetitive as it was captured in the opening clause.

- The second schedule ought to be more descriptive by having the drawings of the flag, coat of arms and seal, and the lyrics of the national anthem.

### **3.3.13 Article 12**

There were no issues arising from this Article and it was adopted without amendments.

### **3.3.14 Article 13**

Issues arising on this Article were:-

- 13(b): - that the clause be deleted, as the day was the first step towards the collapse of this country. This motion was defeated.
- 13(c): --Recognition of heroes by having a Heroes Day.  
- Deletion of Katiba Day
- Upon, members resolved to delete the reference to Katiba Day and to substitute it with a Heroes Day to be marked on the 20<sup>th</sup> of October. There had been a suggestion that the Day be marked on the 7<sup>th</sup> of July, which was negated.
- For consistency members resolved to name the day in Kiswahili.
- The national days should be re-organised to allow sequential flow as per the calendar.

### **3.3.15 Article 14**

Issues arising on this Article were: -

- 14(1): - Substituting the word “Parliament” with “Legislature” and “local authorities” substituted with “devolved levels of government” to cater for the devolved structure. This was agreed on.
- 14(2): - Inserting the words “and patriotism” at the end of the clause. This was agreed on.
- 14(3): - insertion of the word “positive” before the word “cultures.”  
- insertion of the words “and protect” after the word “promote.” This was agreed on.
- 14(7): - provision for timely and affordable institutions of justice.
- 14(8): - substituting the word “bribery” with “corruption” on the basis that bribery was a form of corruption. Upon debate it was resolved that corruption be provided for at the end of the clause without deleting the word “bribery.”
- Enlarging the clause to cater for political movements and associations.
- 14(9): - substituting the word “promote” with “recognize.”  
-deletion of the word “facilitate” as it was too broad and could place a very high responsibility on the government vis-a-vis the civil society.
- 14(11):- that the word “disabled” be substituted with “persons with disability” and emphasise on the minority groups and that the drafting capture the essence of the obligation of the state to allow for the inclusion and participation of the citizen individually and collectively.
- 14(12):-limitation of the duration for affirmative action to ten years.  
-insertion of the words, “at least” before “one-third.”
- 14(13):- Recognition of the family and marriage institutions.  
- provision for spirituality.
- 14(14):-reflecting that the government will only facilitate for the provision of the basic needs to citizens and not be obligated to do so.
- Clause to be harmonised with corresponding provisions of the Bill of Rights.
- 14(17)- Deletion of the phrase “equitable development and the promotion of human rights and fundamental freedoms” as it was not tied to the spirit of the clause.

- 14(18):- clause to be harmonized with the provisions on the chapter on executive.
- Addition of a new clause binding members of Parliament to enforce the national goals, values and principles.

### **3.3.16 Article 15**

The following arose on this Article:-

- Deletion of the entire Article on the basis that it had no place in the draft. This was negatived.
- 15(1)(a):- introduction of constitutional education to make citizens aware of their rights.
- Substitution of the words “acquaint” and “propagate” with simpler terms such as understand and promote.
  - Expanding the Article to reflect that the citizen has the right to promote good governance.
  - Insertion of a new clause to provide for the citizen’s duty to pay taxes.
  - Clause (i) to be expanded to recognise the duty of the citizen to promote good governance in recognition that the people have residual sovereignty in governance.

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

### **4.1 General Comments on the Report**

In the process of discussing the particular Articles of the Draft Bill, reference was made to the Main Report of the Commission by the Rapporteur who explained to the members the thinking that went into the drafting of each Article. Views of Kenyans as reflected in the Report were taken into account when amending the Articles.

It was recommended that there be harmonization between the decisions of the Committee and those of the Committee on Executive and Devolution as well as the Committee on Culture that are cross-cutting.

### **4.2 General Recommendations on the Draft Bill**

Articles of the Draft Bill were amended by inserting new words or phrases, inserting completely new clauses and deleting words, phrases or clauses.

### **4.3 Specific Recommendations on the Amendments to the Draft Bill**

#### ***1. Preamble adopted with amendments***

##### **Old paragraph 1**

That paragraph one be adopted without amendments i.e.

“We the people of Kenya.”

New paragraph 2

That there be inserted a new paragraph 2 that recognizes God. The approved formulation being, “ACKNOWLEDGING the supremacy of the Almighty God of all creation.”

New paragraph 3

That there be inserted a new paragraph that recognizes the heroes and the struggle for independence.

Old paragraph 2

Retained without amendments.

Old paragraph 3

Retained without amendments.

Old paragraph 4

It was resolved that the paragraph be amended to read, “*RECOGNISING the aspirations of all Kenyans for a government based on the essential values of freedom, democracy, social justice and rule of law;*”

Old paragraph 5

Adopted with amendments in phrasing as follows:-

*EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the **making of this** constitution ~~making process.~~*

New paragraph 6

A paragraph be inserted that recognizes and protects the environment.

*RESPECTFUL of the natural environment that is our heritage, and determined to sustain it for the benefit of future generations;*

Old paragraph 6

Adopted with amendments as follows:-

*Adopt, ~~Do adopt~~ enact and give this Constitution to ourselves and to our future generations. ~~this Constitution.~~*

Old paragraph 7

Adopted without amendments.

**2. Article 1 adopted with amendments**

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

New clause 1(3) and 1(4)

Clauses 1(3) and 1(4) be inserted reflecting that Kenya shall be a parliamentary democracy and that the people of Kenya shall govern through their parliament.

### Old clause 1(3) and 1(4)

That article 1(3) and 1(4) be renumbered and reworked in a manner that is consistent with additional clauses and reflects the role of devolved levels of government but in a manner that notes that judicial authority is not to be devolved and refers to the relevant chapters as relates to each organ.

### **3. Article 2 adopted with amendments**

Clause 2(1) and 2(2) was adopted with the amendment that the two clauses be collapsed into one clause.

Clause 2(3) to be revised to allow legitimate causes of action.

Clause 2(4) addition of the words “*and any action or omission in contravention of this constitution is invalid*” at the end to read, “*A law that is inconsistent with this Constitution is void, to the extent of the inconsistency, and any act or omission in contravention of this constitution is invalid.*”

Clause 2(5) simplifying the wording of the whole clause, and in particular 2(5) (a) be amended to read, “*That promotes the values and principles of good governance.*”

Clause 2(5)(c) be amended to read, “*that permits the development of the provisions of the constitution and the common law of Kenya, in a manner that is conducive to the welfare of all citizens; and*”

Clause 2(5) (d) be redrafted so that it caters for “necessary technicalities” in the court procedure without defeating the purpose of the constitution.

Clause 2(6) *be reworked so as to indicate* the matters that the courts should refer to.

### **4. Article 3 adopted with amendments**

It was recommended that this Article be simplified so as to make it more accessible, and that it be expanded to allow groups of people to be able to approach courts

### **5. Article 4 adopted with amendments**

It was recommended that Article 4 be expanded to recognize that while the basic duty to defend the Constitution rests with the institutions set up in the constitution, individuals acting alone or within civic groups have a similar responsibility and obligation to defend the constitution.

### **6. Article 5 adopted with amendments**

The Committee recommended that this Article be amended so that the title provides for the sources of laws of Kenya and so that there is no specific reference to Hindu, Islamic and African customary laws. The amendments is as follows-

### **Sources of the ~~The~~ Laws of Kenya**

5. (1) *The laws of Kenya comprise this constitution, and each of the following, to the extent that it is consistent with the Constitution –*

- (a) *laws enacted under this Constitution;*
- (b) *All law in force in Kenya immediately before the coming into force of this Constitution subject to any subsequent amendment, repeal, or nullification ~~Acts of Parliament enacted under the Constitution;~~*
- ~~(c) *African customary law;*~~
- ~~(d) *Islamic and Hindu personal law;*~~
- (c) ***Personal laws of the peoples of Kenya;***
- (d) *the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and procedures of the Courts of Kenya;*
- (e) ~~the~~ *East African Community Law; and*
- (f) *customary international law, and international agreements, applicable to Kenya.*

(2) *Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, ~~make the amendments enact~~ –*

- (a) ***legislation ~~that are~~ necessary or expedient for bringing the existing law into conformity with the Constitution; and***
- (b) ***legislation relating to the application of personal law and the resolution of conflicts in its application.***

### **7. Article 6 adopted with amendments**

The Article was adopted with amendments by inserting new clauses to reflect the devolution structure.

### **8. Article 7 adopted with amendments**

It was recommended that this Article be amended by deleting the clause 1 that laid basis for providing specifically for the boundary of Kenya, and instead allowing for negotiation of the Kenyan boundary with the neighbours by providing that the same shall be as determined by international agreements. Clause 7(4) too, relating to the duty of the citizen to defend the Republic was deleted.

### **9. Article 8 adopted with amendments**

- Article 8(1) retained as in draft bill.
- Article 8(2) deleted as it is reflected in Article 214 under the Chapter on devolution.

Owing to the revision on the Chapter on devolution, this Article was harmonized with the Chapter. Most specifically, reference to “provinces” in clause (3) was amended to provide for “regions” and the action is made mandatory by substituting “may” with “shall.”

### **10. Article 9 adopted with amendments**

- Article 9(1) and 9(2) was adopted without amendments but the order of clause (1) and (2) reversed to recognise the national language first.
- Article 9(3)

It was recommended that Article 9(3) be amended to provide-

*“The State shall respect, protect and promote the development and use of indigenous languages and sign language.”*

- New article 9(4) was inserted to allow for Braille and other modes of communication for persons with disabilities. It provides,  
*“The state shall promote the development and use of Braille and other methods of communication for persons with visual impairments.*

#### ***11. Article 10 adopted without amendments***

#### ***12. Article 11 adopted with amendments***

Clause 11(d) was amended to provide by deleting the words “*of Kenya*” as the same is captured in the opening clause and is therefore repetition.

#### ***13. Article 12 adopted without amendments***

#### ***14. Article 13 adopted with amendments***

Reference to “Katiba Day” as a national day was deleted and a day for heroes and heroines, 20<sup>th</sup> October, provided for and named in Swahili for consistency.

*“(b) 20<sup>th</sup> October – Mashujaa Day;*

*(c) 12<sup>th</sup> December – Jamhuri Day.*

*(e) ~~the date of enactment of the Constitution-Katiba Day~~*

#### ***15. Article 14 adopted with amendments***

Article 15 was amended as follows:-

14(1) The national goals, values and principles contained in this Chapter apply to the Executive, ~~parliament~~ ***the Legislature***, the Judiciary, ~~local authorities~~ ***devolved levels of government*** and all other state organs and officials, citizens and private bodies whenever any of them–

(2) The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood *and patriotism.*

(3) The Republic shall recognise the diversity of its people and promote *and protect* the cultures of its communities.

(7) The Republic shall ensure access of the people to independent, impartial ~~and~~ competent, *timely and affordable* institutions of justice.

(8) Political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process, and avoid violence ~~and~~ bribery *and other forms of corruption.*

(9) The Republic shall ~~promote~~ *recognise* the role of civil society in governance and facilitate its role in ensuring the accountability of government.



(11) The Republic shall ensure the fullest participation of all citizens (especially women, ~~the disabled~~ persons with disabilities, and the marginalised communities and sectors of society) in the political, social and economic life of the country.

(12) The state shall implement the principle that at least one-third of the members of all elective and appointive bodies shall be women.

(13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material, ~~and~~ moral and spiritual well-being, and, to that end, shall uphold the family as the fundamental element of society and maintain respect for the institution of marriage.

~~(17) The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity, equitable development and the promotion of human rights and fundamental freedoms.~~

(18) At least once every year,-

(a) each state organ shall report to the President and Parliament on its activities and the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter; and

(b) the President shall report to Parliament on those matters, and publish a consolidated report to the nation on all such measures and progress.

***16. Article 15 adopted with amendments***

Article 15 was amended as follows:-

(a) ~~acquaint themselves with~~ acquire basic understanding of the provisions of the Constitution and ~~propagate~~ promote its ideals and objectives;

(i) promote democracy, good governance and the rule of law.

(g) contribute to the welfare and advancement of the nation by paying all lawful taxes;

#### **4.4 DECISIONS REACHED AND RECOMMENDATIONS TO THE CONFERENCE**

The Technical Working Group recommends by consensus that the Conference adopts the preamble and Articles 1 to 15, amended as follows

##### **PREAMBLE**

We, the people of Kenya –

**ACKNOWLEDGING** the supremacy of the Almighty, God of all creation:

**HONOURING** the heroic memory of all those who struggled to bring freedom and justice to our land:

**AWARE** of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:

**RECOGNISING** the aspirations of all Kenyans for a government based on the essential values of freedom, democracy, social justice and the rule of law:

**RESPECTFUL** of the natural environment that is our heritage, and determined to sustain it for the benefit of future generations;

**COMMITTED** to nurturing and protecting the well-being of the individual, the family and the community within our nation:

**EXERCISING** our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the making of this constitution:

Adopt, enact and give this Constitution to ourselves and to our future generations.

***GOD BLESS KENYA.***

#### **CHAPTER ONE**

#### **SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION**

##### **Sovereignty of the people**

1. (1) All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution.
- (2) The people shall exercise their sovereign power either directly or through their democratically elected representatives.

- (3) Kenya shall be a parliamentary democracy in which, subject to clauses (1) and (2), authority is exercised in the name of the people as represented in Parliament.
- (4) The sovereign authority of the people is allocated separately as follows:
  - (a) the legislative authority of the Republic is entrusted to Parliament, and to the legislative structures in devolved government, to be exercised in accordance with Chapter 12 and Chapter 15, respectively;
  - (b) the executive authority of the Republic is entrusted to the national executive, and to the executive structures in devolved governments, to be exercised in accordance with chapter 13 and Chapter 15, respectively;
  - (c) *the judicial authority of the Republic is entrusted to the courts and other independent and impartial tribunals, to be exercised in accordance with Chapter 14; and*
  - (d) *the independent protection of the constitutional state is entrusted to the Constitutional Commissions and Constitutional Offices established by the Constitution, to be secured through the exercise by those bodies of the functions and powers assigned by the Constitution.*
- (5) The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person may purport to exercise any state authority, which does not emanate from the Constitution.

### **Supremacy of the Constitution**

2. (1) This Constitution is the supreme law of the Republic of Kenya and binds all persons and authorities within the Republic.
- (2) The validity or legality of this Constitution is not subject to challenge by or before any court, organ or agency of the state.
- (3) A law that is inconsistent with this Constitution is void, to the extent of the inconsistency, and any action or omission in contravention of this Constitution is invalid.
- (4) The Constitution shall be interpreted in a manner –
  - (a) that promotes the values and principles of good governance;
  - (b) that advances human rights and fundamental freedoms and the rule of law;
  - (c) that permits the development of the provisions of the Constitution, and of the common law of Kenya, in a manner that is conducive to the welfare of all citizens; and
  - (d) that avoids legal and procedural technicalities, which defeat the purpose of the Constitution.
- (5) In interpreting the Constitution, a court, or another authority or person adjudicating a matter, may refer to matters or materials that will assist in the purposive interpretation of the Constitution.

### **Enforcement of the Constitution.**

- 3.(1) A person, or a group of persons, may bring an action in the courts on the ground that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.
- (2) Where a court makes a declaration under clause (1), it shall also make such orders as are necessary to give effect to the declaration.

### **Defence of the Constitution**

- 4.(1) All persons have an obligation to respect and defend the Constitution and the institutions established under it.
- (2) *Any attempt to establish a system of government otherwise than in compliance with the Constitution is unlawful.*
- (3) Parliament *shall* enact legislation to the extent necessary to give effect to this Article.

### **Sources of the Laws of Kenya**

- 5.(1) The laws of Kenya comprise this Constitution, and each of the following, to the extent that it is consistent with the Constitution-
  - (a) laws enacted under this Constitution;
  - (b) all law in force in Kenya immediately before the coming into force of this Constitution subject to any subsequent amendment, repeal, or nullification;
  - (c) Personal laws of the peoples of Kenya;
  - (d) the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and procedures of the courts;
  - (e) East African Community Law; and
  - (f) customary international law, and international agreements, applicable to Kenya.
- (2) Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, enact –
  - (a) *legislation necessary or expedient for bringing the existing law into conformity with the Constitution; and*
  - (b) legislation relating to the application of personal law and the resolution of conflicts in its application.

## **CHAPTER TWO THE REPUBLIC**

### **Declaration of the Republic**

6. (1) Kenya is a sovereign Republic.
- (2) Sovereign power of the people is exercised at-
  - (a) the national level;
  - (b) the regional level;
  - (c) the district level; and
  - (d) the locational level.
- (3) The Republic of Kenya is founded on republican principles of good governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedoms, and the rule of law.
- (4) The governments at each level are distinctive, inter-dependent, consultative and negotiative.

### **Territory**

7. (1) The territory of the Republic of Kenya shall be as determined under international law and international agreements.
- (2) The Republic is divided into the units set out in the *First* Schedule.
- (3) The sovereignty of the Republic of Kenya over its territory is subject only to any international obligations that the Republic of Kenya freely accepts in accordance with the Constitution.

### **Capital**

8. (1) The capital of Kenya is Nairobi.
- (2) It shall be the policy of the State to decentralize the headquarters of national Government departments and national public institutions to all the regions equitably.

### **Languages**

9. (1) The national language of Kenya is Kiswahili.
- (2) The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.
- (3) The state shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of indigenous languages and sign language.

- (4) The State shall promote the development and use of Braille and other methods of communication for persons with visual impairments.

**State and religion**

**10.** (1) State and religion shall be separate.

(2) *There shall be no state religion.*

(3) The state shall treat all religions equally.

**National symbols**

**11.** The national symbols of the Republic of Kenya, consisting of –

- (a) the national flag;
- (b) the national anthem;
- (c) the coat of arms; and
- (d) the Public Seal

are as prescribed in the *Second* Schedule.

**National Oaths and Affirmations**

**12.** The national oaths and affirmations shall be as prescribed in the Fourth Schedule.

**National Days**

**13.**(1) The following days shall be observed as National Days –

- (a) 1<sup>st</sup> June – Madaraka Day;
- (b) 20<sup>th</sup> October – Mashujaa Day;
- (c) 12th December – Jamhuri Day.

## CHAPTER THREE

### NATIONAL GOALS, VALUES AND PRINCIPLES

#### National goals, values and principles

- 14.(1)** The national goals, values and principles contained in this Chapter apply to the Executive, the Legislature, the Judiciary, devolved levels of government and all other state organs and officials, citizens and private bodies whenever any of them—
- (a) applies and interprets the Constitution or any other law; and
  - (b) *applies, makes and implements policy decisions.***
- (2) *The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood and patriotism.***
- (3) The Republic shall recognise the diversity of its people and promote and protect the cultures of its communities.
- (4) *The Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power.***
- (5) *The Republic shall ensure open and transparent government and the accountability of state officials and public authorities.***
- (6) *The Republic shall take effective measures to eradicate all forms of corruption.***
- (7) The Republic shall ensure access of the people to independent, impartial, competent, timely and affordable institutions of justice.
- (8) *The state shall respect and protect the democratic right of citizens to participate in political activities and form political movements, organisations and parties without interference or control.***
- (9) The Republic shall recognise the role of civil society in governance and facilitate its role in ensuring the accountability of government.
- (10) The Republic is fully committed to respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities.
- (11) *The Republic shall ensure the fullest participation of all citizens (especially women, persons with disabilities, and the marginalised communities and sectors of society) in the political, social and economic life of the country.***

- (12) The State shall implement the principle that at least one-third of the members of all elective and appointive bodies shall be women.
- (13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material, moral and spiritual well-being, and, to that end, shall uphold the family as the fundamental unit of society and maintain respect for the institution of marriage.
- (14) *The Republic shall be committed to social justice and, shall take progressive measures to ensure the realisation of the rights of all Kenyans to adequate food, shelter, clean water, sanitation, education, health, a clean environment, and security so that they live a life of dignity and comfort and can fulfil their potential.*
- (15) *The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people.*
- (16) *The Republic shall recognise its responsibilities to future generations of Kenyans, by pursuing policies for the sustainable management of all resources and the environment.*
- (17) *The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity.*
- (18) At least once every year, -
  - (a) each state organ shall report to the President and Parliament on its activities and the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter; and
  - (b) the President shall report to Parliament on those matters, and publish a consolidated report to the nation on all such measures and progress.

#### **Duties of a Citizen**

- 15.(1)** In order to fulfil the national goals, values, and principles, all citizens have the duty to –
- (a) acquire basic understanding of the provisions of the Constitution and promote its ideals and objectives;
  - (b) uphold and defend the Constitution and the law;
  - (c) exercise their democratic rights by voting and being involved in other forms of political participation;
  - (d) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;



- (e) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (f) contribute to the welfare and advancement of the community where they live;
- (g) contribute to the welfare and advancement of the nation by paying all lawful taxes;
- (h) strive to foster national unity and live in harmony with others;
- (i) promote democracy, good governance and the rule of law;
- (j) promote family life and act responsibly in the context of the family;
- (k) protect and safeguard public property from waste and misuse;
- (l) protect the environment and conserve natural resources;
- (m) co-operate with law enforcement agencies for the maintenance of law and order;
- (n) desist from acts of corruption;
- (o) understand and enhance Kenya's place in the international community.

**(2) The duties set out in clause (1) apply equally, wherever appropriate, to non-citizens *and juristic persons*.**

## ANNEXURES

### ANNEXURE I: MINORITY REPORT

#### **ARTICLE 10**

**Hon. Ibrahim Ahmed Yussuf (delegate No. 525)**

Having article 10 (State and Religion) be deleted completely.

#### **Article 14 (12)**

Hon. Julius Arunga (delegate No. 008)

The state shall implement the principle that at least one-third of the members of all elective and appointive bodies shall be of either gender.

**ANNEXURE II: TABLE OF FORMAL MOTIONS**

<b>Date</b>	<b>Name</b>	<b>Summary of Motion</b>	<b>Comment</b>
11 <sup>th</sup> Sept	Hon.Ibrahim Omondi, Del No. 542	<i>That the Preamble be amended as follows: -</i>  By inserting the words “ <i>recognizing the supremacy and sovereignty of the almighty God of all creation</i> ” immediately below the word Kenya on the first line	Principle of recognition of God adopted.
11 <sup>th</sup> Sept 	Hon. Gitu Wa Kahengeri, Del No. 316	That the following words be inserted in the Preamble;  “ <i>Recognizing all resistance wars against entry to Kenya by the colonial power, the heroic struggle for independence and the struggle for democratization, honouring all heroes who died in action liberating Kenya</i> ”	Principle of recognition of war heroes was agreed upon .it was agreed that the draftsperson would formulate the paragraph reflecting this.
12 <sup>th</sup> Sept.	Hon Ibrahim Omondi, No. 542	Amendment Proposed; That the following paragraph be deleted and be replaced by the new paragraph shown thereafter.  “ <i>Recognizing the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law.</i> ”  New Paragraph “ <i>Recognizing our aspirations for a government based on the essential values of freedom, democracy, social justice and the rule of law</i> ”	Negatived
12 <sup>th</sup> Sept 2003	Hon Rita Katamu, Del No. 386	That the paragraph be amended by inserting the words “ <i>Aged, youth and people with disabilities</i> ” immediately after the word “men”	Motion carried.
12 <sup>th</sup> Sept 2003	Hon David Erulu Del No.397	That the words “our Country” be inserted after the word “bless” in the last paragraph of the preamble.	Motion carried
16 <sup>th</sup> Sept 2003	Hon Ibrahim Omondi Del No.542	That Article 2 be amended by deleting sub-Article (1) and inserting in place thereof the following new sub-Article.  “ <i>Kenya is founded on the supremacy of God, and shall be governed in accordance with the</i>	Motion withdrawn

Date	Name	Summary of Motion	Comment
		<i>constitution and the rule of law."</i>	
19 <sup>th</sup> 2003	Sept Hon Ibrahim Ahmed Yussuf Del No.525	<i>That the heading of the Article be deleted and replaced by the following heading "Sources of the Laws of Kenya"</i>	Motion carried
19 <sup>th</sup> 2003	Sept Hon Ibrahim Omondi Del No.542	<i>That Article 5(1) be deleted and replaced by the following; "The sources of the laws of Kenya are"</i>	Motion carried
23 <sup>rd</sup> 2003	Sept Hon Peter Oloo Aringo Del No.212	That the following new Sub- Article 1(3) be inserted immediately after sub-Article 1(2); <i>"Kenya shall be a parliamentary democracy".</i>  That Article 1 be further amended by inserting the following new sub-Article (4) to read; <i>"The people of Kenya shall govern through their parliament"</i>	Agreed to and that the principle be reflected by the drafts person
24 <sup>th</sup> 2003	Sept Hon David Erulu Del No.397	<i>That the whole Article be deleted from the Draft Bill.</i>	Negatived
24 <sup>th</sup> 2003	Sept Hon Ibrahim Omondi Del No.542	<i>That sub-Article 5(1)(c) and (d) be deleted and be replaced by the following: - "The Personal Law"</i>	Agreed to
25 <sup>th</sup> 2003	Sept Hon J. Arunga Del.No.008	<i>That the proposed amendment under 5(2)(5) be further amended by deleting the words "African Customary Law and others"</i>	Motion carried
24 <sup>th</sup> 2003	Sept Hon Florence Mburugu Del No. 530	<i>That the proposed amendment be further amended under 5(2)(b) by inserting the words "of the people of Kenya" after the words "personal laws"</i>	Agreed
24 <sup>th</sup> 2003	Sept Hon Ibrahim Ahmed Yussuf Del.No.525	That a new sub Article 7(4) be inserted to read as follows; <i>"All peoples have the right to self determination; by virtue of that right they are free to determine their political status and freely pursue their economic, social and cultural development.</i>	Motion negatived
25 <sup>th</sup> 2003	Sept Hon David Erulu Del No. 397	That 8(1) be deleted and the following be inserted in place thereof;  <i>The Commercial capital of Kenya is Nairobi</i>  <i>The Administrative capital of Kenya is Kisumu</i>	Negatived
25 <sup>th</sup> 2003	Sept Hon Ibrahim Ahmed Yussuf	Sub article 8(3) That the word "is" on the first line be deleted	Motion carried

Date	Name	Summary of Motion	Comment
	Del No.525	and the words “ <i>shall be</i> ” be inserted in place thereof. That the word “provinces” on the seventh line be deleted and the word regions be inserted in place thereof.	
25 <sup>th</sup> Sept 2003	Hon Gitu wa Kahengeri Del No.316	Sub article 9 (2) That the sub-Article be amended to read; “The National Languages of Kenya are Kiswahili and all other indigenous languages spoke by Kenyan people”	Negatived
25 <sup>th</sup> Sept 2003	Hon Florence Mburugu Del No. 530	<i>Sub article 9(3)</i> That the sub-Article be amended by deleting the word “Kiswahili” on the sixth line. That the sub-Article be amended by inserting the words “and” before the word “sign” on the seventh line. That the sub-Article be further amended by deleting the words “and Braille” at the end of the sentence.  That a new Sub-Article 9(4) be inserted to read; <i>“The state shall promote the development and use of Braille as a mode of communication for persons with visual impairments”.</i>	Motions carried.
13 <sup>th</sup> Jan 2004	Raphael Mwai Del No.485	Article 10(1) That the Article be amended to provide; <i>“Kenya is a secular state and religion and state shall be separate.”</i>	Motion withdrawn
14 <sup>th</sup> Jan 2004	Ibrahim Omondi Del No.542	Article 14 (new) That the Article be provide; <i>“the Republic shall recognize the institution of marriage and family as the moral foundation of this nation and shall uphold its integrity and protect it from abuse.”</i>	Motion carried with direction to have it incorporated under clause 14(13).
14 <sup>th</sup> Jan 2004	Ibrahim Omondi Del No.542	Article 14(12) That the clause be amended to to read; <i>In the first ten years of the implementation of this constitution, the state shall implement the principle that one-third of members of all appointive bodies shall be women.”</i>	Motion negatived.

### ANNEXURE III: LEGISLATIVE DRAFTER’S REPORT

#### ANNOTATED DRAFT

## **ARRANGEMENT OF ARTICLES**

### **PREAMBLE**

#### **CHAPTER ONE - SOVEREIGNTY OF THE PEOPLE AND THE SUPREMACY OF THE CONSTITUTION**

1. Sovereignty of the people
2. Supremacy of the Constitution
3. Enforcement of the Constitution
4. Defence of the Constitution
5. ~~The Laws of Kenya~~ *Sources of the Laws of Kenya*

#### **CHAPTER TWO - THE REPUBLIC**

6. Declaration of the Republic
7. Territory
8. Capital
9. Languages
10. State and religion
11. National symbols
12. National oaths and affirmations
13. National Days

#### **CHAPTER THREE - NATIONAL GOALS, VALUES AND PRINCIPLES**

14. National goals, values and principles
15. Duties of a citizen

## PREAMBLE

We, the people of Kenya –

**ACKNOWLEDGING** *the supremacy of the Almighty, God of all creation:*

**HONOURING** the heroic memory of all those who struggled to bring freedom and justice to our land:

**AWARE** of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:

**RECOGNISING** the aspirations of ~~our women and men~~ *all Kenyans* for a government based on the essential values of freedom, democracy, social justice and the rule of law:

**RESPECTFUL** *of the natural environment that is our heritage, and determined to sustain it for the benefit of future generations;*

**COMMITTED** to nurturing and protecting the well-being of the individual, the family and the community within our nation:

**EXERCISING** our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the *making of this constitution* ~~making process:~~

*Adopt, ~~Do adopt~~ enact and give this Constitution to ourselves and to our future generations this Constitution.*

**GOD BLESS KENYA.**

## CHAPTER ONE

### SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION

#### Sovereignty of the people

1. (1) All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution.
- (2) The people shall exercise their sovereign power either directly or through their democratically elected representatives.
- (3) *Kenya shall be a parliamentary democracy in which, subject to clauses (1) and (2), authority is exercised in the name of the people as represented in Parliament.*
- (3 4) The sovereign authority of the people is allocated separately ~~among~~ *follows:*
  - (a) the ~~Legislature, to whom the people entrust~~ *legislative authority of the Republic is entrusted to parliament, and to the legislative structures in devolved governments, to be exercised in accordance with Chapter 12 and chapter 15, respectively; ~~Seven~~*
  - (b) the ~~Executive, to whom the people entrust the executive~~ *authority of the Republic is entrusted to the National Executive, and to the executive structures in devolved*

- governments, to be exercised in accordance with Chapter 13 and chapter 15 respectively; Eight;*
- (c) ~~the Judiciary, judicial authority of the republic is entrusted to the courts and other independent and other independent and impartial tribunals, to whom the people entrust the judicial authority of the republic,~~ to be exercised in accordance with Chapter ~~Nine~~ 14; and
- (d) ~~the independent protection of the constitutional state is entrusted to the Constitutional Commissions and constitutional Offices established by the constitution, Chapter Seventeen or elsewhere in the Constitution, to which the people entrust the protection and development of the constitutional state,~~ to be secured through the exercise by those bodies of the functions and powers assigned to them by the Constitution.
- (4 5) The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person shall ~~arrogate to himself or herself, or may purport to~~ exercise any state authority which does not emanate from the Constitution.

### **Supremacy of the Constitution.**

2. (1) ~~Kenya is founded on the supremacy of the Constitution and the rule of law and shall be governed in accordance with the Constitution.~~
- (2 1) ~~This~~ The Constitution is the Supreme law of the Republic of Kenya and binds all persons and authorities within ~~authorities and persons throughout~~ the Republic.
- (32) The validity ~~or legality or procedure of enactment or promulgation~~ of this Constitution is not subject to challenge by or before any court, organ or agency of the state.
- (43) A law ~~that which~~ is inconsistent with ~~this~~ the Constitution is void, to the extent of the inconsistency, ~~and any action or omission in contravention of this Constitution is invalid.~~
- (4) The Constitution shall be interpreted in a manner –
- (a) that promotes the values *and principles* of good governance;
- (b) that advances human rights and fundamental freedoms and the rule of law;
- (c) that permits the ~~creative~~ development of the provisions of the Constitution, and of the common law of Kenya, *in a manner that is conducive to the welfare of all citizens;* and
- (d) that avoids *legal and procedural* technicalities which defeat the purpose of the Constitution.
- (65) ~~In interpreting the Constitution, a court, or another authority or person adjudicating a matter, The Courts, a person or an authority interpreting the Constitution~~ may refer to matters or materials that will assist in the purposive interpretation of the Constitution.

### **Enforcement of the Constitution.**

3. (1) A person, *or a group of persons,* may bring an action in the courts on the ground that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.



(2) ~~Where a court The courts~~ makes a declaration under clause (1), it shall also ~~may~~ make ~~an~~ such orders ~~or~~ as are necessary to give ~~appropriate~~ effect to the declaration ~~in~~ clause (1).

#### **Defence of the Constitution**

**4.** (1) *All persons have an obligation to respect and defend the Constitution and the institutions established under it.*

(+ 2) Any attempt to establish a system of government ~~contrary to~~ otherwise than in compliance with the Constitution is unlawful.

(2) ~~An Act that is prejudicial to the sovereignty of Kenya is unlawful.~~

(3) Parliament ~~shall~~ ~~may~~ enact legislation ~~to the extent necessary~~ to give effect to this Article.

#### **Sources of the ~~The~~ Laws of Kenya**

**5.** (1) The laws of Kenya comprise *this constitution, and each of the following, to the extent that it is consistent with the Constitution* –

(a) *laws enacted under this Constitution* ~~the Constitution~~;

(b) *all law in force in Kenya immediately before the coming into force of this Constitution subject to any subsequent amendment, repeal, or nullification*; ~~Acts of Parliament enacted under the Constitution~~;

~~(c) African customary law;~~

(f) ~~Islamic and Hindu personal law~~; *personal laws of the peoples of Kenya*;

(e) the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and procedures of the Courts of Kenya;

(f) ~~the~~ East African Community Law; and

(g) customary international law, and international agreements, applicable to Kenya.

(2) Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, ~~make the amendments~~ *enact* –

(a) *legislation that* ~~are~~ necessary or expedient for bringing the existing law into conformity with the Constitution; *and*

(b) *legislation relating to the application of personal law and the resolution of conflicts in its application.*

## CHAPTER TWO

### THE REPUBLIC

#### Declaration of the Republic

6. (1) Kenya is a sovereign Republic.

*(2) Sovereign power of the people is exercised at –*

*(a) the national level;*

*(b) the regional level*

*(c) the district level*

*(d) the locational level.*

(2 3) The Republic of Kenya is founded on republican principles of good governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedoms, and the rule of law.

*(4) The governments at each level are distinctive, inter-dependent, consultative and negotiative.*

#### Territory

7. (1) The territory of the Republic of Kenya ~~comprises the area described in the First Schedule~~ *shall be as determined under international law and international agreements.*

(2) The Republic is divided into the districts and provinces set out in the ~~Second~~ *First* Schedule.

(3) The sovereignty of the Republic of Kenya over its territory is subject only to any international obligations that the Republic of Kenya freely accepts in accordance with the Constitution.

~~(4) Every citizen has the right and duty to defend the Republic against any person who threatens the political independence, territory, integrity or constitutional order of the Republic by unconstitutional means.~~

#### Capital

8. (1) The capital of Kenya is Nairobi.

~~(2) Parliament shall enact legislation to provide for the status and governance of Nairobi.~~

~~(3 2)~~ *It shall be* the policy of the State to decentralize the headquarters of national Government departments and national public institutions to all the ~~provinces~~ *regions* equitably

#### Languages

9. (2-1) The national language of Kenya is Kiswahili.

(1–2) The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.

(3) The state shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of ~~Kiswahili~~, indigenous languages *and* sign language ~~and Braille~~.

**(4) *The State shall promote the development and use of Braille and other methods of communication for persons with visual impairments.***

### **State and religion**

**10.** (1) State and religion shall be separate.

(2) There shall be no state religion.

(3) The state shall treat all religions equally.

### **National symbols**

**11.** The national symbols of the Republic of Kenya, consisting of –

(a) the national flag;

(b) the national anthem;

(c) the coat of arms; and

(d) the Public Seal of ~~Kenya~~

are as prescribed in the ~~Third~~ **Second** Schedule.

### **National oaths and affirmations**

**12.** The national oaths and affirmations shall be as prescribed in the Fourth Schedule.

### **National Days**

**13.** (1) The following days shall be observed as National Days –

(a) 1<sup>st</sup> June – Madaraka Day;

**(b) 20<sup>th</sup> October – Mashujaa Day;**

~~(b-c)~~ 12<sup>th</sup> December – Jamhuri Day.

~~(c) [the date of enactment of the Constitution] — Katiba Day.~~

## CHAPTER THREE

### NATIONAL GOALS, VALUES AND PRINCIPLES

#### National goals, values and principles

14. (1) The national goals, values and principles contained in this Chapter apply to the Executive, ~~parliament~~ **the Legislature**, the Judiciary, ~~local authorities~~— **devolved levels of government** and all other state organs and officials, citizens and private bodies whenever any of them—
- (a) applies and interprets the Constitution or any other law; and
  - (b) applies makes and implements policy decisions.
- (2) The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood **and patriotism**.
- (3) The Republic shall recognise the diversity of its people and promote **and protect** the cultures of its communities.
- (4) The Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power.
- (5) The Republic shall ensure open and transparent government and the accountability of state officials and public authorities.
- (6) The Republic shall take effective measures to eradicate all forms of corruption.
- (7) The Republic shall ensure access of the people to independent, impartial, ~~and~~ competent, **timely and affordable** institutions of justice.
- (8) Political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process, and avoid violence, ~~and~~ bribery **and other forms of corruption**.
- (9) The Republic shall ~~promote~~ **recognise** the role of civil society in governance and facilitate its role in ensuring the accountability of government.
- (10) The Republic is fully committed to respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities.
- (11) The Republic shall ensure the fullest participation of **all citizens (especially women, ~~the disabled~~—persons with disabilities, and the marginalised communities and sectors of society)** in the political, social and economic life of the country.
- (12) The State shall implement the principle that **at least** one-third of the members of all elective and appointive bodies shall be women.
- (13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material, ~~and~~ moral **and spiritual** well-being, **and, to that end, shall uphold the family as the fundamental element of society and maintain respect for the institution of marriage**.

(14) The Republic shall be committed to social justice and, through appropriate policies and measures, to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment, and security so that they live a life of dignity and comfort and can fulfil their potential.

(15) The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people.

(16) The Republic shall recognise its responsibilities to future generations of Kenyans, by pursuing policies for the sustainable management of the environment.

(17) The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity ~~equitable development and the promotion of human rights and fundamental freedoms.~~

(18) At least once every year, the President shall report to Parliament and the nation all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter.

### **Duties of a citizen**

**15.** (1) In order to fulfil the national goals, values, and principles, all citizens have the duty to –

- (a) ~~acquaint themselves with~~ **acquire basic understanding of** the provisions of the Constitution and ~~propagate~~ **promote** its ideals and objectives;
- (b) uphold and defend the Constitution and the law;
- (c) exercise their democratic rights by voting and being involved in other forms of political participation;
- (d) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;
- (e) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (f) contribute to the welfare and advancement of the community where they live;
- (g) **contribute to the welfare and advancement of the nation by paying all lawful taxes;**
- ~~(g-h)~~ strive to foster national unity and live in harmony with others;
- ~~(h-i)~~ promote democracy, **good governance** and the rule of law;
- ~~(i-j)~~ promote family life and act responsibly in the context of the family;
- ~~(j-k)~~ protect and safeguard public property from waste and misuse;
- ~~(k-l)~~ protect the environment and conserve natural resources;
- ~~(l-m)~~ co-operate with law enforcement agencies for the maintenance of law and order;
- ~~(m-n)~~ desist from acts of corruption;

- (~~n~~-o) understand and enhance Kenya's place in the international community.
- (2) The duties set out in clause (1) apply equally, wherever appropriate, to non-citizens *and juristic persons*.

**ANNEXURE IV: AGENDAS AND MINUTES OF THE TECHNICAL WORKING GROUP**

**NATIONAL CONSTITUTIONAL CONFERENCE**

8 September 2003

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The convenor presents his compliments to Memebtrs of the Technical Working Committee “A” and has the honour

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 9th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Business
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY 9<sup>TH</sup> SEPTEMBER, 2003 AT 10.10 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at ten minutes past Ten O'clock.

The proceedings were opened with prayer.

**PRESENT:**

1. Hon. Billy N. Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon. George Khaniri	55
5. Hon. Gitu wa Kahengeri	316
6. Hon. Ibrahim Omondi	542
7. Hon Ibrahim A Yusuf	525
8. Hon. James Nthiga Gatiti Fr.	520
9. Hon. Jane Kauka	375
10. Hon. Joseph Korir Kipkapto	75
11. Hon. Joyce Muriuki	273
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Manoti Stephen	94
15. Hon. Marie Rose Owino	400
16. Hon. Moffat Maitha	90
17. Hon. Mohammed Abu Chiaba	108
18. Hon. Moses L. Naimandu	358
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo Mary Obonyo	426
21. Hon. Owid Peter Otieno	173
22. Hon. Peter Oloo Aringo	212
23. Hon. Rhonda Maende	298
24. Hon. Rita Katamu	381
25. Hon. Somoina Keko Margaret	363
26. Hon. W. R. Ole Ntimama	147
27. Hon. Zuhura Zukira Wanje	236
28. Hon Mburugu Florence	530

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer



Rozina Mngola - Asst. Programme Officer  
Stephen Njenga - Clerk Assistant  
Flora Wambua Verbatim Recorder

**MIN.NCC/TCA/3/03 PRELIMINARY**

Ms Kavetsa Adagala informed the Committee that Hon. O. Aringo was elected as the Convenor during the last meeting but had stepped down in favour of Mr. Billy Onwonga to comply with the principle of regional representation

The Technical Committee Welcomed the leadership changes.

The convenor explained the modalities of considering the relevant section of the Draft Bill and report. The Delegates requested the convenor to brief them on the guidelines for the Technical Committee.

Adjourned at 11.15 a.m. for a tea break.

The Technical Committee was guided on the procedural modalities of considering the relevant articles and ways of introducing and disposing of proposed amendments including a simulation of the process.

**MIN.NCC/TCA/4/03 ADJOURNMENT**

And the time being fifteen minutes past One O'clock, the convenor adjourned the meeting until 2.30 p.m. this afternoon.

**AFTERNOON SITTING AT 2.35P.M.**

The Convenor called the meeting to order at thirty-five minutes past Two O'clock

**PRESENT**

1 Hon Billy N. Onwonga	<i>Convenor</i>
2 Hon. Eisintele Kureya	264
3 Hon. Gitu wa Kahengeri	316
4 Hon. James Nthiga Gatiti Fr.	520
5 Hon. Jane Kauka	375
6 Hon. Joyce Muriuki	273
7 Hon. Kavoo Kilonzo	479
8 Hon. Marie Rose Owino	400
9 Hon. Nalea G. Kithumbu	285
10 Hon. Pascalina R. Lubarleiya	351
11 Hon. Peter Oloo Aringo	212
12 Hon. Rhonda Maende	298
13 Hon. Rita Katamu	381

14 Hon. Zuhura Zukira Wanje	236
15 Hon. Mburugu	530
16 Hon. Benson Okwaro	449
17 Hon Ibrahim A Yusuf	525
18. Hon. Mary Orwenyo	426
19 Hon. Asha Wanje	493

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant
Flora Wambua	-	Verbatim Recorder

**MIN.NCC/TCA/5/03                      GUIDELINES FOR THE COMMITTEE**

Rapporteur Dr. Githu Muigai appraised the members on the mandate of the Technical Working Group A.

He appealed to the Committee to consider all matters raised during the general debate besides the draft Bill and Report.

He added that the Committee should improve on the sections of the Draft Bill and report referred to the Committee by the National Constitutional Conference.

Delegates agreed, that all members of the Technical Working Group should append their signatures the final report of the Committee.

The Committee resolved to start business by deliberating on the Preamble and Articles 1 and 2 on Wednesday 10<sup>th</sup> September 2003.

**MIN.NCC/TCA/6/03                      ADJOURNMENT**

And the time being forty-five minutes past Three O'clock, the Convenor adjourned the meeting until Wednesday, 10th September, 2003 at 8.30 a.m.

CONFIRMED (CONVENOR).....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

9 September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 10th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 1 and 2
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE THIRD TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON WEDNESDAY 10<sup>TH</sup> SEPTEMBER, 2003 AT 12.40 P.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 12.40 P.M.

The proceedings were opened with prayer.

**PRESENT**

**MORNING SITTING**

1. Hon. Francis Wabayale	588
2. Hon. Gitu wa Kahengeri	316
3. Hon. James Nthiga Gatiti Fr.	520
4. Hon. Jane Kauka	375
5. Hon. Joseph Korir Kipkapto	75
6. Hon. Joyce Muriuki	273
7. Hon. Julius Arunga	8
8. Hon. Kavoo Kilonzo	479
9. Hon. Marie Rose Owino	400
10. Hon. Mburugu Florence	530
11. Hon. Moffat Maitha	90
12. Hon. Murtaza Jaffer	623
13. Hon. Orwenyo Mary Obonyo	426
14. Hon. Pascalina R. Lubarleiya	351
15. Hon. Peter Oloo Aringo	212
16. Hon. Rose Lukalo	471
17. Hon. Githu Muigai	570
18. Hon. Kavetsa Adagala	563

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/7/03 PRELIMINARY**

The Convenor asked delegates who were not members of Technical Committee No A but wanted to join the Committee to communicate their intentions to their provincial representatives who could forward their names to the Secretariat.

The delegates requested the Convenor to change the sitting arrangements to enhance communication.

The delegates were asked to submit their proposed amendments to the secretariat who would provide necessary drafting assistance.

**MIN.NCC/TCA/8/03                      ADJOURNMENT**

And the time being five minutes past One O'clock, the Convenor adjourned the sitting until Two O'clock this afternoon.

*AFTERNOON SITTING*

The Convenor called the meeting to order at 2.30 p.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Asha Chiku Wanje	493
3. Hon. Benson Okwaro	449
4. Hon. Eisintele Kureya	264
5. Hon. Francis Wabayale	588
6. Hon. Ibrahim Ahmed Yusuf	525
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti Fr.	520
9. Hon. Jane Kauka	375
10. Hon. Joyce Muriuki	273
11. Hon. Kavoo Kilonzo	479
12. Hon. Marie Rose Owino	400
13. Hon. Murtaza Jaffer	623
14. Hon. Nalea G. Kithumbu	285
15. Hon. Orwenyo Mary Obonyo	426
16. Hon. Pascalina R. Lubarleiya	351
17. Hon. Peter Oloo Aringo	212
18. Hon. Rhonda Maende	298
19. Hon. Rita Katamu	381
20. Hon. Somoina Keko Margaret	363
21. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN/NCC/TCA/9/03                      CONSIDERATION OF THE PREAMBLE**

The Committee deliberated on the Preamble.

The Rapporteur (Dr. Githu) briefed the delegates on the pertinent issues highlighted during the plenary debate, which included;

Reference to God in the plenary

The phrase “we the people” needs to be well defined

Other forms of life need to be recognized in the Preamble.

Following Lengthy discussions, the Committee adopted the first line, “we the people of Kenya.”

**MIN.NCC/TCA /10/03      ADJOURNMENT**

And the time being forty minutes past Four O'clock, the convenor adjourned the sitting until Thursday 11<sup>th</sup> September 2003.

CONFIRMED: .....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

10<sup>th</sup> September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 11th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 1 and 2
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE FOURTH TECHNICAL WORKING GROUP ‘A’ ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON THURSDAY 11<sup>TH</sup> SEPTEMBER, 2003 AT 9.15 A.M.**

The Convenor (Mr. Billy N. Onwong’a) called the meeting to order at 9.15 a.m.

The proceedings were opened with prayer.

**PRESENT**

**MORNING SITTING**

1. Hon. Asha Chiku Wamje	493
2. Hon. Benson Okwaro	449
3. Hon. Francis Wabayale	588
4. Hon. Gitu wa Kahengeri	316
5. Hon. Ibrahim Ahmed Yusuf	525
6. Hon. James Nthiga Gatiti Fr.	520
7. Hon. Jane Kauka	375
8. Hon. Julius Arunga	8
9. Hon. Kavoo Kilonzo	479
10. Hon. Manoti Stephen	94
11. Hon. Mburugu Florence	530
12. Hon. Murtaza Jaffer	623
13. Hon. Nalea G. Kithumbu	285
14. Hon. Nginyo Kariuki	607
15. Hon. Owidi Peter Otieno	173
16. Hon. Pascalina R. Lubarleiya	351
17. Hon. Peter Oloo Aringo	212
18. Hon. Rhonda Maende	298
19. Hon. Rita Katamu	381
20. Hon. Somoina Keko Margaret	363
21. Hon. W. R. Ole Ntimama	147
22. Hon. Zuhura Zukira Wanje	236
23. Hon. Nyang’au B. Onwonga	Convenor

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant



The convenor appraised the committee on the meeting of the steering committee. He informed the committee that Rapporteurs are not allowed to move motions.

He further informed the committee that sittings would be held between 8.30 a.m. and 5.30 p.m.

He appealed to members to switch off their mobile phones as they enter the tent.

The committee agreed that a Co-Convenor should be appointed to be chairing sittings when the substantive Convenor is not available.

Delegates appointed Hon. Peter Oloo Aringo to be the Co-Convenor in absentia.

**AMENDMENT PROPOSED**

That the Preamble be amended as follows: -

By inserting the words “recognizing the supremacy and sovereignty of the almighty God of all creation” immediately below the word Kenya on the first line

(Kagendo Muriuki Delegate No. 524)

Question of the Amendment proposed;  
Debate arising.

Question Put and agreed to.

The convenor adjourned the sitting at 10.45 am for a tea break.

Debate interrupted resumed at 11.45 a.m.

The convenor informed Hon. Peter O. Aringo that he had been appointed the Co-convenor.

Hon Aringo expressed his appreciation at the honour bestowed upon him.

He, however, informed the Committee that he would be away on an official visit to Italy, beginning Friday, 12<sup>th</sup> September 2003.

**AMENDMENT PROPOSED**

That the following words be inserted in the Preamble;



25. Hon. Rita Katamu	381
26. Hon. Somoina Keko Margaret	363
27. Hon. W. R. Ole Ntimama	147
28. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Dr. Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/12/03 CONSIDERATION OF THE PREAMBLE**

The committee deliberated on the Preamble.

Question Proposed that the following paragraph be part of the Preamble;

“Aware of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation”

Debate Arising;

Question put and agreed to

Question proposed that the following paragraph be part of the Preamble;

“Committed to nurturing and protecting the well-being of the individual, the family and the community within out nation”

Debate arising

Question put and negatived.

The Convenor adjourned the sitting at fifteen minutes past four O’clock for a tea break.

Debate resumed at 4.50 p.m.

The Convenor informed the Committee that following consultations with the Rapporteur, it had been decided that the meeting be adjourned to Friday, September 12, 2003 at 10.30 a.m.

**MIN.NCC/TCA/13/03 ADJOURNMENT**

And the time being fifty minutes past Four O”clock, the Convenor adjourned the sitting until Friday, September 12, 2003 at 10.30 a.m.

CONFIRMED: .....

DATE: .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

11 September 2003

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held on **Friday, 12th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Article 1 and 2
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE FIFTH TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON FRIDAY 12<sup>TH</sup> SEPTEMBER, 2003 AT 9.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.15 a.m.

The proceedings were opened with prayer.

**PRESENT**

1.	Hon. Billy Onwong'a	Convenor
2.	Hon. Asha Chiku Wanje	493
3.	Hon. Benson Okwaro	449
4.	Hon. David L. A. Erulu	397
5.	Hon. Francis Wabayale	588
6.	Hon. Gitu wa Kahengeri	316
7.	Hon. Ibrahim A. Yusuf	525
8.	Hon. Ibrahim Omondi	542
9.	Hon. James Nthiga Gatiti Fr.	520
10.	Hon. Jane Kauka	375
11.	Hon. Joseph Korir Kipkapto	75
12.	Hon. Joyce Muriuki	273
13.	Hon. Julius Arunga	8
14.	Hon. Kavoo Kilonzo	479
15.	Hon. Marie Rose Owino	400
16.	Hon. Mburugu Florence	530
17.	Hon. Murtaza Jaffer	623
18.	Hon. Nalea G. Kithumbu	285
19.	Hon. Orwenyo Mary Obonyo	426
20.	Hon. Owidi Peter Otieno	173
21.	Hon. Pascalina R. Lubarleiya	351
22.	Hon. Peter Oloo Aringo	212
23.	Hon. Rhonda Maende	298
24.	Hon. Rita Katamu	381
25.	Somoina Keko Margaret	363
26.	Hon. Suba Churchill	463
27.	Hon. W. R. Ole Ntimama	147
28.	Hon. Zuhura Zukira Wanje	236

**NON REGISTERED MEMBERS**

29.	Hon. Mburugu Florence	530
30.	Hon. Suba Churchill	463
31.	Hon. Salah A. Ahmed	253

**IN ATTENDANCE**

Kavetsa Adagala - Rapporteur

Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Programme Officer
Rozina Mngola	-	Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/14/03                      CONFIRMATION OF MINUTES**

Delegates expressed concern that the minutes were too brief and were not encompassing everything that was discussed.

Hon.Kavetsa Adagala explained that several reports on the committee’s proceedings were being prepared hence Minutes could not contain extra details as that would amount to duplication.

The confirmation of Minutes was deferred to a later date.

The Committee requested that the attendance list be corrected accordingly.

**MIN.NCC/TCA/15/03                      CONSIDERATION OF THE PREAMBLE**

The Committee agreed to re-consider the following paragraph.

“Recognizing the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law:

**DEBATE ARISING**

Amendment Proposed;

That the following paragraph be deleted and be replaced by the new paragraph shown thereafter.

“Recognizing the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law.

New Paragraph

“Recognizing our aspirations for a government based on the essential values of freedom, democracy, social justice and the rule of law”

(Ibrahim Omondi Delegate No. 542)

Question of the amendment proposed.

Debate Arising.

The Convenor adjourned the sitting at thirty minutes past Ten O’clock for a tea Break.

The Committee reconvened at 11.30 a.m.

Hon. Aringo requested that he be given time to explain the rationale behind his proposed amendments to Articles 1 and 2.

The committee agreed to allow Hon Aringo to move his motion after the conclusion of debate that commenced this morning.

The Committee resolved to proceed with the consideration of the paragraph without further expert advise.

Interrupted Business Resumed;

That the following paragraph be deleted and be replaced by the new paragraph shown thereafter.

“Recognizing the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law”

New Paragraph

“Recognizing our aspirations for a government based on the essential values of freedom, democracy, social justice and the rule of law”.

Debate Arising;

Question put and negatived.

**MIN.NCC/TCA/16/03          ADJOURNMENT**

And the time being fifty minutes past Twelve O’clock the session was adjourned

*AFTERNOON SITTING*

The Convenor called the meeting to order at 2.30 p.m.

PRESENT;

1.	Hon. Billy Onwong’a	Convenor
2.	Hon. Asha Chiku Wanje	493
3.	Hon. Benson Okwaro	449
4.	Hon. David L. A. Erulu	397
5.	Hon. Francis Wabayale	588
6.	Hon. Gitu wa Kahengeri	316
7.	Hon. Ibrahim Omondi	542
8.	Hon. James Nthiga Gatiti Fr.	520
9.	Hon. Jane Kauka	375
10.	Hon. Joseph Korir Kipkapto	75
11.	Hon. Joyce Muriuki	273



12.	Hon. Julius Arunga	8
13.	Hon. Kavoo Kilonzo	479
14.	Hon. Marie Rose Owino	400
15.	Hon. Mburugu Florence	530
16.	Hon. Mohammed Abu Chiaba	108
17.	Hon. Nalea G. Kithumbu	285
18.	Hon. Orwenyo Mary Obonyo	426
19.	Hon. Owidi Peter Otieno	173
20.	Hon. Pascalina R. Lubarleiya	351
21.	Hon. Peter Oloo Aringo	212
22.	Hon. Rhonda Maende	298
23.	Hon. Rita Katamu	381
24.	Hon. Suba Churchill	463
25.	Hon. W. R. Ole Ntimama	147
26.	Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/17/03      CONSIDERATION OF ARTICLE 1**

As agreed in the in the morning, the convenor allowed Hon. Aringo to explain the rational behind his proposed amendments to Article 1

The committee resolved to defer the consideration of Article 1 until Hon. Aringo returns from Italy to move his proposed amendments.

**MIN.NCC/TCA/18/03      CONSIDERATION OF THE PREAMBLE**

**FURTHER AMENDMENTS PROPOSED**

That the paragraph be amended by inserting the words,  
“Aged, youth and people with disabilities” immediately after the word “men”

Question of the amendment proposed, put and agreed to.

**MIN.NCC/TCA/19/03      ADJOURNMENT**

*And the time being fifty minutes past Three O”clock, the Convenor adjourned the sitting until Monday, September 15, 2003 at 8.30 a.m.*

CONFIRMED: .....

DATE: .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

12 September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Monday 15th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 1 and 2
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE SIXTH TECHNICAL WORKING GROUP ‘A’ ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON MONDAY, 15<sup>TH</sup> SEPTEMBER, 2003 AT 12.30 P.M.**

The Convenor (Mr. Billy N. Onwong’ a) called the meeting to order at 12.30 p.m.

The proceedings were opened with prayer.

**PRESENT**

1. Hon. Billy Onwong’ a	Convenor
2. Hon. Asha Chiku Wanje	493
3. Hon. Benson Okwaro	449
4. Hon. David L. A. Erulu	397
5. Hon. Francis Wabayale	588
6. Hon. Gitu wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti Fr.	520
9. Hon. Jane Kauka	375
10. Hon. Joyce Muriuki	273
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Manoti Stephen	94
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Moffat Maitha	90
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Owidi Peter Otieno	173
20. Hon. Rhonda Maende	298
21. Hon. Rita Katamu	381
22. Hon. W. R. Ole Ntimama	147
23. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

Salah A. Ahmed

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/15/03**

**PRELIMINARY**

The committee noted that the sitting arrangements had been changed and agreed to review the set-up later.

**MIN.NCC/TCA/16/03**

**CONFIRMATION OF MINUTES**

The convenor informed the committee that the minutes could not be confirmed, as the clerk was not present.

**MIN.NCC/TCA/17/03**

**PRESIDING OVER MEETINGS**

The convenor informed the committee that there could not be a temporary Chair for each day as the regulations only provides for a temporary convenor when the substantive convenor is not available.

He further informed the committee that the convenor would be rotating with the co-convenor.

**MIN.NCC/TCA/18.03**

**CONSIDERATION OF THE PREAMBLE**

The committee deliberated on the following paragraphs;

“Exercising our sovereign and inalienable right to determine the form of government of our country and having fully participated in the constitution making process”.

Question Proposed;

Debate arising.

Question put and agreed to.

“Do adopt, enact and give to ourselves and to our future generations this constitution”

Question proposed;

Debate arising.

Question put and agreed to.

“God bless Kenya”

Question proposed;

Debate arising.

That the paragraph be amended by inserting the words “our country” after the word “bless”.

(David Erulu – Del. No. 397)

Question of the amendment proposed.

Debate arising;

The delegates resolved to reconsider all the paragraphs beginning (i) above.

**MIN.NCC/TCA/19/03** **ADJOURNMENT**

And the time being five minutes past One O'clock the convenor adjourned the sitting until 2.00 p.m. this afternoon.

*AFTERNOON SITTING*

The convenor called the meeting to order at 2.45 p.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Asha Chiku Wanje	493
3. Hon. Benson Okwaro	449
4. Hon. David L. A. Erulu	397
5. Hon. Francis Wabayale	588
6. Hon. Gitu wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti Fr.	520
9. Hon. Jane Kauka	375
10. Hon. Joyce Muriuki	273
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Manoti Stephen	94
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Moffat Maitha	90
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Owidi Peter Otieno	173
20. Hon. Rhonda Maende	298
21. Hon. Rita Katamu	381
22. Hon. W. R. Ole Ntimama	147
23. Hon. Zuhura Zukira Wanje	236

Observers

Hon. Salah A. Ahmed

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/20/03      INTERRUPTION FO BUSINESS TO VISIT THE  
FAMILY OF THE LATE CONVENOR, DR. CHRISPIN MBAI**

*The Convenor informed the committee that in line with other Committees, some delegates had requested that the afternoon sitting be adjourned to allow them to visit the family of the late Dr. Chrispin Mbai.*

The committee unanimously agreed to adjourn until Tuesday, 16<sup>th</sup> September 2003.

**MIN.NCC/TCA/21/03      ADJOURNMENT**

And the time being Three O'clock, the convenor adjourned the sitting until Tuesday, September 16<sup>th</sup>, 2003 at 9.00 a.m.

CONFIRMED: .....

DATE: .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

16<sup>th</sup> September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 17th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 1 and 2
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time.....

**MINUTES OF THE SEVENTH TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON WEDNESDAY, 17<sup>TH</sup> SEPTEMBER, 2003 AT 9.45 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.45 a.m.

The proceedings were opened with prayer.

**PRESENT**

1. Billy Onwong'a	Convenor
2. Abdirahman Ali Hassan	3
3. Asha Chiku Wanje	493
4. Benson Okwaro	449
5. David L. A. Erulu	397
6. Francis Wabayale	588
7. George Khaniri	55
8. Gitu Wa Kahengeri	316
9. Ibrahim Omondi	542
10. Jane Kauka	375
11. Joseph Korir Kipkapto	75
12. Joyce Muriuki	273
13. Julius Arunga	8
14. Kavoo Kilonzo	479
15. Manoti Stephen	94
16. Marie Rose Owino	400
17. Moffat Maitha	90
18. Mohamed Abu Chiaba	108
19. Murtaza Jaffer	623
20. Nalea G. Kithumbu	285
21. Orwenyo Mary Obonyo	426
22. Owidi Peter Otieno	173
23. Pascalina R. Lebarleiya	351
24. Rhonda Maende	298
25. Rita Katamu	381
26. Somoina Keko Margaret	363
27. W. R. Ole Ntimama	147
28. Zuhura Zukira Wanje	236
29. Ibrahim Ahmed Yusuf	525

**OBSERVERS**

Hon. Salah A. Ahmed

**ABSENT WITH APOLOGY**

Hon. James N. Gatiti	520
Hon. Mburugu Florence	530



## **IN ATTENDANCE**

Prof Okoth Ogendo	-	Rapporteur-General
Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

## **MIN.NCC/TCA/22/03**

## **CONFIRMATION OF MINUTES**

The confirmation of minutes was deferred to this afternoon, as some delegates did not have copies.

## **MIN.NCC/TCA/23/03**

## **CONSIDERATION OF THE PREAMBLE**

The committee reconsidered the following paragraphs;

Exercising our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the constitution making process:

Do adopt, enact and give to ourselves and to our future generations this constitution.

Question proposed, put and agreed to.

God Bless Kenya.

Amendment proposed

That the words “our Country” be inserted after the word “bless.”  
(Hon. D. Erulu Del. No. 397)

Question of the amendment proposed.

*Debate arising.*

*Question put and agreed to.*

## **MIN.NCC/TCA/23/03**

## **CONSIDERATION OF ARTICLE 2 (SUPREMACY OF THE CONSTITUTION)**

*The rapporteur Hon. Kavetsa Adagala briefed the committee on the report of the commission with regard to Article 2 and recommendations of the commission thereof together with the report of the rapporteur General.*

*The convenor adjourned the sitting for a tea break at 11.00 a.m.*

The Committee reconvened at 11.45 a.m.

*Rapporteur Hon. Adagala gave the committee additional details related to Article 2*

**AMENDMENT PROPOSED**

That Article 2 be amended by deleting sub-Article (1) and inserting in place thereof the following new sub-Article.

Kenya is founded on the supremacy of God, and shall be governed in accordance with the constitution and the rule of law.

(Ibrahim Omondi – Del. No. 542)

Question of the amendment proposed.

Debate arising.

*Rapporteur G. Muigai explained the rationale of the Article and implications of the proposed amendment.*

**PROPOSED AMENDMENT WITHDRAWN**

*With the permission of the Committee, delegate No. 542 withdrew the proposed amendment.*

*The Committee recommended that sub-Articles 1 & 2 be harmonized to avoid repetitiveness.*

*The committee further recommended that Sub-Article 3 be reviewed so as not to include legitimate complaints by the people.*

**MIN.NCC/TCA/24/03**

**ADJOURNMENT**

And the time being twenty minutes past One O'clock, the convenor adjourned the sitting until 2.30 p.m. this afternoon.

***AFTERNOON SITTING***

*The convenor called the meeting to order at 2.45 p.m.*

**PRESENT**

1. Billy Onwong'a	Convenor
2. Abdirahman Ali Hassan	3
3. Asha Chiku Wanje	493
4. Benson Okwaro	449
5. David L. A. Erulu	397
6. Francis Wabayale	588
7. George Khaniri	55
8. Gitu Wa Kahengeri	316
9. Ibrahim Omondi	542
10. Jane Kauka	375

11.	Joseph Korir Kipkapt	75
12.	Joyce Muriuki	273
13.	Julius Arunga	8
14.	Kavoo Kilonzo	479
15.	Manoti Stephen	94
16.	Marie Rose Owino	400
17.	Moffat Maitha	90
18.	Mohamed Abu Chiaba	108
19.	Murtaza Jaffer	623
20.	Nalea G. Kithumbu	285
21.	Orwenyo Mary Obonyo	426
22.	Owidi Peter Otieno	173
23.	Pascalina R. Lebarleiya	351
24.	Rhonda Maende	298
25.	Rita Katamu	381
26.	Somoina Keko Margaret	363
27.	W. R. Ole Ntimama	147
28.	Zuhura Zukira Wanje	236
29.	Ibrahim Ahmed Yusuf	525

Observers

Salah A. Ahmed

Benard Chahilu

**ABSENT WITH APOLOGY**

Hon. James N. Gatiti 520

Hon. Mburugu Florence 530

**IN ATTENDANCE**

Prof. Okoth Ogendo	-	Rapporteur General
Dr. Githu Muigai	-	Rapporteur
Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/25/03**

**CONSIDERATION OF ARTICLE 2**

Rapporteur Dr. Muigai explained further the pertinent issues under the subject of supremacy of the constitution.

The committee then considered Article 2 as follows:

*Sub-Article 2(4)*



**NATIONAL CONSTITUTIONAL CONFERENCE**

17 September 2003

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 18th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Article 3 and 5
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE EIGHTH SITTING OF TECHNICAL WORKING GROUP  
'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE  
REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN  
TENT NO. 1 ON THURSDAY, 18<sup>TH</sup> SEPTEMBER, 2003 AT 9.35 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.35 a.m.

The proceedings were opened with prayer.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon. Francis Wabayale	588
5. Hon. George Khaniri	55
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti	520
9. Hon. Jane Kauka	375
10. Hon. Joyce Muriuki	273
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Manoti Stephen	94
14. Hon. Marie Rose Owino	400
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Nginyo Kariuki	607
19. Hon. Orwenyo Mary Obonyo	426
20. Hon. Owidi Peter Otieno	173
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Rhonda Maende	298
23. Hon. Rita Katamu	381
24. Hon. Somoina Keko Margaret	363
25. Hon. W. R. Ole Ntimama	147
26. Hon. Zuhura Zukira Wanje	236
27. Hon. Ibrahim Ahmed Yusuf	525
28. Hon. Mburugu Florence	530

Observers

Hon. Salah A. Ahmed

Hon. David Oreshi

Hon. J. Denis Okumu

Hon. Benard Chahilu

Lancaster

## **IN ATTENDANCE**

Dr. Githu Muigai - Rapporteur  
Kavetsa Adagala - Rapporteur  
Sylvia Nyaga - Asst. Programme Officer  
Rozina Mngola - Asst. Programme Officer  
Stephen Njenga - Clerk Assistant

## **MIN.NCC/TCA/27/03**

## **CONFIRMATION OF MINUTES**

*Minutes of the Third sitting were confirmed by the members present, having been proposed by Hon. R. Maende and Seconded by Hon. M.R. Owino*

*Minutes of the Fourth sitting were confirmed by the members present having been proposed by Hon. R. Katamu and Seconded by Hon. J. Kauka.*

*Minutes of the Fifth sitting were confirmed by the members present having been proposed by Hon. M.Orwenyo and seconded by Hon. F. Mburugu.*

*Minutes of the Sixth sitting were confirmed by the members present having been proposed by Hon. R.Maende and seconded by Hon. D. Erulu.*

## **MIN.NCC/TCA/28/03**

## **MATTERS ARISING**

*The following corrections were made to the minutes.*

The Heading of the minutes to contain the word “sitting” and days/dates amended accordingly.

Third Sitting

The following delegates were omitted from attendance list

Morning Sitting

Hon. R. Katamu	Del. 381
Hon. Z. Wanje	Del 236
Hon. A.C. Wanje	Del.493
Hon. D. Erulu	Del. 397

Afternoon

Hon F. Mburugu	Del. 530
Hon. O. Aringo	Del. 212(name appears twice)

Fourth Sitting

Morning

Hon. K. Muriuki	Del. 273
Hon. M. Orwenyo	Del. 426
Hon. M. Matha	Del. 90
Hon. D. Erulu	Del. 397

Names omitted

Afternoon  
Hon. A.C. Wanje Del. 493  
Hon. D. Erulu Del. 397

Fifth sitting  
Morning  
Hon. J. Kauka

Afternoon  
Hon. J. Kauka

**MIN.NCC/TCA/29/03 ANY OTHER BUSINESS**

Delegates complained that the support staff required more training in managing the records of the committee as the minutes contained many omissions particularly with regard to the attendance lists

Delegates requested that the committee prepares a daily timetable to guide its sitting.

The Convenor adjourned the sitting at 10.30 a.m. for a tea break.

The committee reconvened at 11.30 a.m.

**MIN.NCC/TCA/30/03 CONSIDERATION OF ARTICLE 3 & 4**

a) ARTICLE 3

*Rapporteur Dr. Muigai explained the meaning and purpose of the Article.*

Question Proposed;

*That the Article be part of the Draft Bill*

*The Committee recommended that:*

*Article 3(1) be revised to make provision for “groups of persons” so that there is no restriction on “a person” only.*

*Article 3(2) be revised by deleting the word “may” and replace it with the word “shall”*

*The whole Article should also be rewritten in clear, simple and plain language.*

b) ARTICLE 4

*Question proposed;*

*That the Article be part of the Draft Bill.*



*Debate Arising:*

*The committee recommended that the Article should be revised to make it explicit that the defense of the constitution lies with the people.*

**MIN. NCC/TCC/31/03**

**ADJOURNMENT**

*And the time being Ten minutes past One O'clock, the convenor adjourned the sitting until 2.30 p.m. this afternoon.*

AFTERNOON SITTING

The Convenor called the meeting to order at 2.30 p.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon. Francis Wabayale	588
5. Hon. George Khaniri	55
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti	520
9. Hon. Jane Kauka	375
10. Hon. Joyce Muriuki	273
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Manoti Stephen	94
14. Hon. Marie Rose Owino	400
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Nginyo Kariuki	607
19. Hon. Orwenyo Mary Obonyo	426
20. Hon. Owidi Peter Otieno	173
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Rhonda Maende	298
23. Hon. Rita Katamu	381
24. Hon. Somoina Keko Margaret	363
25. Hon. W. R. Ole Ntimama	147
26. Hon. Zuhura Zukira Wanje	236
27. Hon. Ibrahim Ahmed Yusuf	525
28. Hon. Mburugu Florence	530

Observers  
Salah A.Ahmed

David Oreshi  
Hon. J. Denis Akumu  
Bernard Chahilu

Lancaster

**IN ATTENDANCE**

Prof. O. Ogendo	-	Rapporteur General
Prof, J.B. Ojwang	-	Draftsman
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN NCC/TCA/32/03 RESUMPTION OF DEBATE ON ARTICLE 4**

The Committee deliberated on article 4.

The committee reiterated its earlier recommendation that the Article be revised to include the following;

Affirmation that the defense of the constitution is the duty of the people and their institutions, including parliament.

A clause on how to defend the constitution

A clause to provide penalties for failure to defend the constitution

Reduce the scope of parliament on the constitution.

**MIN.NCC/TCA/33/03 ADJOURNMENT**

And the time being four O'clock, the convenor adjourned the sitting until Friday, 19<sup>th</sup> September 2003 at 8.30 a.m.

CONFIRMED: .....

DATE: .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

18 September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 19th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 5
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE NINTH SITTING OF TECHNICAL WORKING GROUP 'A'  
ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE  
REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN  
TENT NO. 1 ON FRIDAY, 19<sup>TH</sup> SEPTEMBER, 2003 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon Assa Chiku Wanje	493
4. Hon. Benson Okwaro	449
5. Hon. David L. A. Erulu	397
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon Joseph K. Korir	75
12. Hon. Joyce Muriuki	273
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Manoti Stephen	94
16. Hon. Marie Rose Owino	400
17. Hon. Moffat Maitha	90
18. Hon. Murtaza Jaffer	623
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo Mary Obonyo	426
21. Hon. Owidi Peter Otieno	173
22. Hon. Pascalina R. Lebarleiya	351
23. Hon. Rhonda Maende	298
24. Hon. Rita Katamu	381
25. Hon. Somoina Keko Margaret	363
26. Hon. W. R. Ole Ntimama	147
27. Hon. Zuhura Zukira Wanje	236
28. Hon. Ibrahim Ahmed Yusuf	525
<i>Non signed up delegates</i>	
29. Hon. Mburugu Florence	
30. Hon. Shakeel S. Ahmed	

*Observers*

David Orechi	
Hon. J. Denis Akumu	Lancaster
Benard Chahilu	

David Malaba  
Salah Arte

**IN ATTENDANCE**

Dr. Githu Muigai	-	Rapporteur
Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/34/03 - CONFIRMATION OF MINUTES**

*The minutes of the seventh sitting were confirmed by members present having been proposed by Hon. N. Kithumbu and seconded by Hon. J. Kauka.*

**MIN.NCC/TCA/35/03 CONSIDERATION OF ARTICLE 4**

The committee reconsidered the recommendations to Article 4 and resolved to amend them as follows by revising it to include the following;

Affirmation that the defence of the constitution is the duty of the people and their institutions, which include parliament, the Executive, Judiciary and others, provided by or under the constitution.

A clause to reduce the scope of Parliament particularly in amending the constitution.

A clause to compel Parliament to enact legislation to make it mandatory for holders of constitutional offices to defend the constitution including creating offenses for failure to do so.

**MIN.NCC/TCA/36/03 ANY OTHER BUSINESS**

The Convenor informed the committee that the Convenors and Rapporteurs meeting had permitted the Technical Committee No. A to deliberate on Chapter 18 (eighteen) and present their recommendations to the Convenors and Rapporteurs meeting.

*The Committee agreed to consider the chapter at a later date and prepare a report.*

The Convenor adjourned the sitting at 10.45 a.m. for a tea break.

The committee reconvened at 11.30 a.m.

**MIN.NCC/TCA/37/03 CONSIDERATION OF ARTICLE 5**

The committee deliberated on Article 5

Rapporteur Dr. Githu Muigai appraised the committee on the principles of the Article.

Rapporteur Kavetsa Adagala elaborated on pertinent issues related to the Article particularly proposals emanating from the plenary.

Question proposed that the Article be part of the Draft Bill.

*Debate Arising*

AMENDMENT PROPOSED

*That the heading of the Article be deleted and replaced by the following heading*

*Sources of the Laws of Kenya  
(Hon I. Yusuf - Del. No. 525)*

*Question of the amendment proposed*

Debate arising

Question put and agreed to.

FURTHER AMENDMENT PROPOSED

*That Article 5(1) be deleted and replaced by the following;*

*“The sources of the laws of Kenya are”  
(Hon. I. Omondi – Del. No. 542)*

Question of the amendment proposed.

Debate arising;

The committee deferred resolving this matter until 2.00 p.m. this afternoon.

**MIN.NCC/TCA/38/03                      ADJOURNMENT**

And the time being thirty minutes past Twelve O'clock, the convenor adjourned the sitting until 2.00 p.m. this afternoon.

*AFTERNOON SITTING*

*The Convenor called the meeting to order at 2.45 p.m.*

## PRESENT

1. Hon. Billy Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon Asa Chiku Wanje	493
4. Hon Benson Okwaro	449
5. Hon. David L. A. Erulu	397
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Joyce Muriuki	273
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Marie Rose Owino	400
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rhonda Maende	298
21. Hon. Rita Katamu	381
22. Hon. Somoina Keko Margaret	363
23. Hon. W. R. Ole Ntimama	147
24. Hon. Zuhura Zukira Wanje	236
25. Hon. Ibrahim Ahmed Yusuf	525

### *Non signed up delegates*

26. Hon. Shakeel S. Ahmed	
27. Hon. Mburugu Florence	530

### *Observers*

David Orechi	
Hon. J. Denis Akumu	Lancaster
Benard Chahilu	
David Malaba	

## IN ATTENDANCE

Dr. Githu Muigai	-	Rapporteur
Kavetsa Adagala	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/39/03                      RESUMPTION OF DEBATE ON ARTICLE 5**

That Article 5(1) be deleted and the following be inserted in place thereof;

*5(1) The sources of the laws of Kenya are: -  
(Hon. I. Omondi – Del. No. 542)*

*Debate interrupted resumed;*

Prof. J.B. Ojwang explained the basis of the Article.

Prof. Knight further elaborated on the meaning of the laws and sources of law as contained in the Article and subsequent proposed amendments.

The committee deferred consideration of the Article until Monday, 22<sup>nd</sup> September 2003 and requested that Rapporteur Dr. Muigai and the Legal Draftsman be present.

**MIN.NCC/TCA/40/03                      ADJOURNMENT**

And the time being ten minutes past Four O'clock, the Convenor adjourned the sitting until Monday, 22<sup>nd</sup> September, 2003 at 8.30 a.m.

The Proceedings were closed with prayers.

CONFIRMED: .....

DATE: .....



**NATIONAL CONSTITUTIONAL CONFERENCE**

19<sup>th</sup> September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 22<sup>nd</sup> September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 5
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TENTH SITTING OF TECHNICAL WORKING GROUP 'A'  
ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE  
REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN  
TENT NO. 1 ON MONDAY 22<sup>ND</sup> SEPTEMBER, 2003 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Asha C. Wanje	493
3. Hon. Benson Okwaro	449
4. Hon. Eisintele Kureya	264
5. Hon. David L. A. Erulu	397
6. Hon. George Khaniri	55
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Joyce Muriuki	273
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Manoti Stephen	94
15. Hon. Marie Rose Owino	400
16. Hon. Moffat Maitha	90
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rhonda Maende	298
21. Hon. Rita Katamu	381
22. Hon. Somoina Keko Margaret	363
23. Hon. W. R. Ole Ntimama	147
24. Hon. Zuhura Zukira Wanje	236
25. Hon. Ibrahim Ahmed Yusuf	525
26. Hon. P. Oloo Aringo	212
27. Hon. Mburugu Florence	530

Observers

David Orechi

Hon. J. Denis Akumu

Lancaster

Benard Chahilu

David Malaba

**IN ATTENDANCE**

Dr. Githu Muigai

- Rapporteur

Kavetsa Adagala	-	Rapporteur
Prof. J.B. Ojwang	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/41/03                      CONFIRMATION OF MINUTES**

The minutes of the eighth sitting were confirmed by members present having been proposed by Hon. R. Katamu and seconded by Hon. J Kauka.

Minutes of the ninth sitting were confirmed by the members present having been proposed by Hon. Maende and seconded by Hon. MR. Owino

**MIN.NCC/TCA/42/03                      MATTERS ARISING**

The following delegate was omitted from the attendance list.

Hon. A.C. Wanje                      Del. No. 493

**MIN.NCC/TCA/43/03                      CONSIDERATION OF ARTICLE 1**

The convenor informed the committee that the morning session would be spent in the consideration of Article 1, as agreed earlier.

Question proposed that Article 1 be part of the Draft Bill.

Rapporteur Dr Muigai briefed the committee on the Article especially on the proposals made at the plenary.

Debate Arising;

- Sub Article 1(1)                      -                      Agreed to.
- Sub Article 1(2)                      -                      Agreed to

Rapporteur Kavetsa Adagala informed the committee that she had requested, the CKRC to provide expertise on the systems of government but the expected expert had not arrived.

The committee agreed to proceed for a break awaiting the expert.

The convenor adjourned the sitting at 11.00 a.m. for a tea break.

The Committee reconvened at 11.50 a.m.





**NATIONAL CONSTITUTIONAL CONFERENCE**

22 September 2003

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 23rd September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Article 1 and 5
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE ELEVENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY, 23RD SEPTEMBER, 2003 AT 9.55 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.55 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Abdirahman Ali Hassan	3
3. Hon. Asha Chiku Wanje	493
4. Hon. Benson Okwaro	449
5. Hon. David L. A. Erulu	397
6. Hon. Eisintele Kureya	264
7. Hon. Francis Wabayale	588
8. Hon. George Khaniri	55
9. Hon. Gitu Wa Kahengeri	316
10. Hon. Ibrahim Omondi	542
11. Hon. James N. Gatiti	520
12. Hon. Jane Kauka	375
13. Hon. Joseph K. Kipkapto	75
14. Hon. Joyce Muriuki	273
15. Hon. Julius Arunga	8
16. Hon. Kavoo Kilonzo	479
17. Hon. Manoti Stephen	94
18. Hon. Marie Rose Owino	400
19. Hon. Moffat Maitha	90
20. Hon. Murtaza Jaffer	623
21. Hon. Nalea G. Kithumbu	285
22. Hon. Oloo Aringo	212
23. Hon. Orwenyo M Obonyo	426
24. Hon. Owidi Peter Otieno	173
25. Hon. Pascalina R. Lebarleiya	351
26. Hon. Rhonda Maende	298
27. Hon. Rita Katamu	381
28. Hon. Somoina K. Margaret	363
29. Hon. W. R. Ole Ntimama	147
30. Hon. Zuhura Z Wanje	236
31. Hon. Ibrahim A. Yusuf	525
32. Mburugu Florence	530

Observers

- 1 Denis Akumu
- 2 David Orechi K.





Rapporteur Dr. Muigai expounded on the effects of the proposed amendment and its implications on other parts of the draft bill and specifically on Article 3 and Chapter eight (8) (The executive).

Debate arising;

Question put and agreed to

The convenor adjourned the sitting at twenty-five minutes past Eleven O'clock for a tea break

*The Committee reconvened at 12.00 noon.*

Debate interrupted resumed;

#### FURTHER AMENDMENT PROPOSED

That Article 1 be further amended by inserting the following new sub-Article (4) to read;

“The people of Kenya shall govern through their parliament”  
(Hon. Peter O. Aringo Del. No. 212)

Question of the amendment proposed

Debate arising

Question put and agreed to.

#### **MIN.NCC/TCA/50/03**

#### **ANY OTHER BUSINESS**

*The Committee requested Prof. J.B. Ojwang to recast the old Sub-Articles 3 and 4 in view of the amendments adopted, above.*

#### **MIN.NCC/TCA/51/03**

#### **ADJOURNMENT**

And the time being fifteen minutes past One O'clock, the convenor adjourned the sitting until 2.30 p.m. this afternoon.

#### *AFTERNOON SITTING*

The Convenor called the meeting to order at 2.45 p.m.

#### **PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Asha Chiku Wanje	493
3. Hon. Benson Okwaro	449
4. Hon. Francis Wabayale	588
5. Hon. George Khaniri	55

6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti	520
9. Hon. Jane Kauka	375
10. Hon. Joseph Korir Kipkapto	75
11. Hon. Joyce Muriuki	273
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Marie Rose Owino	400
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Oloo Aringo	212
19. Hon. Orwenyo Mary Obonyo	426
20. Hon. Owidi Peter Otieno	173
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Rhonda Maende	298
23. Hon. W. R. Ole Ntimama	147
24. Hon. Zuhura Zukira Wanje	236
25. Hon. Ibrahim Ahmed Yusuf	525
26. Hon. Mburugu Florence	530

Observers

Hon. Denis Akumu	Lancaster
David Orechi K	
David S. Malaba	

**IN ATTENDANCE**

Kavetsa Adagala	-	Rapporteur
D. G. Muigai	-	Rapporteur
Prof. J.B. Ojwang	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/52/03**

**CONFIRMATION OF MINUTES**

Minutes of the Tenth sitting were confirmed by the members present having been proposed by Hon. J. Kauka and seconded by Hon. Gitu wa Kahengeri.

**MIN.NCC.TCA.53.03**

**CONSIDERATION OF ARTICLE 1**

The committee deliberated on Article 1 and specifically on the values of the new sub-Articles 3 and 4, adopted earlier.

The committee resolved to defer any consideration on this article pending consultations between the rapporteur, the draftsman and the mover of the two motions in the morning to come up with text that addresses the concerns raised by delegates

**CONSIDERATION OF ARTICLE 5**

The committee deliberated on Article 5, whose consideration was deferred earlier.

Debate interrupted resumed;

The convenor adjourned the sitting at 3.45 p.m. for a tea break.

Debate interrupted resumed;

**AMENDMENT PROPOSED**

That Article 5(1) be deleted and the following be inserted in place thereof.

(Hon. Omondi – Del. No. 542)

With the permission of the committee, the delegate withdrew the proposed amendment.

Debate on Article 5 resumed.

**MIN.NCC/TCA/54/03                      ADJOURNMENT**

And the time being ten minutes past Five O'clock, the convenor adjourned the sitting until Wednesday, 24<sup>th</sup> September, 2003 at 8.30 a.m.

Confirmed: .....

Date: .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

23<sup>rd</sup> September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 24th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 5 and 6
5. Consideration of Chapter 18
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWELFTH SITTING OF TECHNICAL WORKING GROUP  
'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE  
REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN  
TENT NO. 1 ON WEDNESDAY 24TH SEPTEMBER, 2003 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor
2. Hon. Benson Okwaro	449
3. Hon. David L. A. Erulu	397
4. Hon. Eisintele Kureya	264
5. Hon. Francis Wabayale	588
6. Hon. George Khaniri	55
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Joseph Korir Kipkapt	75
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Manoti Stephen	94
16. Hon. Marie Rose Owino	400
17. Hon. Mburugu Florence Ruhiu	530
18. Hon. Moffat Maitha	90
19. Hon. Murtaza Jaffer	623
20. Hon. Nalea G. Kithumbu	285
21. Hon. Peter Oloo Aringo	212
22. Hon. Orwenyo Mary Obonyo	426
23. Hon. Owidi Peter Otieno	173
24. Hon. Pascalina R. Lebarleiya	351
25. Hon. Rhonda Maende	298
26. Hon. W. R. Ole Ntimama	147
27. Hon. Zuhura Zukira Wanje	236

Observers

David Okech Keraa

David S. Malaba

**IN ATTENDANCE**

Dr. G. Muigai	-	Rapporteur
Prof. J.B. Ojwang	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme Officer

Rozina Mngola - Asst. Programme Officer  
Stephen Njenga - Clerk Assistant

**MIN.NCC/TCA/55/03**                      **PRELIMINARY**

The convenor informed the committee that the steering committee had reiterated that members wishing to make interventions in other committees should do so between 9.30 a.m. and 10.30 a.m.

The convenor also informed the committee that the steering committee had directed that a list of members, who were not attending committee sittings, should be prepared so that necessary action could be taken.

The convenor added that he was in the process of compiling the list.

The convenor allowed Hon. Gitu Wa Kahengeri to make a personal statement regarding his eviction from a City Council House

He explained the circumstances surrounding the matter and thanked the members of the committee for their concern

**MIN.NCC/TCA/56/03**                      **CONFIRMATION OF MINUTES**

Minutes of the eleventh sitting were confirmed by the members present having been proposed by Hon. I. Omondi and seconded by Hon. R. Maende

**MIN.NCC/TCA.57/03**                      **CONSIDERATION OF ARTICLE 6**

*The committee deliberated on Article 6.*

Question proposed that the Article be part of the draft bill.

Debate arising

Question put and agreed to

*CONSIDERATION OF ARTICLE 7*

The committee deliberated on Article 7

**AMENDMENT PROPOSED**

That Sub-Article 7(1) be deleted and the following be inserted in place thereof.

“The territory of the Republic of Kenya shall be as determined under international law and international agreements.

(Hon Oloo Aringo - Del. No. 212)

Question of the amendment proposed

Debate Arising

Question put and agreed to.

Sub-Article 7(2) agreed to

Sub-Article 7(3) agreed to

Sub –Article (4)

#### AMENDMENT PROPOSED

That sub-Article 7(4) be deleted

(Hon. Oloo Aringo – Del. No. 212)

Question of the amendment proposed.

Rapporteur Dr. Muigai explained the consequences of the proposed amendment.

Debate arising;

Question put and agreed to.

#### *CONSIDERATION OF ARTICLE 5*

#### AMENDMENT PROPOSED

That the whole Article be deleted from the Draft Bill.

(Hon. D. Erulu Del. No. 397)

Question of the amendment proposed.

Debate arising.

The convenor adjourned the sitting at 11.45 a.m. for a tea break.

The committee reconvened at 12.10 p.m.

Interrupted business resumed.

Question put and upon a division negatived

Yes - 4

No - 13

Abstention - 1

*CONSIDERATION OF ARTICLE 5*

AMENDMENT PROPOSED

That sub-Article 5(1)(c) and (d) be deleted and be replaced by the following: -

The Personal Law  
(Hon. I Omondi - Del. No. 542)

Question of the amendment proposed

**MIN.NCC/TCA/58/03 ADJOURNMENT**

And the time being One O'clock, the convenor adjourned the sitting until Thursday, 25<sup>th</sup> September 2003 at 8.30 a.m.

CONFIRMED: .....

DATE: .....



**NATIONAL CONSTITUTIONAL CONFERENCE**

23rd September 2003

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 25th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Preamble, Articles 5 and 8
5. Consideration of Chapter 18
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE THIRTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON THURSDAY, 25<sup>TH</sup> SEPTEMBER, 2003 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.55 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Abdirahman Ali Hassan	3
3. Hon. Benson Okwaro	449
4. Hon. David L. A. Erulu	397
5. Hon. Eisintele Kureya	264
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. John Munyes	119
12. Hon. Joseph Korir Kipkapt	75
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence Ruhiu	530
17. Hon. Moffat Maitha	90
18. Hon. Nalea G. Kithumbu	285
19. Hon. Peter Oloo Aringo	212
20. Hon. Orwenyo Mary Obonyo	426
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Rhonda Maende	298
23. Hon. W. R. Ole Ntimama	147
24. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

David Okechi Keraa

David S. Malaba

**IN ATTENDANCE**

Dr. Githu Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/59/03      CONFIRMATION OF MINUTES**

Minutes of the twelfth sitting were confirmed by the members present having been proposed by Hon. O. Aringo and seconded by Hon. R. Maende.

**MIN.NCC/TCA/60/03      MATTERS ARISING**

*The committee directed that the pages of the minutes should be numbered for ease of reference.*

**MIN.NCC/TCA/61/03      CONSIDERATION OF ARTICLE 5**

The committee deliberated on Article 5

Debate interrupted resumed

Question Proposed

That sub-Article 5(1) (c ) and (d) be deleted and be replaced by the following: -

Personal Laws  
(Hon. I Omondi – Del. No. 542)

Question of the amendment proposed;

Debate arising

Question put and agreed to

The convenor adjourned the sitting at 11.00 a.m. for a tea break.

Debate interrupted resumed.

Question proposed

Sub-Article 5(1)(e) be part of the Draft Bill

Question put and agreed to

Application of these laws.  
(Hon. I. Oyugi – Del. No. 525)

Question of the amendment proposed;

Debate arising;

*FURTHER AMENDMENT PROPOSED*

That the proposed amendment under 5(2)(5) be further amended by deleting the words “African Customary Law and others”

(Hon. J. Arunga – Del. No. 8)

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to.

*FURTHER AMENDMENT PROPOSED*

That the proposed amendment be further amended under 5(2)(b) by inserting the words” of the people of Kenya” after the words “personal laws”

(Hon. F. Mburugu – Del. No. 530)

Question of the further amendment proposed;

Debate arising

Question of the further amendment agreed to;

*RECONSIDERATION OF ARTICLE 7*

The committee reconsidered Article 7 as follows;

*FURTHER AMENDMENT PROPOSED*

That a new sub Article 7(4) be inserted to read as follows;

“All peoples have the right to self determination; by virtue of that right they are free to determine their political status and freely pursue their economic, social and cultural development.

(Hon. I. Yussuf – Del. No. 525)

Question of the amendment proposed;

Debate arising

Question put and negatived

**MIN.NCC/TCA/62/03**

**ADJOURNMENT**

And the time being five minutes past One O’clock, the convenor adjourned the sitting until 2.30 p.m. this afternoon.

*AFTERNOON SITTING*

The Convenor called the meeting to order at 2.40 p.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Gitu Wa Kahengeri	316
3. Hon. Ibrahim Ahmed Yussuf	525
4. Hon. Jane Kauka	375
5. Hon. John Munyes	119
6. Hon. Joseph Korir Kipkapto	75
7. Hon. Julius Arunga	8
8. Hon. Kavoo Kilonzo	479
9. Hon. Marie Rose Owino	400
10. Hon. Mburugu Florence Ruhiu	530
11. Hon. Nalea G. Kithumbu	285
12. Hon. Peter Oloo Aringo	212
13. Hon. Orwenyo Mary Obonyo	426
14. Hon. Pascalina R. Lebarleiya	351
15. Hon. Rhonda Maende	298
16. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Dr. G. Muigai	-	Rapporteur
Sylvia Nyaga	-	Asst. Programme officer
Rozina Mngola	-	Asst. Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/63/03 - CONSIDERATION OF ARTICLE 8**

The committee deliberated on Article 8.

Question proposed that Article 8 be part of the Draft Bill.

**AMENDMENT PROPOSED**

That 8(1) be deleted and the following be inserted in place thereof;

The Commercial capital of Kenya is Nairobi

The Administrative capital of Kenya is Kisumu  
(Hon. D. Erulu – Del. No. 397)

Question of the amendment proposed;

Debate Arising

Question put and negatived

Sub-Article 8(2) - agreed to.

Sub-Article 8(3)

**AMENDMENT PROPOSED**

That the word “is” on the first line be deleted and the words “shall be” be inserted in place thereof.

That the word “provinces” on the seventh line be deleted and the word regions be inserted in place thereof.

(Hon I. Yussuf – Del. No. 525)

Question of the amendments proposed;

Debate arising

Question put and agreed to

**CONSIDERATION OF ARTICLE 9**

The committee deliberated on Article 9

Question Proposed

That sub-Article 9(1) be part of the Draft Bill.

Debate Arising.

Question put and agreed to.

Sub-Article 9(2)

**AMENDMENT PROPOSED**

That the sub-Article be amended to read;

“The National Languages of Kenya are Kiswahili and all other indigenous languages spoke by Kenyan people”

(Hon. Gitu Wa Kahengeri Del No. 316)

Question of the Amendment proposed

Debate arising

Question put and negatived

Sub-Article 9(3)

AMENDMENT PROPOSED

That the sub-Article be amended by deleting the word “Kiswahili” on the sixth line.

Question of the amendment proposed.

Debate arising

Question put and agreed to

That the sub-Article be amended by inserting the words “and” before the word “sign” on the seventh line.

That the sub-Article be further amended by deleting the words “and Braille” at the end of the sentence.

(Hon. F. Mburugu – Del. No. 530)

Question of the amendment proposed

Debate arising

Question put and agreed to.

The committee recommended that the sub-Article be revised to improve its flow.

That a new Sub-Article 9(4) be inserted to read;

“The state shall promote the development and use of Braille as a mode of communication for persons with visual impairments”.

(Hon. F. Mburugu - Del. No. 530)

Question of the amendment proposed.

Debate Arising.

Question put and agreed to.

**MIN.NCC/TCA/64/03**

**ADJOURNMENT**

The convenor adjourned the sitting at 4.05 p.m.

CONFIRMED: .....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

25 September 2003

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Friday 26th September, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Article 1, 10 and 11
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....



**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday 13<sup>th</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Articles 1, 10-13
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE FOURTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY 13<sup>TH</sup> JANUARY, 2004 AT 11.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 11.30 a.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon Asha Ciku Wanje	493
4. Hon. David L. A. Erulu	397
5. Dubat Ali Amey	252
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon Jane Kauka	375
12. Hon. Joseph Korir Kipkapto	75
13. Hon. Kavoo Kilonzo	479
14. Hon. Kuria Simon Kanyingi	79
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence	530
17. Hon. Moffat Maitha	90
18. Hon. Nalea G. Kithumbu	285
19. Hon. Orwenyo Mary Obonyo	426
20. Hon. Pascalina R. Lebarleiya	351
21. Hon. Peter Oloo Aringo	212
22. Hon. Rodah Maende	298
23. Hon. Raphael G. Mwai	485
24. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

Hon. David Orechi K.  
Hon. Linda Agaloduay  
Hon. David Malava

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme Officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/65/04      INTRODUCTORY REMARKS**

The Convenor welcomed the members of the Committee and briefed them on the procedure to be followed in the consideration of the remaining part of its work.

The Convenor suggested that the Committee proceeds with Articles not covered (Articles 10 – 15) before considering the Articles deferred during Bomas II

The Committee agreed with the proposal.

The Committee welcomed the new draftsman Mr. Jeremy Wainwright.

The Committee resolved to adjourn to 2.30 p.m. this afternoon to give the draftsman time to be updated on the work of the Committee including issues that require his intervention.

### **MIN.NCC/TCA/66/04      ADJOURNMENT**

And the time being fifty minutes past eleven O'clock, the Convenor adjourned the sitting until 2.30 p.m. in the afternoon.

#### **AFTERNOON SITTING**

#### **PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon Benson Okwaro	449
4. Hon. David L. A. Erulu	397
5. Dubat Ali Amey	252
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Joseph Korir Kipkapto	75
13. Hon. Kavoo Kilonzo	479
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Moffat Maitha	90
17. Hon. Murtaza Jaffer	623
18. Hon. Nalea G. Kithumbu	285
19. Hon. Orwenyo Mary Obonyo	426
20. Hon. Pascalina R. Lebarleiya	351
21. Hon. Peter Oloo Aringo	212
22. Hon. Rodah Maende	298
23. Hon. Raphael G. Mwai	485
24. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

Hon. David Orechi K.  
Hon. Linda Agaloduay  
Hon. David Malava

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Sylvia Nyaga	-	Programme officer
Rozina Mngola	-	Programme Officer
Stephen Njenga	-	Clerk Assistant

**MIN.NCC/TCA/67/04**

**CONFIRMATION OF MINUTES**

Minutes of the thirteenth sitting were confirmed by the members present and signed by the convenor having been proposed by Hon .J. Kauka and Seconded by Hon. R. Maende.

**MIN.NCC/TCA/68/04**      **CONSIDERATION OF ARTICLE 1**

The Convenor informed the Committee that the draftsperson needed more time to review the suggestions proposed by Prof. Ojwang on Article 1.

Consideration of Article 1 was therefore deferred.

**CONSIDERATION OF ARTICLE 10**

Deliberation don this Article was deferred until Wednesday 14<sup>th</sup> January 2004.

**CONSIDERATION OF ARTICLE 11**

Question Proposed;

That 11(a) be part of the Draft Bill.

Debate arising

**AMENDMENT PROPOSED**

That the Sub-article be amended to define the National Flag and significance of its colours.

(Hon. Gitu wa Kahengeri      -      Del. No. 316)

Question of the amendment proposed;

Debate arising;

Question put and negatived.

Question proposed;

That 11(b) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed;

That 11(c) be part of the Draft Bill.

Debate arising;

#### AMENDMENT PROPOSED

That the slogan “Harambee” on the Coat of Arms be deleted and in place thereof insert the words “Tujenge Pamoja”

(Hon. I. Omondi - Del. No. 542)

Debate arising;

By the indulgence of the Committee, the delegate withdrew the proposed amendment.

Question put and agreed to.

Question proposed;

That 11(d) be part of the Draft Bill.

Debate arising;

#### AMENDMENT PROPOSED

That the words “of Kenya” be deleted.

(Hon. I. Yusuf - Del. No. 525)

Question of the amendment proposed.

Debate arising;

Question put and agreed to.

Article 11, as amended, agreed to.

#### CONSIDERATION OF ARTICLE 12

Question proposed;

That Article 12 be part of the Draft Bill

Debate arising;

Question put and agreed to.

#### CONSIDERATION OF ARTICLE 13

Question proposed;

That 13(a) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed

That 13(b) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question Proposed;

That 13(c) be part of the Draft Bill.

Debate arising;

#### AMENDMENT PROPOSED

That 13(c) be deleted and in place thereof be inserted “heroes day”.  
(Hon. I. Omondi - Del. No.542)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

#### FURTHER AMENDMENT PROPOSED

That “20<sup>th</sup> October” be observed as the heroes’ day.  
(Hon. Gitu Wa Kahengeri - Del. No. 316)



**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday, 14th January, 2003 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Article 10, 14-15
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....



**MINUTES OF THE FIFTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON WEDNESDAY, 14<sup>TH</sup> JANUARY, 2004 AT 9.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. Abdirahman A. Hassan	3
4. Hon. David L. A. Erulu	397
5. Hon Benson Okwaro	449
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. George Khaniri	55
9. Hon. Ibrahim Ahmed Yussuf	525
10. Hon. Ibrahim Omondi	542
11. Hon. James Nthiga Gatiti	520
12. Hon Jane Kauka	375
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Manoti Stephen	94
16. Hon. Marie Rose Owino	400
17. Hon. Mburugu Florence	530
18. Hon. Moffat Maitha	90
19. Hon. Murtaza Jaffer	623
20. Hon. Nalea G. Kithumbu	285
21. Hon. Orwenyo M. Obonyo	426
22. Hon. Owidi Peter Otieno	173
23. Hon. Pascalina R. Lebarleiya	351
24. Hon. Rodah Maende	298
25. Hon. Raphael G. Mwai	485
26. Hon. Zuhura Zukira Wanje	236

Observers

Hon. David Orechi K.

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme officer
Rozina Mngola	-	Programme Officer



That the words “and protect” be inserted immediately after the word “promote” on the fourth line.

(Hon. F. Mburugu - Del. No. 530)

Question of the amendment proposed.

Debate arising;

Question put and agreed to.

Question proposed;

That 14(4) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed

That 14(5) be part of the Draft Bill.

Question put and agreed to.

Question proposed;

That 14(6) be part of the Draft Bill.

Question put and agreed to.

Question proposed;

That 14(7) be part of the Draft Bill.

#### AMENDMENT PROPOSED

That the word “affordable” be inserted immediately after the word “impartial” on the fourth line.

(Hon. Gitu Wa Kahengeri - Del. No. 316)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

#### FURTHER AMENDMENT PROPOSED



Debate arising;

#### AMENDMENT PROPOSED

That the word “promote” be deleted and the word “recognize” be inserted in place thereof.

(Hon. J. Arunga - Del. No. 8)

Question of the amendment proposed.

Debate arising;

Question put and agreed to.

Question proposed;

That 14(10) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed;

That 14(11) be part of the Draft Bill.

#### AMENDMENT PROPOSED

That the words “the disabled” be deleted and the words “people with disabilities” be inserted in place thereof.

(Hon. R. Maende - Del. No. 298)

#### FURTHER AMENDMENT PROPOSED

That the amendment be further amended by deleting the word “people” and insert the word “persons” in place thereof.

(Hon. D. Erulu- Del. No. 397)

Question of the further amendment proposed.

Debate arising;

The Committee deferred consideration on this sub-article and requested the Rapporteur to liaise with the Draftsperson and prepare text that accommodates the views of the Committee as reflected in the proposed amendments.

And the time being One O'clock, the convener adjourned the sitting until 2.30 p.m. this afternoon.

**AFTERNOON SITTING**

The Convenor called the meeting to order at 3.25 p.m.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. David L. A. Erulu	397
4. Hon. Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Marie Rose Owino	400
14. Hon. Mburugu Florence	530
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo M. Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rodah Maende	298
21. Hon. Zuhura Zukira Wanje	236

## Observers

Hon. David Orechi K.

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Asst. Programme officer
Rozina Mngola	-	Asst. Programme Officer

Debate interrupted on Article 14 resumed.

Question proposed;

That 14(12) be part of the Draft Bill.

AMENDMENT PROPOSED

That 14(12) be deleted and the following be inserted in place thereof.

In the first ten years of the implementation of this Constitution, the state shall implement the principle that one third of the members of all elective and appointive bodies shall be women.

(Hon. I. Omondi - Del. No. 542)

Question of the amendment proposed.

Debate arising

This Article was deferred pending the draftspersons' proposal on 14(11).

Question proposed;

That 14(13) be part of the Draft Bill.

AMENDMENT PROPOSED

That the words "and spiritual" be inserted immediately after the word "moral" on the eighth line.

(Hon. I. Omondi - Del. No. 542)

Question of the amendment proposed.

Debate arising.

Question put and agreed to.

Question proposed;

That 14(14) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed;

That 14(15) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

That 14(16) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

The Committee, however, recommended that the drafting team review the wording of the sub-Article based on experiences elsewhere.

Question proposed;

That 14(17) be part of the Draft Bill.

Debate arising;

#### AMENDMENT PROPOSED

That all the words after the word “solidarity” on the sixth line be deleted.  
(Hon. J. Arunga - Del. No. 8)

Question of the amendment proposed

Debate arising;

Question put and agreed to.

Question proposed

That 14(18) be part of the Draft Bill.

Debate arising.

Question put and agreed to.

#### AMENDMENT PROPOSED

That a new sub-Article 14(19) be inserted immediately after 14(18) to read: -

The republic shall recognize the institution of marriage and family as the moral foundation of this nation and shall uphold its integrity and protect it from abuse.

(Hon. I. Omondi - Del. No. 542)

Debate arising;





**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Thursday 15th January, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising. Articles 15, and 14 (11 & 12)
4. Any Other Business.
5. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE SIXTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON THURSDAY, 15TH JANUARY, 2004 AT 9.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. David L. A. Erulu	397
4. Hon Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon Jane Kauka	375
11. Hon. Joseph Korir Kipkapto	75
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Moffat Maitha	90
17. Hon. Murtaza Jaffer	623
18. Hon. Nalea G. Kithumbu	285
19. Hon. Orwenyo M. Obonyo	426
20. Hon. Pascalina R. Lebarleiya	351
21. Hon Peter Oloo Aringo	212
22. Hon. Rodah Maende	298
23. Hon. Raphael Mwai	485
24. Hon. Zuhura Zukira Wanje	236

**Observers**

Hon. David Orechi K.  
Hon. David S. Malaba

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme officer
Rozina Mngola	-	Programme Officer

Question proposed

That 15(1)(a) be part of the Draft Bill.

Debate arising;

AMENDMENT PROPOSED

That 1(a) be deleted and insert the following in place thereof;

Understand the provisions of the Constitution and promote its ideals and objectives.  
(Hon. G. Mwai - Del. No. 485)

Question of the amendment proposed

Debate arising;

Question put and agreed to.

Question proposed;

That (1)(b) be part of the Draft Bill.

AMENDMENT PROPOSED

That all the words after the word “constitution” be deleted.  
(Hon. G. Mwai - Del. No. 485)

Question of the amendment proposed.

Debate arising;

Question put and negatived.

Question proposed.

That 1(c ) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed

That 1(d) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed.

That 1(e) be part of the Draft Bill

Debate arising;

Question put and agreed to.

Question proposed

That 1(f) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed.

That 1(g) be part of the Draft Bill.

Debate arising.

#### AMENDMENT PROPOSED

That the words “strive and” be deleted.  
(Hon. G. Mwai - Del. No. 485)

Question of the amendment proposed.

Debate arising;

Question put and negatived.

The Convenor adjourned the sitting at fifty minutes past Ten O'clock for a tea break.

The Committee reconvened at 11.45 a.m.

Debate interrupted resumed;

Question proposed.

That 1(h) be part of the Draft Bill.

Debate arising

Question put and agreed to.

Question proposed.

That 1(i) be part of the Draft Bill

Debate arising;

Question put and agreed to.

Question proposed

That 1(j) be part of the Draft Bill.

Question put and agreed to.

Question proposed

That 1(k) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

Question proposed

That 1(l) be part of the Draft Bill.

Debate arising

Question put and agreed to.

Question proposed.

That 1(m) be part of the Draft Bill.

Debate arising

Question put and agreed to.

Question proposed

That 15(2) be part of the Draft Bill.

Debate arising;

Question put and agreed to.

#### AMENDMENT PROPOSED

That a new paragraph be inserted under sub-Article 1 to read;

“pay taxes to the government”  
(Hon. David Erulu - Del. No. 397)

Question of the amendment proposed.

Debate arising;

Question put and agreed to.

#### CONSIDERATION OF ARTICLE 14

The Committee deliberated on sub-Articles 11& 12 deferred on 14<sup>th</sup> January, 2004 as follows:-

Question proposed

That 14(11) be part of the Draft Bill.

#### AMENDMENT PROPOSED

That the sub-Article be deleted and the following be inserted in place thereof;

The Republic shall ensure the fullest participation of all citizens, especially women, persons with disabilities, the marginalized communities and sectors of society in the political, social and economic life of the country.

(Hon. J. Arunga - Del. No. 8)

Question of the amendment proposed.

Debate arising;

Question put and agreed to.

Question proposed

That 14(12) be part of the Draft Bill.

Debate arising.

Question put and agreed to.

Question proposed









**NATIONAL CONSTITUTIONAL CONFERENCE**

15<sup>th</sup> January 2004

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 16<sup>th</sup> January, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Articles 2, 3, 4 and Preamble,
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE SEVENTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON FRIDAY, 16TH JANUARY, 2004 AT 9.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. David L. A. Erulu	397
4. Hon Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Joseph Korir Kipkapto	75
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Moffat Maitha	90
17. Hon. Murtaza Jaffer	623
18. Hon. Nalea G. Kithumbu	285
19. Hon. Orwenyo M. Obonyo	426
20. Hon. Pascalina R. Lebarleiya	351
21. Hon Peter Oloo Aringo	212
22. Hon. Rodah Maende	298
23. Hon. Raphael Mwai	485
24. Hon. Zuhura Zukira Wanje	236

**Observers**

Hon. David Orechi K.  
Hon. David S. Malaba

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/83/04                    CONSIDERATION OF ARTICLES 2,3,4 & THE PREAMBLE**

The Committee noted that it would be difficult to deliberate on the above Articles and Preamble before receiving the proposal from the draftsman against its recommendations.

The Committee resolved to defer these items until Monday, 19<sup>th</sup> January, 2004.

The Convenor informed the Committee that the Technical Working Committee No. K. on Constitutional Commissions had finalized its report on Chapter Eighteen.

The Convenor undertook to obtain a copy of that report and consult on the input by the Technical Working Committee "A" on the Preamble.

**MIN.NCC/TCA/84/04                    ADJOURNMENT**

And the time being ten minutes past Ten O'clock the Convenor adjourned the sitting until Monday, 19<sup>th</sup> January 2004, at 9.30 a.m.

CONFIRMED: .....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Monday, 19th January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Articles 2, 3, 4 and the preamble
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE EIGHTEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON MONDAY, 19TH JANUARY, 2004 AT 9.50 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.50 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Billy Onwong'a	Convenor (457)
3. Hon. Githu Muigai	Rapporteur
4. Hon. David L. A. Erulu	397
5. Hon Benson Okwaro	449
6. Hon. David L.A.Erulu	397
7. Hon. Francis Wabayale	588
8. Hon. Gitu Wa Kahengeri	316
9. Hon. Ibrahim Ahmed Yussuf	525
10. Hon. Ibrahim Omondi	542
11. Hon. James Nthiga Gatiti	520
12. Hon Jane Kauka	375
13. Hon. Joseph Korir Kipkapto	75
14. Hon. Julius Arunga	8
15. Hon. Kavoo Kilonzo	479
16. Hon. Marie Rose Owino	400
17. Hon. Mburugu Florence	530
18. Hon. Moffat Maitha	90
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo M. Obonyo	426
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Rodah Maende	298
23. Hon. Raphael Mwai	485
24. Hon. Zuhura Zukira Wanje	236

**Observers**

Hon. David Orechi K.

Hon. David S. Malaba

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/85/04**

**CONFIRMATION OF MINUTES**

Minutes of the sixteenth sitting were confirmed by the members present having been proposed by Hon. Nalea Kithumbu and seconded by Hon. Gitu Wa Kahengeri.

Minutes of the seventeenth sitting were confirmed by the members present having been proposed by Hon. Orwenyo Mary and seconded by Hon. Zuhura Wanje.

**MIN.NCC/TCA/86/04**

**MATTERS ARISING**

The convenor briefed the Committee on his consultations with the Convenor of the Constitutional Commissions Committee on the consideration of Chapter 18.

The Convenor informed members that that the said Committee had finalized its consideration of the Chapter.

The Committee was further informed that the matter was raised at the Convenors meeting where it was agreed that the issue be reconsidered after all Committees have presented their reports.

**MIN.NCC/TCA/87/04      CONSIDERATION OF ARTICLE 2,3,4 & THE PREAMBLE**

The Convenor informed the Committee that proposals on the above Articles/Preamble had been received from the draftsman.

The Committee decided to adjourn the sitting until 11.30 a.m. to give members time to consider the proposals.

**MIN.NCC/TCA/88/04**

**ADJOURNMENT**

And the time being fifteen minutes past Ten O'clock, the Convenor adjourned the sitting until 11.30 a.m.

The Committee reconvened at 12.20 p.m.

Interrupted business resumed.

The Committee reconsidered the Preamble as redrafted against its recommendations and adopted the following version:-

We, the people of Kenya –

ACKNOWLEDGING the supremacy of the Almighty, God of all creation:

HONOURING the heroic memory of all those who struggled to bring freedom and justice to our land:



AWARE of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:

COMMITTED to nurturing and protecting the well-being of the individual, the family and the community within our nation:

RECOGNISING the aspirations of all Kenyans for a government based on the essential values of freedom, democracy, social justice and the rule of law:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the making of this Constitution:

Adopt, enact and give this Constitution to ourselves and to our future generations.

GOD BLESS OUR COUNTRY

The Committee asked the draftsman to insert the paragraph starting with the word “AWARE” above the one beginning with the word “HONOURING”.

**MIN.NCC/TCA/89/04                    ADJOURNMENT**

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

*AFTERNOON SITTING*

The Convenor called the meeting to order at 2.40 p.m.

**MIN.NCC/TCA/90/04                    CONSIDERATION OF ARTICLE 2**

The Committee deliberated on this Article, which was deferred earlier.

The Committee considered the proposals by the draftsman and agreed as follows:-

Recommended that 2(1) and (2) be redrafted.

2(3) was adopted without amendments

2(4) be amended to read;

*A law which is inconsistent with the constitution is null and void, to the extent of the inconsistency.*

2(5) be amended to read;

*The Constitution shall be interpreted in a manner –*

*that promotes the values and principles of good governance;*

*that advances human rights and fundamental freedoms and the rule of law;*

*that permits the development of the provisions of the Constitution and of the common law of Kenya in a manner that is conducive to the welfare of all citizens; and*

*that avoids legal and procedural technicalities which defeat the purpose of the Constitution.*

2(6) was amended to read as follows:-

*In interpreting the Constitution, a Court, or another authority or person adjudicating a matter, may refer to matters or materials that will assist in the purposive interpretation of the Constitution.*

### CONSIDERATION OF ARTICLE 3

3(1) was adopted with amendments to read;

*A person, or a group of persons, may bring an action in the courts on the grounds that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.*

3(2) was adopted with amendments to read;

*Where a court makes a declaration under clause (1), it shall also make such order as is necessary to give appropriate effect to that declaration.*

Article 3, as amended, agreed to.

### CONSIDERATION OF ARTICLE 4

The Article was adopted with amendments to read;

*4(1) All persons have an obligation to respect and defend the Constitution and the institutions established under it.*

*4(2) Any attempt to establish a system of government otherwise than in compliance with the Constitution is unlawful.*

*4(3) An Act that is prejudicial to the sovereignty of Kenya, its people, its territory, or the supremacy of the Constitution is unlawful.*

*4(4) Parliament may enact legislation to give effect to this Article.*

Article 4, as amended, agreed to.

The Convenor noted that the Committee had considered all articles under its purview.

**MIN.NCC/TCA/91/04                      ANY OTHER BUSINESS**

The Committee undertook to consider reports of other Committees before concluding its report.

The Committee resolved to meet on Tuesday, 20<sup>th</sup> January, 2004 to review any report from other Committees.

**MIN.NCC/TCA/92/04                      ADJOURNMENT**

And the time being fifty minutes past Three O'clock, the Convenor adjourned the sitting until Tuesday, 20<sup>th</sup> January, 2004 at 9.30 a.m.

CONFIRMED: .....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday, 20th January, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Reports from other committees
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE NINETEENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY, 20TH JANUARY, 2004 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. Gitu Wa Kahengeri	316
4. Hon. Ibrahim Ahmed Yussuf	525
5. Hon. Ibrahim Omondi	542
6. Hon. James Nthiga Gatiti	520
7. Hon. Jane Kauka	375
8. Hon. Joseph Korir Kipkapto	75
9. Hon. Kavoo Kilonzo	479
10. Hon. Marie Rose Owino	400
11. Hon. Mburugu Florence	530
12. Hon. Moffat Maitha	90
13. Hon. Nalea G. Kithumbu	285
14. Hon. Orwenyo Mary Obonyo	426
15. Hon. Pascalina R. Lebarleiya	351
16. Hon. Rodah Maende	298

**Observers**

Hon. David Orechi K.

Hon. David Malava

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme Officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/93/04**

**CONFIRMATION OF MINUTES**

Minutes of the eighteenth sitting were confirmed by the members present having been proposed by Hon. Erulu David and seconded by Hon. Mburugu Florence. It was observed that in the attendance list the name Hon. David Erulu had been repeated and that one would be deleted.

**MIN.NCC/TCA/94/04**

**WAY FORWARD**



**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Wednesday 21<sup>st</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of the Re-Draft
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTIETH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON WEDNESDAY, 21ST JANUARY, 2004 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a Convenor	(457)
2. Hon. Abdirahman Ali Hassan	3
3. Hon. Benson Okwaro	449
4. Hon. David L.A. Erulu	397
5. Hon. Esintele Kureya	264
6. Hon. Francis Wabalaye	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon Jane Kauka	375
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Marie Rose Owino	400
14. Hon. Mburugu Florence	530
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Peter Oloo Aringo	212
21. Hon. Rodah Maende	298
22. Hon. Zuhura Zukira Wanje	326

**Observers**

Hon. David Orechi K.	111
Hon. David Malava	143

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme Officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/97/04**

**CONFIRMATION OF MINUTES**



Minutes of the nineteenth sitting were confirmed by the members present having been proposed by Hon. Nalea Kithumbu and Seconded by Hon. Julius Arunga

**MIN.NCC/TCA/98/04                      MATTERS ARISING**

It was noted that the names of Hon. Julius Arunga, Hon. Francis Wabalaye and Hon. Zuhura Wanje were missing from the attendance list.

**MIN.NCC/TCA/99/04                      INTRODUCTORY REMARKS**

The Convenor informed the Committee that the Steering Committee had mandated the Technical Committees to consider the reports of the Ufungamano grouping and the other by the Citizens Coalition for Constitutional Change.

The Committee deliberated on the principle of reviewing the aforementioned documents. The Committee made a resolution that the documents should be ignored.

**MIN.NCC/TCA/100/04                      CONSIDERATION OF THE COMMITTEE'S DRAFT REPORT**

ARTICLE 1

Agreed to.

ARTICLE 2

Agreed to.

ARTICLE 3

Agreed to.

ARTICLE 4

Agreed to.

The Convenor adjourned the sitting at fifty minutes past Ten O'clock for a tea break.

The Committee reconvened at 11.30 a.m.

Interrupted business resumed.

ARTICLE 5

The Committee deffered consideration on the report on this Article until 2.30 p.m. to allow members to review the draftsperson's version of the Committee's recommendations.

And there being no other business, the Convenor adjourned the sitting at Twelve O'clock until 2.30 p.m. this afternoon.

*AFTERNOON SITTING*

**PRESENT**

1. Hon. Billy Onwong'a	Convenor	(457)
2. Hon. Benson Okwaro		449
3. Hon. Esintele Kureya		264
4. Hon. Francis Wabalaye		588
5. Hon. Gitu Wa Kahengeri		316
6. Hon. Ibrahim Ahmed Yussuf		525
7. Hon. Ibrahim Omondi		542
8. Hon. James Nthiga Gatiti		520
9. Hon. Jane Kauka		375
10. Hon. Julius Arunga		8
11. Hon. Kavoo Kilonzo		479
12. Hon. Marie Rose Owino		400
13. Hon. Mburugu Florence		530
14. Hon. Murtaza Jaffer		623
15. Hon. Nalea G. Kithumbu		285
16. Hon. Orwenyo Mary Obonyo		426
17. Hon. Pascalina R. Lebarleiya		351
18. Hon. Peter Oloo Aringo		212
19. Hon. Rodah Maende		298
20. Hon. Zuhura Zukira Wanje		326

Observers

Hon. David Orechi K.

Hon. David Malava

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Programme Officer
Rozina Mngola	-	Programme Officer

**MIN.NCC/TCA/101/04                      ANY OTHER BUSINESS**

There was call for tolerance among members with divergent views.

Hon. Ibrahim Omondi shall host the Committee members to dinner on Tuesday 27<sup>th</sup> January 2004.

Members decisions of going to the media Houses should give their contacts to Hon. David Erulu.

Committee members shall take a group photograph on 22<sup>nd</sup> January , 2004.

Members with articles for “Sauti Ya Katiba” should forward them to Hon. David Erulu.

**MIN.NCC/TCA/102/04                      ADJOURNMENT**

And there being no other business and the time being fifty five minutes past Three O'clock, the Committee adjourned to Thursday, 22nd January at 9.00 a.m.

CONFIRMED:.....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 22<sup>nd</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Committees Draft
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Friday 23<sup>rd</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Committee's Draft
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....



**MIN.NCC/TCA/108/04      CONSIDERATION OF THE COMMITTEE'S DRAFT BILL**

ARTICLE 15

Agreed to.

ARTICLE 5

Agreed to.

AMENDMENT PROPOSED

That the word "Communal" on clauses 5(1)(c) and 5(2)(b) be deleted.

**MIN.NCC/TCA/109/04      CLEANING UP OF COMMITTEE'S DRAFT**

ARTICLE 1(1)

The Committee resolved that the Drafters should consider placing the word "only" between "may" and "be".

ARTICLE 15(1)(a)

Upon a motion moved by Hon. Raphael Mwai, the Committee resolved to replace the word "propagate" with "promote".

ARTICLE 15(1)(i)

Hon. Raphael Mwai proposed that there be inserted a new clause (o) providing for the need to promote good governance in private and public institutions. Upon deliberations by the members, it was agreed that this be incorporated under Article 15(1)(i).

**MIN.NCC/TCA/110/04                      ADJOURNMENT**

And there being no other business, the Convenor adjourned the sitting at twenty five minutes past Ten O'clock until Monday, 26<sup>th</sup> January, 2004 at 9.00 a.m.

CONFIRMED:.....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Monday 26<sup>th</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Committee's Draft and Arising Motions
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....



**MINUTES OF THE TWENTY THIRD SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON MONDAY, 26<sup>TH</sup> JANUARY, 2004 AT 9.42 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.42 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a Convenor	(457)
2. Hon. Abdirahman Ali Hassan	3
3. Hon. Benson Okwaro	449
4. Hon. David L.A. Erulu	397
5. Hon. Francis Wabalaye	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Marie Rose Owino	400
14. Hon. Mburugu Florence	530
15. Hon. Moffat Maitha	90
16. Hon. Nalea G. Kithumbu	285
17. Hon. Orwenyo Mary Obonyo	426
18. Hon. Pascalina R. Lebarleiya	351
19. Hon. Perter Oloo Aringo	212
20. Hon. Raphael Mwai	485
21. Hon. Rodah Maende	298
22. Hon. Zuhura Zukira Wanje	326

Observer

David S. Malaba

David Orechi K.

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/111/04**

**CONFIRMATION OF MINUTES**

Minutes of the twenty second sitting were confirmed by the members present having been proposed by Hon. Raphael Mwai and seconded by Hon. Jane Kauka.

**MIN.NCC/TCA/112/04      CONSIDERATION OF ARISING MOTIONS**

The Convenor informed members that they could move motions.

Hon. Delegate Prof. Wangari Mathai proposed to move six motions. Members resolved to defer debate on the motions to a later date as they needed time to acquaint themselves with the motions.

**MIN.NCC/TCA/113/04      CONSIDERATION OF THE COMMITTEE'S DRAFT BILL**

ARTICLE 1(1)

Approved

ARTICLE 5(1)(A)

Approved

And the time being thirty minutes past Ten O'clock, the Convenor adjourned the sitting until 2.00 p.m.

*AFTERNOON SESSION*

The Committee reconvened at 2.00 p.m.

Interrupted business resumed.

**PRESENT**

1. Hon. Billy Onwong'a Convenor	(457)
2. Hon. Githu Muigai Rapporteur	
3. Hon. Benson Okwaro	449
4. Hon. David L.A. Erulu	397
5. Hon. Francis Wabalaye	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. Jane Kauka	375
9. Hon. Kavoo Kilonzo	479
10. Hon. Marie Rose Owino	400
11. Hon. Murtaza Jaffer	285
12. Hon. Mburugu Florence	530
13. Hon. Nalea G. Kithumbu	285

14. Hon. Orwenyo Mary Obonyo	426
15. Hon. Pascalina R. Lebarleiya	351
16. Hon. Perter Oloo Aringo	212
17. Hon. Raphael Mwai	485
18. Hon. Rodah Maende	298
19. Hon. Zuhura Zukira Wanje	326

Observer  
David S. Malaba  
David Orechi

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

The Committee re-considered the motions forwarded by Hon. Delegate Prof. Wangari Mathai and resolved that they ought to be discussed by the Technical Working Group on the Environment who shall forward a formal request on the issues that this Committee ought to incorporate in the Preamble and other Articles.

**MIN.NCC/TCA/114/04 ANY OTHER BUSINESS**

Members were reminded of the dinner planned at Hon. Delegate Ibrahim Omondi's residence on Tuesday 27<sup>th</sup> January 2004.

Members took a group photograph.

**MIN.NCC/TCA/115/04 ADJOURNMENT**

And there being no other business, the Convenor adjourned the sitting at three minutes past Three O'clock until Tuesday 27<sup>th</sup> day of January, 2004 at 9.00 a.m.

CONFIRMED:.....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday 27<sup>th</sup> January 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Communication from the Convenor
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY FOURTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY, 27<sup>TH</sup> JANUARY, 2004 AT 9.30 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a Convenor	(457)
2. Hon. Githu Muigai Rapporteur	
3. Hon. Abdirahman Ali Hassan	3
4. Hon. Benson Okwaro	449
5. Hon. David L.A. Erulu	397
6. Hon. Francis Wabalaye	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Julius Arunga	8
13. Hon. Kavoo Kilonzo	479
14. Hon. Manoti Stephen	94
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence	530
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo Mary Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Raphael Mwai	485
21. Hon. Rodah Maende	298
22. Hon. W.R. Ole Ntimama	147

Observers

David S. Malaba

David Orechi K.

**IN ATTENDANCE**

Mr. Jeremy Wainwright	-	Draftsperson
Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/116/04**

**CONFIRMATION OF MINUTES**

Minutes of the twenty third sitting were confirmed by the members present having been proposed by Hon.M. Orwenyo and seconded by Hon. F. Mburugu.

**MIN.NCC/TCA/117/04                      ANY OTHER BUSINESS**

The Committee informed the Committee that the CKRC Program Officers had requested for time to finalize their report.

The Convenor acceded to the request and agreed to adjourn its sittings until Thursday, 29th January, 2004 when the final report will be considered.

The Convenor briefed the Committee on deadlock breaking mechanisms and consensus building initiative by the steering Committee.

The Committee supported the effort but recommended that the Technical Working Groups be consulted regularly and that their views be taken into consideration.

The Committee suggested that a field trip be arranged to allow the Technical working Group to interact with other Kenyans.

The Convenor undertook to consult with the Rapporteur and report back.

**MIN.NCC/TCA/118/04                      ADJOURNMENT**

And there being no other business, the Convenor adjourned the sitting at twenty minutes past Ten O'clock until Thursday 29<sup>th</sup> day of January, 2004 at 9.30 a.m.

CONFIRMED:.....  
DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 29<sup>th</sup> January, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Committee's Final Report
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY FIFTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON THURSDAY, 29TH JANUARY, 2004 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a Convenor (457)	
2. Hon. Githu Muigai Rapporteur	
3. Hon. Abdirahman Ali Hassan	3
4. Hon. Benson Okwaro	449
5. Hon. David L.A. Erulu	397
6. Hon. Francis Wabalaye	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Joseph Korir Kipkapto	75
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence	530
17. Hon. Moffat Maitha	90
18. Hon. Murtaza Jaffer	623
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo Mary Obonyo	426
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Raphael Mwai	485
23. Hon. Rodah Maende	298
24. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/119/04**

**CONFIRMATION OF MINUTES**

Minutes of the twenty fourth sitting were confirmed by the members present having been proposed by Hon. Marie Owino and seconded by Hon. David Erulu.

**MIN.NCC/TCA/120/04**

**MATTERS ARISING**



Under MIN.NCC/TCA/117/04(II) on deadlock breaking mechanisms, the Convenor informed the Committee that the mandate/membership of the envisaged initiative has been revised to avoid conflict with existing conflict resolution processes.

The new profile will now be to promote dialogue through all possible means.

Under Min. No. MIN.NCC/TCA/117/04(III), on the field trip, the Convenor informed the Committee that the Rapporteur was pursuing the matter with the Rapporteur General and the Secretary of CKRC.

### **MIN.NCC/TCA/121/04      CONSIDERATION OF THE COMMITTEE'S FINAL REPORT**

The Committee deliberated on its final report and adopted it with the following amendments;

That Article 8(2) be amended by deleting the word “government” and inserting the word “governance” in place thereof.

Hon. Murtaza Jaffer - Del. No. 623)

Debate arising;

Question put and agreed to.

That 14(12) be amended to read;

The state should implement the principle of affirmative action with regard to gender equity in all elective and appointive public bodies.

(Hon. J. Arunga - Del. No. 8)

Debate arising;

### **MIN.NCC/TCA/122/04      ADJOURNMENT**

And the time being fifteen minutes past One O'clock, the Convenor adjourned the sitting until 2.30 p.m. this afternoon

#### *AFTERNOON SITTING*

The Convenor called the meeting to order at 2.45 pm.

#### **PRESENT**

1. Hon. Billy Onwong'a Convenor (457)
2. Hon. Githu Muigai Rapporteur

3. Hon. Benson Okwaro	449
4. Hon. Francis Wabalaye	588
5. Hon. Gitu Wa Kahengeri	316
6. Hon. Jane Kauka	375
7. Hon. Joseph Korir Kipkapto	75
8. Hon. Kavoo Kilonzo	479
9. Hon. Moffat Maitha	90
10. Hon. Nalea G. Kithumbu	285
11. Hon. Raphael Mwai	485
12. Hon. Rodah Maende	298
13. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Asst. Programme Officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/123/04      CONSIDERATION OF COMMITTEE'S REPORT**

The Committee deferred further deliberations on the proposed amendments to Article 14(12) until Friday, 30<sup>th</sup> January, 2004.

**MIN.NCC/TCA/124/04      ADJOURNMENT**

And there being no other business, the Convenor adjourned the sitting at Three O'clock, to Friday 30th day of January, 2004 at 9.30 a.m.

CONFIRMED:.....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Friday, 30<sup>th</sup> January, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Committee's Final Report
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY SIXTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON FRIDAY, 30<sup>TH</sup> JANUARY, 2004 AT 10.00 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 10.0 a.m.

The proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a Convenor	(457)
2. Hon. Githu Muigai Rapporteur	
3. Hon. Abdirahman Ali Hassan	3
4. Hon. Benson Okwaro	449
5. Hon. David L.A. Erulu	397
6. Hon. Francis Wabalaye	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Joseph Korir Kipkapto	75
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence	530
17. Hon. Moffat Maitha	90
18. Hon. Murtaza Jaffer	623
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo Mary Obonyo	426
21. Hon. Pascalina R. Lebarleiya	351
22. Hon. Raphael Mwai	485
23. Hon. Rodah Maende	298
24. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Stephen Njenga	-	Clerk Assistant
Sylvia Nyaga	-	Asst. Programme officer
Rozina Mngola	-	Asst. Programme Officer

**MIN.NCC/TCA/125/04**

**INTRODUCTORY REMARKS**

The Convenor informed the Committee that the initiative to promote consensus was underway except that National Alliance Party of Kenya had submitted more names than its requirements.

He added that the party had been advised to scale down their proposal for 3 names from the 7 they submitted

The Convenor informed the Committee that the CKRC, the Convenors and the Draftspersons will proceed for a retreat between 1<sup>st</sup> to 8<sup>th</sup> February 2004 to harmonize reports from the technical working Committees.

**MIN.NCC/TCA/126/04                    CONFIRMATION OF MINUTES**

Minutes of the twenty fifth sitting were confirmed by the members present having been proposed by Hon. Jane Kauka and seconded by Hon. Nalea Kithumbu

**MIN.NCC/TCA/127/04    CONSIDERATION OF THE COMMITTEE'S REPORT**

The Committee deliberated on the proposed amendments to 14(12)

Debate arising;

Question put and negatived

**AMEMDMENT PROPOSED**

That 12(12) be amended by inserting the words “at least” after the word “that” on the third line.

(Hon. Murtaza Jaffer - Del. No. 623)

**FURTHER AMENDMENT PROPOSED**

That 14(12) be further amended by deleting the words “elective and” on the fifth line.

(Hon. Ibrahim Yusuf - Del. No. 525)

Debate arising;

Question of the further amended proposed;

Debate on the original motion resumed.

Question put and agreed.

**MIN.NCC/TCA/128/04                    ADJOURNMENT**

And there being no other business, the Convenor adjourned the sitting at Three O'clock.

CONFIRMED:.....

DATE:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Tuesday 17<sup>th</sup> February 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Mombasa Retreat Report
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY SEVENTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON TUESDAY, 17TH FEBRUARY, 2004 AT 10.00 A.M.**

The Convener (Mr. Billy N. Onwong'a) called the meeting to order at 10.01 a.m.

The Proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convener(457)
2. Hon. Billy Onwong'a	Convener (457)
3. Hon. Githu Muigai	Rapporteur
4. Hon. David L. A. Erulu	397
5. Hon Benson Okwaro	449
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Ahmed Yussuf	525
9. Hon. Ibrahim Omondi	542
10. Hon. James Nthiga Gatiti	520
11. Hon. Jane Kauka	375
12. Hon. Joseph Korir Kipkapto	75
13. Hon. Julius Arunga	8
14. Hon. Kavoo Kilonzo	479
15. Hon. Marie Rose Owino	400
16. Hon. Mburugu Florence	530
17. Hon. Moffat Maitha	90
18. Hon. Murtaza Jaffer	623
19. Hon. Nalea G. Kithumbu	285
20. Hon. Orwenyo M. Obonyo	426
21. Hon W.R. Ole Ntimama	147
22. Hon.Pascalina Lebarleiya	351
23. Hon. Rodah Maende	298
24. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Prof. Phil Knight	-	Draftsperson
Sylvia Nyaga	-	Asst. Programme officer
Rozina Mngola	-	Asst. Programme Officer



The Convenor informed the members of the content of the distributed documents at which point members decided to adjourn until 2.30p.m to allow then go through the documents.

***AFTER TEA BREAK***

The Committee confirmed the content of the Zero Draft as a true reflection of the Committee's draft and only one error (Typo) was identified in Article 5(1)d - the word "he" ought to be "the".

**AFTERNOON SESSION**

PREAMBLE

1. *Recognise the environment- environment is under a big threat and there are a number of constitutions in the world that have recognized the environment in their constitutions.*

Question that the environment be included in the preamble put and carried. The Drafts person was asked to see how best to include it.

2. Use of the word "supremacy of the Almighty" in the second paragraph yet Article 1 provides for the supremacy of the constitution" appears to be a contradiction.

It was agreed that there be maintained the sense in the two clauses i.e. supremacy to God and to the constitution and that the Draftsperson reworks the clauses to avoid possible contradiction.

3. Reflecting our national philosophy peculiar to our culture.

*On the rationale that there is no national philosophy peculiar to our culture, members resolved that this comment could not be incorporated.*

4. Observing the chronological principle in paragraphing i.e. Acknowledge the Almighty, Honour the heroes.

*It was resolved that this was a technical issue that should be addressed by the Drafts people.*

5. Make reference to Kenya in the last paragraph.

It was resolved that the paragraph be amended to read “GOD BLESS KENYA.”

6. Recognising the equality of all i.e. women, men and other groups of people.

*It was resolved that reference to “all” in the preamble is adequate and therefore no need to categorise.*

- a. Recognising the right to self-determination.

Committee has already tackled this and resolved that this right ought not be recognized. The issue was therefore not opened to discussion.

## **ARTICLE 1**

8. Sub-Article 4 add “*at all levels of government*” after the word “government” so as to conform with the principle of devolution.

**Matter to be referred to the Drafts people with the recommendation that this comment be incorporated save in as far as it makes reference to the judiciary as the judiciary is strictly speaking not being devolved.**

9. Reconcile with Executive Committee which has come up with a hybrid system.

*Bilateral meeting to be organized with the Executive Committee.*

10. Harmonise theory with structure and explore whether the theory describes the sovereignty of the people or whether its best suited under the provisions on that describe the republic.

*Bilateral meeting to be organized with the Executive Committee.*

11. 1(4)(d) –incorporate “councils” created in the Constitution.

It was argued that this is not necessary, as the term “constitutional commission” under the chapter on interpretation shall be interpreted to mean councils as well.

## **ARTICLE 2**

12. 2(2) is unnecessary and should be deleted.

*No decision*

## ARTICLE 4

13. Make the clause mandatory "...shall..." and provide a time frame for Parliament to enact such legislation.

*Resolved that the clause to be amended by substituting "may" with "shall."*  
The provided time frame of one year was endorsed.

- a. *It was observed that Article 4(3) is incorrect and should be reworded, as every nation yields some of its sovereignty whenever it signs treaties with other nations. The government must be allowed to make decisions.*

## Article 5

- b. 5 (1)(b)- Some devolved authorities will have their own laws so legislation of devolved authorities should be included.

*The drafts person to formulate a better provision of article 5 for the committee to evaluate. Members were made to understand that not every law needs to be mentioned and Article 5 as provided is not exhaustive.*

14. Capturing the *Africaness* of our laws instead of English Common Law.

**Reference to English Common Law is not meant to colonize Kenya but rather this is meant to block any lacuna that may arise if there where there isn't any Kenyan law to apply for example in new areas such as surrogate motherhood.**

*Once the personal laws of the peoples' of Kenya is recognized a common law of Kenya will be developed.*

15. Personal law of who? Have clause 5(1) (c) read "Christian, Islamic Hindu and other personal laws of the people's of Kenya." Laws as practiced by the various communities of the people's of Kenya ought to be recognized.

*It was resolved to amend to "Personal law of the peoples' of Kenya."*

16. Is Article 5 (1) a hierarchy?

**The Committee resolved that this is not a hierarchy. It simply means that the Constitution is supreme and the other laws will be applied as is necessary.**

17. (2) ought to capture the devolution of powers as well i.e. amend to read, "...separation *and devolution* of powers..."

*To be incorporated.*

- 18. Indigenous values of democracy should be taken on board.

To be left to the Committee on Culture.

- 19. Amend to read, "...human *and people's* rights..."

"...and peoples rights..." understood to mean communal rights.

**Article 7**

*Cross-reference the division of the country by the Committee on devolution to ensure that Schedule 2 is up to date.*

**Schedule 7 as drafted by the Devolution Committee be renamed Schedule 2.**

- 20. *The issue of inaccuracies of Schedule 1 was raised and it was explained that the same stands deleted.*

- 21. Cross-reference the division of the country by the Committee on devolution to ensure that Schedule 2 is up to date.

*The drafts person shall confirm this with the devolution committee.*

**MIN.NCC/TCA/132/04**

**ADJOURNEDMENT**

There being no other business the meeting adjourned at 4:55 p.m. to Wednesday 18<sup>th</sup> day of February 2004.

DATED .....

SIGNED .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on 18th February, 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Mombasa Retreat Report
5. Consideration of amendments to the zero
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY EIGHTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON WEDNESDAY, 18<sup>TH</sup> FEBRUARY, 2004 AT 9.40 A.M.**

The Convener (Mr. Billy N. Onwong'a) called the meeting to order at 9.43 a.m.

The Proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convener (457)
2. Abdiraman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. James Nthiga Gatiti	520
9. Hon. Jane Kauka	375
10. Hon. Joseph Korir Kipkapto	75
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Marie Rose Owino	400
14. Hon. Mburugu Florence	530
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo M. Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rodah Maende	298
21. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

1. Hon. David Orechi K.	111
2. Hon. David S. Malaba	143

**IN ATTENDANCE**

Prof Phil Knight	Draftsperson
Silvia Nyaga	Asst. Programme Officer
Rozina Mngola	Asst. Programme Officer
Flora Wafula	Verbatim Recorder

**MIN.NCC/TCA/132/04**

**COMMENCEMENT**

*The meeting was called to order at 9:43 a.m. with the Convener Billy Onwonga in the chair. Prayers were conducted by Hon Delegate Zuhura Wanje. Members resolved that the Committee finishes the days' activities at 4:00 p.m. so as to avoid transport problems.*

*Article 9*

1. Translating all official documents into all languages will be very expensive and leave out some people.

*Resolved that article 9 (1) be retained without amendments..*

2. Recognizing the national language first before all the other aspects under languages.

*Members were made to understand that there would be rearrangement in the manner in which the clause appeared so as to allow the incorporation of this comment.*

3. Use of indigenous languages in devolved levels of government

*While members recognized that indigenous languages could be used as a mode for communication it was resolved that the official languages should be the only languages used in all official forums.*

4. Providing for provision of education in indigenous languages.

*Upon debating this issue, members resolved that promotion of indigenous languages should a private affair and not endorsed for education purposes.*

5. Amending Article 9(4) to allow the use of other developing technologies and not merely limiting it to Braille.

*Members resolved that there is need to open up this clause to allow development and asked that the Drafts person expands the clause accordingly.*

**Article 11**

6. The Third Schedule simply lists the national symbols as does Article 11. The Committee should reconsider deleting reference to the Article and consequently deleting the schedule or amending it in a more suitable manner.

*Members were made to understand that the original intention of the Commission was to have the 3<sup>rd</sup> Schedule provide for the symbols of the of the flag, coat of arms and the public seal and the lyrics of the national anthem. It was resolved that the schedule be maintained and that the symbols of the flag, coat of arms and the public seal be inserted and that the lyrics of the anthem be inserted. The Drafts person indicated that the*

*drafting team would ensure that this is done and the Committee should confirm this when the final document is out.*

7. Reference to “HARAMBEE” in the Public Seal.

*The Convenor brought it to the attention of the members that the Committee discussed the issue with opinion raised that that the word is religious and other opinion that it has Mijikenda heritage. The Committee resolved that the mandate of Bomas does not extend to prescribing the public seal, altering the lyrics of the national anthem or altering the national symbols to this extent.*

**Article 13**

8. Including a cultural day “Utamaduni Day.”

*Members observed that Kenya marks days such as those on AIDS without having national day for it and noted that it is upon the ministry of culture to create a culture day or culture week to be marked without necessarily having a holiday.*

*It was recommended that utamaduni day should not be recognized under Article 13, but that it be left to the Ministry and other organs of government to recognize the day or days for the observance of culture.*

**Article 14**

9. 14(12) “...at least one third...”

**This is a clerical omission. Insertion of the words “at least” had been agreed on by the TWG and hence no reason to discuss the comment.**

10. Clause 14(12) -principle of 1/3 can be captured as 1/3 women or 1/3 of either gender. It was noted that the Constitution has a bill of rights calls for equality and that the Constitution should not contemplate a situation where there will be a “marginalized gender.”

*The Committee resolved to ignore the comment.*

11. Clause 14(16) -Amend “...sustainable management of the resources and the environment...”

*The committee resolved that this should be incorporated and that the drafts person formulates it as appropriate.*

12. Clause 14(13) The virtues of African extended families should be captured. The Committee resolved that this view shall not be incorporated under the national values, goals and principles and referred it back to the culture committee.

13. Clause 14(14) The Republic should be mandated to create an enabling environment for the provision of food and shelter rather than being obligated to provide.



*It was resolved that the language should be harmonized with that in the Bill of Rights which is for the progressive measures for the realization of the rights.*

14. Clause 14(18) be moved to the chapter on the executive.

It was resolved that this clause remains as it is and the duties of the President under the executive should also make reference to this as a delivery function.

Prof Phil Knight summarised that that the clause be drafted simply as reporting to the nation and then under the Chapter on the Executive the obligation be made more detailed under Article 51.

Hon Delegate Murtaza Jaffer suggested that there be a suggestion to the Executive Committee providing under Article 51 that shall be an Act of Parliament to address these concerns. This was noted.

15. Clause 14(18) should fall under the topic on Representation of the People. Counter view that the provision be captured as a principle by rewording it.

It was resolved that the principle be maintained but that the clause be reworded.

#### *ADJOURNMENT*

The time being five minutes past one o'clock the meeting adjourned for lunch break.

#### **AFTERNOON SESSION**

The afternoon session was called to order at 2: 43 p.m. with the Convenor in the Chair.

16. **Clause 14(1):** Delete local authorities and refer to devolved levels of government.

Members resolved to incorporate this suggestion.

17. **Clause 15(1)** -Language in the opening clause should be enlarged to cater for *juristic* persons.

*Upon debate it was resolved that this be incorporated under clause 15(2).*

18. Article should fall under chapter on citizenship.

Members resolved that the Article should remain under the Chapter on values, goals and principles as the chapter on citizenship deals with the acquisition of citizenship and it was best leaving the duties where they are.

**MIN.NCC/TCA/134/04**

**CONSIDERATION OF THE AMENDMENTS MADE  
TO THE ZERO DRAFT BY THE DRAFTSPERSON**

**1. Preamble**

*Adopted as amended*

**2. Article 1(4)**

*Members noted that the Draftsperson had deleted certain words from the Article without the mandate of the Committee. The matter was referred back to the Draftsperson to reformulate with instructions that the cross-referencing be retained.*

**3. Article 2**

*Formulation of 2(1) to “This Constitution is the supreme law of the Republic of Kenya and binds all persons and authorities within the Republic” adopted.*

*Members noted that reference to the rule of law was deleted as this was captured adequately under Article 6(2), which deals with the foundation of the Republic.*

**MIN.NCC/TCA/135/04**

**ADJOURNMENT**

And the time being forty-three minutes past three in the afternoon the meeting adjourned to Thursday the nineteenth day of February 2004.

DATED .....

SIGNATURE .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Thursday, 19<sup>th</sup> February 2004 in tent No. 1, Bomas of Kenya at 8.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of Zero Draft
5. Consideration of re-drafted Articles
6. Consideration of cross-cutting issues
7. Any Other Business.
8. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY EIGHTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON THURSDAY, 19TH FEBRUARY, 2004 AT 9.40 A.M.**

The Convenor (Mr. Billy N. Onwong'a) called the meeting to order at 9.43 a.m.

The Proceedings were opened with prayers.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Abdiraman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Ahmed Yussuf	525
8. Hon. James Nthiga Gatiti	520
9. Hon. Jane Kauka	375
10. Hon. Joseph Korir Kipkapto	75
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Marie Rose Owino	400
14. Hon. Mburugu Florence	530
15. Hon. Moffat Maitha	90
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo M. Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rodah Maende	298
21. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

1. Hon. David Orechi K.	111
2. Hon. David S. Malaba	143

**IN ATTENDANCE**

Prof Phil Knight	Draftsperson
Silvia Nyaga	Asst. Program Officer
Rozina Mngola	Asst. Program Officer
Flora Wafula	Verbatim Recorder

**MIN.NCC/TCA/136/04**

**ANNOUNCEMENTS**

The Convenor informed members that the Steering Committee had decided that no delegate goes to the court to get the ruling of the application presented, as they would send a representative.

Issues being discussed by the consensus Building Team would only be discussed after the team finished their deliberations.

**MIN.NCC/TCA/137/04**

**CONFIRMATION OF MINUTES**

Minutes of the 17<sup>th</sup> Feb 2004 were proposed as being a true record of the proceedings by Hon. Mary Orwenyo and seconded by Hon. Asha Wanje.

**MIN.NCC/TCA/138/04**

**CONSIDERATION OF ZERO DRAFT**

**Article 2(2)**

Should be deleted, as it is unnecessary.

Constitution is supreme and thus cannot be challenged thus no need to protect its legality.

Clause can be redrafted to reflect that the constitution is the supreme law.

Members resolved that the clause be re-drafted.

**Article 7**

Reference to schedule 7 ought to be schedule 2.

Members were made aware that schedule 1 would be deleted and thus schedule 7 would now be schedule 1.

Hon Marie Dan Owino proposed the minutes of 18<sup>th</sup> February 2004 as being a true record of the proceedings and was seconded by Hon. David Erulu.

**MIN.NCC/TCA/139/04**

**CONSIDERATION OF RE-DRAFTED ARTICLES**

**Article 4(3)**

Kenyans ought to allow the government to enter into international agreements and the supremacy clause would protect the government into entering into unlawful treaties

Clause left pending to allow more consultations.

**Article 5**

Article 2(3) is harmonized with Article 5(1)

**Article 5(1) c**

Existing laws as referred to should be discussed and the ones approved be adopted.

There are many statutes of law, which are still to be repealed.

Its of more value to have the clause in the chapter instead of moving it to Transitional Committee.

**Article 5(1)d**

Deletion of the word “customary”

English Common law has become statute.

Courts have not been allowed to develop customary law and this ought to be opened up for the courts to struggle with it. Hindu and Islamic Law are all customary law and thus incorporated in the clause.

Members resolved to adopt Article 5 as re-drafted.

**Article 6**

*213(A) Forms of government to be inserted as clause 3 to set out the structure of government as prescribed by the Devolution Committee.*

*Re-numbering Articles – 213A(1) be 6(2) and 213(A)(2) be 6(4)*

*It was resolved that the draftsman re-works the Article by incorporating Article 213(A).*

*Article 6(2) – the phrasing is too loose and ought to be clearer.*

**Article 8**

*Article 8(2) to be deleted and catered for in Article 214*

*Agreed to.*

**Article 9**

*Agreed to.*

**Article 11**

*Agreed to.*

***Article 14***

***Clause 8***

*Distinction between state and republic.*

State is in charge of government while republic is broader and encompasses the state. Inclusion of associations thus not only limiting the provisions to political parties.

Improving the clause by including:-

Political movements, parties and Associations.

To be redrafted on the basis of new formulation proposed.

**Clause 12**

Clause adopted as re-drafted

Hon. Julius Arunga recorded a minority report reflecting at least 1/3 (one-third) representation of either gender in all elective and appointive bodies.

**Clause 14**

Replacing the word Republic with the State to make the clause more enforceable.

Deleting all words after “security”. This was disregarded on the explanation by the draftsman that courts will use the last part of the clause to qualify the content of the entire clause.

The Clause was adopted as re-drafted.

**Clause 16**

*Adopted as re-drafted.*

***ADJOURNMENT***

*The meeting adjourned for lunch at 12.45 p.m.*

**AFTERNOON SESSION**

The Afternoon Session was called to order at 2.30 p.m. with the Convenor in the Chair.

***Article 18***

Affirmative Action Principle to be harmonized with other Committees.

*Adopted as re-drafted.*

*Members adopted the revised version of Articles as re-drafted in lieu to amendments made.*

**MIN.NCC/TCA/140/04      CONSIDERATION OF CROSS CUTTING ISSUES**  
**Article 1      *Sovereignty of the People* (as provided under Article 213A)**

This had been considered by being incorporated in Article 6.

**Article 1(3)      Theory of Government**

Bilateral meeting to be held with the Executive Committee to harmonize this.

**Article 7(2)**

This has been taken into consideration, as schedule 7 would be re-numbered to be schedule 1.

**Article 14(3)**

Deletion of the clause as it is captured in culture broadly. Culture uses ambiguous words like sagacity and philosophy.

*Members agreed to retain Article 14(3) while incorporating issues raised in Article 15(1).*

*Sagacity is wisdom of age while philosophy means science of knowledge.*

*It was agreed that the draftsperson would incorporate Article 15(1) in Article 14(3).*

**Article 14(12)**

Members agreed to retain the principle of at least one third.

**Article 14(13)**

Deleting the word “our” to avoid specificity.

- ◆ The Constitution is making reference to Kenyans thus should refer only to Kenyan children.
- ◆ The international standard norm is stipulated in the Bill of Rights and it is not specific to “our children”.
- ◆ Not being specific will give Kenyans responsibility for children not rightly the responsibility of Kenyans and this may put more strain on the economy.
- ◆ The word “our” is discriminatory yet Kenya is a signatory to the children’s Act which is not limiting.
- ◆ Being too general opens the door to bad strategies like encouraging dumping of children in view that Kenyans would readily take responsibility for them.



The Issue was left pending.

**MIN.NCC/TCA/141/04**

**ADJOURNMENT**

And the time being forty five minutes past three in the afternoon the meeting adjourned to Friday 20th February 2004.

**DATED** .....

**SIGNATURE** .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Friday 20<sup>th</sup> February in tent No. 1, Bomas of Kenya at 9.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Consideration of cross-cutting issues
5. Any Other Business.
6. Date of next Meeting.

Approved for circulation - Convenor

Sign.....

Date .....

Time .....

**MINUTES OF THE TWENTY NINTH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON FRIDAY, 20TH FEBRUARY, 2004 AT 9.40 A.M.**

The meeting was called to order at 10:00 a.m. with the *Convenor Billy Onwonga* in the chair.

The proceedings were opened with prayers by Hon Delegate Mary Dan Owino.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Abdiraman Ali Hassan	3
3. Hon. David L. A. Erulu	397
4. Hon Benson Okwaro	449
5. Hon. Francis Wabayale	588
6. Hon. Gitu Wa Kahengeri	316
7. Hon. Ibrahim Omondi	542
8. Hon. James Nthiga Gatiti	520
9. Hon Jane Kauka	375
10. Hon. Joseph Korir Kipkapto	75
11. Hon. Julius Arunga	8
12. Hon. Kavoo Kilonzo	479
13. Hon. Manoti Stephene	94
14. Hon. Marie Rose Owino	400
15. Hon. Mburugu Florence	530
16. Hon. Nalea G. Kithumbu	285
17. Hon. Orwenyo M. Obonyo	426
18. Hon. Pascalina R. Lebarleiya	351
19. Hon. Peter Oloo Aringo	212
20. Hon. Zuhura Zukira Wanje	236

**IN ATTENDANCE**

Prof. Phil Knight	Draftsperson
Silvia Nyaga	Asst. Program Officer
Rozina Mngola	Asst. Program Officer
Flora Wafula	Verbatim Recorder

**MIN. NCC/TCA/142/04**

**COMMENCEMENT**

The Convenor informed members that the Drafts person was away as he was supposed to be traveling to Canada and that another drafts person will be availed on Monday. He also announced that the allegations in the newspapers as relates to the hybrid system and Section 47 were not true. Members were made to understand that there were proposals by delegate from other Committees on amending various sections. It was resolved that the

delegates move the motions on Monday, 23rd February after which members shall have had adequate time to go through them.

**MIN.NCC/TCA/143/04**

**CONTINUATION OF THE PREVIOUS DAYS’  
DEBATE ON CROSS-CUTTING ISSUES.**

**1. Reference to “our” under 14(13).**

The Convenor put the question and it was resolved that the clause be retained without amendments.

**2. Promotion of science and technology**

The Convenor informed members that this was cross-cutting with the culture provisions.

*Upon debate members resolved that the words “recognize and enhance the role of science and technology,” be deleted from clause 14(15) as the aspect of science and technology had been adequately covered by the Culture Committee.*

**MIN.NCC/TCA/144/04 RE-OPENING UP OF ISSUES**

The chair sought to know whether there were members who had issues that they wanted reconsidered.

Members observed that the chair should direct members by indicating whether there were pending issues otherwise some members who were away during debates may seek to sneak in new things after the Committee has already deliberated on them. It was agreed that such re-consideration should be done selectively after the dissatisfied member had indicated specifically the nature of his/her dissatisfaction.

**MIN.NCC/TCA/145/04 RE-CONSIDERATION OF ARTICLE 5**

Hon Delegate Ibrahim Omondi indicated that he was concerned with Article 5 and especially clause (c) and (d). He indicated that the suggested formulation as adopted by members was a complete overhaul of the Article and would have needed the guidance of the Rapporteur before it was passed.

A number of the members were not convinced with the argument advanced by the Hon Delegate seeking to re-open the Article for debate.

The Convenor ruled that he would consult with the Rapporteur-General who shall avail a Rapporteur if necessary.

**MIN.NCC/TCA/146/04 ADJOURNMENT**

The time being 10:59 the Committee adjourned to Monday 23<sup>rd</sup> February at 9:00 a.m.

DATED.....

SIGNED .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TECHNICAL WORKING GROUP “A” ON PREAMBLE, SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL VALUES, GOALS AND PRINCIPLES.**

The Convenor presents his compliments to Members of the Technical Working Committee “A” and has the honour to inform them that a sitting of the Committee will be held **on Monday 23<sup>rd</sup> February 2004 in tent No. 1, Bomas of Kenya at 9.30 a.m.**

**AGENDA**

1. Prayers.
2. Confirmation of Minutes.
3. Matters Arising.
4. Re-consideration of Articles
5. Any Other Business.
6. Date of next Meeting.

**Approved for circulation - Convenor**

Sign.....

Date .....

Time .....

**MINUTES OF THE THIRTIETH SITTING OF TECHNICAL WORKING GROUP 'A' ON THE PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES, HELD IN TENT NO. 1 ON MONDAY, 23RD FEBRUARY, 2004 AT 10.00 A.M.**

The meeting was called to order at 10:10 a.m. with the Convenor Billy Onwonga in the chair.

The proceedings were opened with prayers by Hon Delegate Mary Dan Owino.

**PRESENT**

1. Hon. Billy Onwong'a	Convenor (457)
2. Hon. Githu Muigai	Rapporteur
3. Hon. David L. A. Erulu	397
4. Hon. Esintele Kureya	264
5. Hon Benson Okwaro	449
6. Hon. Francis Wabayale	588
7. Hon. Gitu Wa Kahengeri	316
8. Hon. Ibrahim Omondi	542
9. Hon. James Nthiga Gatiti	520
10. Hon. Jane Kauka	375
11. Hon. Julius Arunga	8
12. Hon. Manoti Stephen	94
13. Hon. Marie Rose Owino	400
14. Hon. Moffat Maitha	90
15. Hon. Mburugu Florence	530
16. Hon. Murtaza Jaffer	623
17. Hon. Nalea G. Kithumbu	285
18. Hon. Orwenyo M. Obonyo	426
19. Hon. Pascalina R. Lebarleiya	351
20. Hon. Rhonda Maende	298
21. Hon. Zuhura Zukira Wanje	236

**OBSERVERS**

1.	Hon. David S. Malaba	143
2.	Hon. David Orechi K.	111

**IN ATTENDANCE**

Silvia Nyaga	Asst. Program Officer
Rozina Mngola	Asst. Program Officer
Flora Wafula	Verbatim Recorder

**MIN.NCC/TCA/147/04                      COMMENCEMENT**

The Convenor summarized decisions in the report forwarded by the consensus building team in regard to contentious issues.

Members were informed that if contentious issues could not be agreed upon at the committee stage, these would be forwarded to plenary.

**MIN.NCC/TCA/148/04                    CONFIRMATION OF MINUTES**

Minutes of the 19<sup>th</sup> of February were proposed by Hon. Gitu Wa Kahengeri as being a true record of the proceeding and seconded by Hon. Marie Dan Owino.

**MIN.NCC/TCA/149/04                    MATTERS ARISING**

The Convenor informed members that he had consulted with the Rapporteur General on the issue of re-opening of Article 5, and was advised that the committee had the mandate to decide on whether to proceed.

**MIN.NCC/TCA/150/04                    RE – CONSIDERATION OF ISSUES**

**Article 5(1)(d)**

Having the word customary restricts personal laws to only customary laws.

**Article 5(1)(c)**

The clause is omnibus and allows courts to apply any laws in existence.

**Article 5(1)(d)**

Personal law is inclusive of customary laws and any other personal laws practiced.

Islamic and Christian laws are not part of customary laws.

Customs dictate the distinctiveness of the people and our Africaness ought to be protected by recognizing the customary laws.

A customary law confines individuals to present customs and prevents them from developing.

The clauses left pending to await consultation with the rapporteur.

**Article 13(b)**

***Hon. Gitu Wa Kahengeri proposed a motion to include “and heroines” after the word “heroes”.***

Hon. Ibrahim Ahmed Yussuf proposed an amendment to the motion to replace the word Heroes with “shujaa” which is a Swahili word and will be consistent with all the other holidays named in Swahili.

“Mashujaa” was proposed to cater for all heroes.

Members resolved to replace the word “Heroes” with “Mashujaa”

**Article 5(1)d**

There are various types of customary laws but the purpose of the clause is to enforce personal law, which is the corpus of customary law.  
Personal law is narrowed to the question of marriage, divorce and inheritance.

Customary opens a floodgate to all the forms of customary laws, which ought to be enforceable to all individuals. Customary is limiting as it leaves out the personal laws of other individuals e.g. statute.

Members resolved to delete the word customary and retain personal laws of the peoples of Kenya.

**Article 5(1) c**

The Clause allows for practice of all existing law after the enactment of the constitution but should capture only law enforceable in courts.

Members resolved to adopt the clause as proposed by the rapporteur.

“All the laws in force in Kenya immediately before the coming into force of this constitution subject to any subsequent amendment, repeal or nullification.”

**MIN.NCC/TCA/151/04**

**PROPOSED MOTION ON ARTICLE 5**

Nothing to do with the sovereignty under the committee’s mandate which deals with the philosophy. Sovereignty is operationalized elsewhere in the Constitution and conduct of referendum.

Motion to be referred to the committee dealing with chapter 18 and are free to consult with the committee on issues of sovereignty.

**MIN.NCC/TCA/152/04**

**ADJOURNMENT**



The time being forty-five minutes past twelve O'clock Committee adjourned to Tuesday  
24th February 2004 at 9:00 a.m.

DATED.....

SIGNED .....

**ANNEXURE V: COMMITTEE’S REPORT TO THE COMMITTEE OF THE WHOLE CONFERENCE**

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

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
<b>PREAMBLE</b>	<p><b>PREAMBLE</b> We, the people of Kenya – <b>AWARE</b> of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:</p> <p><b>COMMITTED</b> to nurturing and protecting the well-being of the individual, the family and the community within our nation:</p> <p><b>RECOGNISING</b> the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law:</p> <p><b>EXERCISING</b> our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the constitution making process:</p> <p>Do adopt, enact and give to ourselves and</p>	<p><b>PREAMBLE</b> We, the people of Kenya – <b>ACKNOWLEDGING</b> the supremacy of the Almighty, God of all creation:</p> <p><b>HONOURING</b> the heroic memory of all those who struggled to bring freedom and justice to our land:</p> <p><b>AWARE</b> of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:</p> <p><b>RECOGNISING</b> the aspirations of all Kenyans for a government based</p>	None	<ul style="list-style-type: none"> <li>• Upon the rationale that Kenya is a God-fearing nation members resolved that there be a paragraph that recognizes God.</li> <li>• Members accepted the idea that we ought not forget our history and our heroes and resolved that there be a paragraph reflecting the struggle for independence and the heroes.</li> <li>• Upon debate whereby</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>to our future generations this Constitution.</p> <p><b>GOD BLESS KENYA</b></p>	<p>on the essential values of freedom, democracy, social justice and the rule of law:</p> <p><b>RESPECTFUL</b> of the natural environment that is our heritage, and determined to sustain it for the benefit of future generations;</p> <p><b>COMMITTED</b> to nurturing and protecting the well-being of the individual, the family and the community within our nation:</p> <p><b>EXERCISING</b> our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the making of this</p>		<p>some members wanted the inclusion of all groups of people, including people with disabilities, the youth etc, it was resolved to have an all inclusive clause.</p> <ul style="list-style-type: none"> <li>• There was great concern that the environment is at risk and hence the need to recognise it in the preamble.</li> <li>• Paragraphs reorganized, to allow Kenyans recognize themselves before others and to allow good flow.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p>constitution:</p> <p>Adopt, enact and give this Constitution to ourselves and to our future generations.</p> <p><b><u>GOD BLESS KENYA.</u></b></p>		
<p><b>CHAPTER ONE</b> <b>SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION</b></p>				
<p><b>Article 1</b> <b>Sovereignty of the People</b></p>	<p><b>Sovereignty of the people</b></p> <p><b>1.</b> (1) All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution.</p> <p><i>(2) The people shall exercise their sovereign power either directly or through their democratically elected representatives.</i></p> <p>(3) The sovereign authority of the people is allocated separately among –</p> <p>(a) the Legislature, to whom the people entrust the legislative authority of the Republic, to be exercised in</p>	<p><b>Sovereignty of the people</b></p> <p><b>1.</b> (1) All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution.</p> <p>(2) The people shall exercise their sovereign power either directly or through their democratically elected representatives.</p> <p>(3) Kenya shall be a</p>	<p>None</p>	<ul style="list-style-type: none"> <li>• A new clause (3) was inserted to provide that Kenya shall be a parliamentary</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>accordance with Chapter Seven;</p> <p><i>(b) the Executive, to whom the people entrust the executive authority of the Republic, to be exercised in accordance with Chapter Eight;</i></p> <p>(c) the Judiciary and other independent and impartial tribunals, to whom the people entrust the judicial authority of the republic, to be exercised in accordance with Chapter Nine; and</p> <p>(d) the Constitutional Commissions and Offices established by Chapter Seventeen or elsewhere in the Constitution, to which the people entrust the protection and development of the constitutional state, to be secured through the exercise by those bodies of the functions and powers assigned to them by the Constitution.</p> <p>(4) The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person shall arrogate to himself</p>	<p>parliamentary democracy in which, subject to clauses (1) and (2), authority is exercised in the name of the people as represented in Parliament.</p> <p>(4) The sovereign authority of the people is allocated separately as follows:</p> <p>(a) the legislative authority of the Republic is entrusted to Parliament, and to the legislative structures in devolved government, to be exercised in accordance with Chapter 12 and Chapter 15, respectively;</p> <p>(e) the executive authority of the Republic is entrusted to the national executive,</p>		<p>democracy on the basis that the theory of government ought to be defined under this article.</p> <ul style="list-style-type: none"> <li>• The parliamentary system was agreed upon as it is the system that would ensure that power is not concentrated in the hands of one person and the country does not become an authoritarian or dictatorship regime as is likely to be under other systems of government.</li> <li>• Clause (4) reformulated to</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>or herself, or exercise any state authority which does not emanate from the Constitution.</p>	<p>and to the executive structures in devolved governments, to be exercised in accordance with chapter 13 and Chapter 15, respectively ;</p> <p><i>(f) the judicial authority of the Republic is entrusted to the courts and other independent and impartial tribunals, to be</i></p>		<p>recognize the role of devolved levels of government, but in a manner that notes that judicial authority is not to be devolved.</p>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>exercised in accordance with Chapter 14; and</i></p> <p><i>(g) the independent protection of the constitutional state is entrusted to the Constitutional Commissions and Constitutional Offices established by the Constitution, to be secured through the</i></p>		

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>exercise by those bodies of the functions and powers assigned by the Constitution.</i></p> <p>(5) The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person may purport to exercise any state authority, which does not emanate from the Constitution.</p>		
<p><b>Article 2</b> <b>Supremacy of the Constitution</b></p>	<p><i>Supremacy of the Constitution.</i></p> <p>2. (1) <i>Kenya is founded on the supremacy of the Constitution and the rule of law and shall be governed in accordance with the Constitution.</i></p> <p>(2) <i>The Constitution is the supreme law and binds all authorities and persons</i></p>	<p><b>Supremacy of the Constitution</b></p> <p>2. (1) This Constitution is the supreme law of the Republic of Kenya and binds all persons and authorities within the Republic.</p>		<ul style="list-style-type: none"> <li>• Clause (1) of Article 2 reformulated to avoid confusion between it and the Preamble in regard to reference to supremacy.</li> </ul>



ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p><i>throughout the Republic.</i></p> <p>(3) The validity, legality or procedure of enactment or promulgation of this Constitution is not subject to challenge by or before any court, organ or agency of the state.</p> <p><b>(4) A law which is inconsistent with the Constitution is void, to the extent of the inconsistency.</b></p> <p>(5) The Constitution shall be interpreted in a manner –</p> <p>(a) that promotes the values of good governance;</p> <p>(b) that advances human rights and fundamental freedoms and the rule of law;</p> <p>(c) that permits the creative development of the provisions of the Constitution and of the common law of Kenya; and</p> <p>(d) that avoids technicalities which defeat the purpose of the Constitution.</p>	<p>(2) The validity or legality of this Constitution is not subject to challenge by or before any court, organ or agency of the state.</p> <p>(3) A law that is inconsistent with this Constitution is void, to the extent of the inconsistency, and any action or omission in contravention of this Constitution is invalid.</p> <p>(4) The Constitution shall be interpreted in a manner –</p> <p>(e) that promotes the values and principles of good governance;</p> <p>(f) that advances human rights and fundamental freedoms and the rule of law;</p> <p>(g) that permits the development of the provisions of the Constitution, and of the</p>		<ul style="list-style-type: none"> <li>• Reference to the rule of law was deleted as this is adequately covered under Article 6(2) which deals with the foundation of the Republic.</li> <li>• Old Clause (3) reworded on the basis that upon enactment the procedure cannot be challenge as the Constitution shall be in force. The clause is also restructured to cater for the individual’s right to challenge the constitution in legitimate circumstances.</li> <li>• Old clauses</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>(6) The Courts, a person or an authority interpreting the Constitution may refer to matters or materials that will assist in the purposive interpretation of the Constitution.</p>	<p>common law of Kenya, in a manner that is conducive to the welfare of all citizens; and</p> <p>(h) that avoids legal and procedural technicalities which defeat the purpose of the Constitution.</p> <p>(5) In interpreting the Constitution, a court, or another authority or person adjudicating a matter, may refer to matters or materials that will assist in the purposive interpretation of the Constitution.</p>		<p>2(5) and 2(6) were amended to simplify the language.</p>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
<b>Article 3 Enforcement of Constitution</b>	<p><b>Enforcement of the Constitution.</b></p> <p>3. (1) A person may bring an action in the courts on the ground that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.</p> <p>(2) The courts may make an order or give appropriate effect to the declaration in clause (1).</p>	<p><b>Enforcement of the Constitution.</b></p> <p>3. (1) A person, or a group of persons, may bring an action in the courts on the ground that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.</p> <p>(2) Where a court makes a declaration under clause (1), it shall also make such orders as are necessary to give effect to the declaration.</p>	None	<ul style="list-style-type: none"> <li>Article 3(1) was expanded so as to give groups of people <i>locus standi</i> in cases brought in enforcement of the constitution.</li> <li>The article was simplified on the basis that being the supreme law of the land, the constitution should be to easily understood by Kenyans if they are to be expected to defend it.</li> </ul>
<b>Article 4 Defence of the Constitution</b>	<p><b>Defence of the Constitution</b></p> <p>4(1) Any attempt to establish a system of government contrary to the Constitution is unlawful.</p> <p>(2) An Act that is prejudicial to the sovereignty of Kenya is unlawful.</p>	<p><b>Defence of the Constitution</b></p> <p>4. (1) All persons have an obligation to respect and defend the Constitution and the institutions established under it.</p>	None	<ul style="list-style-type: none"> <li>A new clause 4(1) was inserted on the basis that the custodian of the constitution is not just parliament and the government but all people as well</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(3) Parliament may enact legislation to give effect to this Article.	<p>(2) <i>Any attempt to establish a system of government otherwise than in compliance with the Constitution is unlawful.</i></p> <p>(3) Parliament shall enact legislation to the extent necessary to give effect to this Article.</p>		<ul style="list-style-type: none"> <li>• Old clause 4(2) deleted as it is incorrect since each time the government or its representatives enters into agreements with other nations, it yields some of its sovereignty. Retaining the clause would therefore mean that such acts are unconstitutional.</li> </ul>
<p><b>Article 5</b> <b>The Laws of Kenya</b></p>	<p><b>The Laws of Kenya</b></p> <p>5. (1) The laws of Kenya comprise –</p> <p>(a) the Constitution;</p> <p>(b) Acts of Parliament enacted under the Constitution;</p> <p>(c) African customary law;</p> <p>(d) Islamic and Hindu personal law;</p> <p>(e) the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and</p>	<p><b>Sources of the Laws of Kenya</b></p> <p>5. (1) The laws of Kenya comprise this Constitution, and each of the following, to the extent that it is consistent with the Constitution-</p> <p>(g) laws enacted under this Constitution;</p> <p>(h) all law in force in</p>		<ul style="list-style-type: none"> <li>• The title of the Article was amended to reflect that the Article narrows down to providing for the sources of law.</li> <li>• The Article is re-formulated to delete reference to Islamic,</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>procedures of the Courts of Kenya;</p> <p>(f) the East African Community Law; and</p> <p>(g) Customary international law and international agreements applicable to Kenya.</p> <p>(2) Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, make the amendments that are necessary or expedient for bringing the existing law into conformity with the Constitution.</p>	<p>Kenya immediately before the coming into force of this Constitution subject to any subsequent amendment, repeal, or nullification ;</p> <p>(i) Personal laws of the peoples of Kenya;</p> <p>(j) the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and procedures of the courts;</p> <p>(k) East African Community Law; and</p> <p>(l) customary international law,</p>		<p>Hindu laws and to avoid unintended omission of any law that is part of the laws of Kenya at the effective date of enactment of the Constitution.</p>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p>and international agreements, applicable to Kenya.</p> <p>(2) Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, enact –</p> <p><i>(a) legislation necessary or expedient for bringing the existing law into conformity with the Constitution; and</i></p> <p>(b) legislation relating to the application of personal law and the resolution of conflicts in its application.</p>		
<p><b>CHAPTER TWO</b> <b>THE REPUBLIC</b></p>				
<p><b>Article 6</b> <b>The Republic</b></p>	<p><b>Declaration of the Republic</b></p> <p>6. (1) Kenya is a sovereign Republic.</p> <p>(2) The Republic of Kenya is founded on republican principles of good</p>	<p><b>Declaration of the Republic</b></p> <p>6. (1) Kenya is a sovereign Republic.</p> <p>(2) Sovereign power of the</p>	<p>None</p>	<ul style="list-style-type: none"> <li>The concept of devolved government included in the Article that lays the foundation of the</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights fundamental freedoms, and the rule of law.	<p>people is exercised at-</p> <p>(e) the national level;</p> <p>(f) the regional level;</p> <p>(g) the district level; and</p> <p>(h) the locational level.</p> <p>(3) The Republic of Kenya is founded on republican principles of good governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedoms, and the rule of law.</p> <p>(4) The governments at each level are distinctive, inter-dependent, consultative and negotiative.</p>		Republic.
<b>Article 7 Territory</b>	<b>Territory</b> 7. (1) The territory of the Republic of Kenya comprises the area described in the	<b>Territory</b> 7. (1) The territory of the Republic of Kenya shall be	None	<ul style="list-style-type: none"> <li>It was resolved that the Kenya Uganda border be first resolved</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>First Schedule;</p> <p>(2) The Republic is divided into the districts and provinces set out in the Second Schedule;</p> <p>(3) The sovereignty of the Republic of Kenya over its territory is subject only to any international obligations that the Republic of Kenya freely accepts in accordance with the Constitution;</p> <p>(4) Every citizen has the right and duty to defend the Republic against any person who threatens the political independence, territorial integrity or constitutional order of the Republic by unconstitutional means.</p>	<p>as determined under international law and international agreements.</p> <p>(2) The Republic is divided into the units set out in the <i>First</i> Schedule.</p> <p>(3) The sovereignty of the Republic of Kenya over its territory is subject only to any international obligations that the Republic of Kenya freely accepts in accordance with the Constitution.</p>		<p>so as to define Kenya’s territory adequately hence the general proviso that the boundary shall be as determined under international law and agreements. The First Schedule is consequently deleted.</p> <ul style="list-style-type: none"> <li>• The committee resolved to delete “districts and provinces’ and replace with a word that is in harmony with the recommendations of the devolution committee.</li> <li>• Clause 7(4) is deleted on the rationale that the patriotic notion of Kenyans was being</li> </ul>



ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
				taken away.
<b>Article 8 Capital</b>	<p><b>Capital</b></p> <p>8. (1) The capital of Kenya is Nairobi;</p> <p>(2) Parliament shall enact legislation to provide for the status and government of Nairobi;</p> <p>(3) It is the policy of the State to decentralize the headquarters of national Government departments and national public institutions to all the provinces equitably.</p>	<p><b>Capital</b></p> <p>8. (1) The capital of Kenya is Nairobi.</p> <p>(2) It shall be the policy of the State to decentralize the headquarters of national Government departments and national public institutions to all the regions equitably</p>	None	<ul style="list-style-type: none"> <li>• It was resolved that clause 8(3) be harmonized by reflecting the recommendations under article 7 by deleting “provinces.”</li> <li>• Old clause 8(2) is deleted as it is addressed in Article 214.</li> </ul>
<b>Article 9 Languages</b>	<p><b>Languages</b></p> <p>9. (1) The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.</p> <p>(2) <i>The national language of Kenya is Kiswahili.</i></p> <p>(3) The state shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of Kiswahili, indigenous languages, sign language and Braille.</p>	<p><i>Languages</i></p> <p>9. (1) The national language of Kenya is Kiswahili.</p> <p>(2) The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.</p> <p>(3) The state shall respect and protect the diversity of language of the people of Kenya and shall promote the</p>	None	<ul style="list-style-type: none"> <li>• The order of clause (1) and clause (2) reversed to recognize the national language first.</li> <li>• Members resolved to delete the word “Kiswahili” from old clause (3) as it was already recognized.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p>development and use of indigenous languages and sign language.</p> <p>(4) The State shall promote the development and use of Braille and other methods of communication for persons with visual impairments.</p>		<ul style="list-style-type: none"> <li>• It was indicated that Braille is not a language and thus deleted from old clause 3 and a new clause 4 provided.</li> <li>• Clause (4) was inserted to cater for Braille and allow for new developments in the area of communication aids.</li> </ul>
<p><b>Article 10</b> <b>State and Religion</b></p>	<p><b>State and Religion</b></p> <p><b>10.</b> (1) State and religion shall be separate.</p> <p>(2) There shall be no state religion.</p> <p>(3) The state shall treat all religions equally.</p>	<p><b>State and religion</b></p> <p><b>10.</b> (1) State and religion shall be separate.</p> <p><b>(2) <i>There shall be no state religion.</i></b></p> <p>(3)The state shall treat all religions equally.</p>	<p><i>That the Article be deleted in totality on the basis that Christianity is the only religion that separates state from religion.</i></p>	<ul style="list-style-type: none"> <li>• The Committee resolved to adopt the Article without amendments in spite of minority opinion expressed that the Article be entirely deleted.</li> </ul>
<p><b>Article 11</b> <b>National Symbols</b></p>	<p><b>National Symbols</b></p> <p><b>11.</b> The national symbols of the Republic of Kenya, consisting of –</p>	<p><b>National symbols</b></p> <p><b>11.</b> The national symbols of the Republic of Kenya, consisting of –</p>		<ul style="list-style-type: none"> <li>• Members resolved</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(a) the national flag; (b) the national anthem; (c) the coat of arms; and (d) the Public Seal of Kenya  are as prescribed in the Third Schedule.	(a) the national flag; (b) the national anthem; (c) the coat of arms; and (d) the Public Seal  are as prescribed in the <i>Second</i> Schedule.		to delete the words “of Kenya” in clause (d) as it would be a repetition as the opening phrase made reference to the “symbols of the Republic of Kenya.” <ul style="list-style-type: none"> <li>It is noted that the Schedule in question should have the drawings of flag, coat of arms and seal, and the lyrics of the national anthem.</li> </ul>
<b>Article 12 National Oaths and Affirmations</b>	<b>National Oaths and Affirmations</b>  <b>12.</b> The national oaths and affirmations shall be as prescribed in the Fourth Schedule.	<b>National Oaths and Affirmations</b>  <b>12.</b> The national oaths and affirmations shall be as prescribed in the Fourth Schedule.	None	
<b>Article 13 National Days</b>	<b>National Days</b>  <b>13.</b> The following days shall be observed as National Days -	<b>National Days</b>  <b>13.</b> (1) The following days shall be observed as		<ul style="list-style-type: none"> <li>Upon debate it was resolved that “Katiba Day” be</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(a) 1 <sup>st</sup> June – Madaraka Day; (b) 12 <sup>th</sup> December – Jamhuri Day; (c) [ <i>the date of enactment of the Constitution</i> ] - Katiba Day.	National Days – (a) 1 <sup>st</sup> June – Madaraka Day; (b) 20 <sup>th</sup> October – Mashujaa Day; (c) 12 <sup>th</sup> December – Jamhuri Day.		deleted and replaced with “Mashujaa Day-20 <sup>th</sup> October” on the basis that many Kenyans had advocated for a Heroes day. For consistency members resolved to name the day in Kiswahili.  <ul style="list-style-type: none"> <li>The Article was reworked to allow sequential flow as per the calendar.</li> </ul>
<b>CHAPTER THREE NATIONAL GOALS, VALUES AND PRINCIPLES</b>				
<b>Article 14 National goals, values and principles</b>	<b>National goals, values and principles</b>  <b>14.</b> (1) The national goals, values and principles contained in this Chapter apply to the Executive, Parliament, the Judiciary, local authorities and all other state organs and officials, citizens and private bodies whenever any of them–	<b>National goals, values and principles</b>  <b>14.</b> (1) The national goals, values and principles contained in this Chapter apply to the Executive, the Legislature, the Judiciary, devolved levels of government		<ul style="list-style-type: none"> <li>The word “parliament” was substituted with “ the legislature” and “local authorities” substituted with “devolved levels of government” to</li> </ul>

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	<p>(a) applies and interprets the Constitution or any other law; and</p> <p>(b) applies, makes and implements policy decisions.</p> <p>(2) The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood.</p> <p>(3) The Republic shall recognise the diversity of its people and promote the cultures of its communities.</p> <p>(4) The Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power.</p> <p>(5) The Republic shall ensure open and transparent government and the accountability of state officials and public authorities.</p> <p>(6) The Republic shall take effective measures to eradicate all forms of corruption.</p> <p>(7) The Republic shall ensure access of the</p>	<p>and all other state organs and officials, citizens and private bodies whenever any of them–</p> <p>(b) applies and interprets the Constitution or any other law; and</p> <p><b><i>(b) applies, makes and implements policy decisions.</i></b></p> <p><b><i>(2) The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood and patriotism.</i></b></p> <p>(3) The Republic shall recognise the diversity of its people and promote and protect the cultures of its communities.</p> <p><b><i>(4) The Republic is based on principles of democracy and shall promote the</i></b></p>		<p>cater for the devolved structure.</p> <p>• The word “patriotism” inserted at the end of the clause 2.</p>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>people to independent, impartial and competent institutions of justice.</p> <p>(8) Political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process, and avoid violence and bribery.</p> <p>(9) The Republic shall promote the role of civil society in governance and facilitate its role in ensuring the accountability of government.</p> <p>(10) The Republic is fully committed to respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities.</p> <p>(11) The Republic shall ensure the fullest participation of women, the disabled, and the marginalised communities and sectors of society in the political, social and economic life of the country.</p> <p>(12) The State shall implement the principle that one-third of the members of all elective</p>	<p><i>participation of the people in public affairs and facilitate the sharing and devolution of power.</i></p> <p><i>(5) The Republic shall ensure open and transparent government and the accountability of state officials and public authorities.</i></p> <p><i>(6) The Republic shall take effective measures to eradicate all forms of corruption.</i></p> <p>(7) The Republic shall ensure access of the people to independent, impartial, competent, timely and affordable institutions of justice.</p> <p><i>(8) The state shall respect and protect the democratic right of citizens to participate</i></p>		<ul style="list-style-type: none"> <li>• There was concern that court cases take an unduly long time and that justice is beyond reach of the less fortunate and thus the recommendation that clause 7 be expanded to provide that that Republic shall ensure access to timely and affordable justice.</li> <li>• Clause (8) reformulated as a principle and enlarged to cater for</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>and appointive bodies shall be women.</p> <p>(13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material and moral well being.</p> <p>(14) The Republic shall be committed to social justice and, through appropriate policies and measures, to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment, and security so that they live a life of dignity and comfort and can fulfill their potential.</p> <p>(15)The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people.</p> <p>(16) The Republic shall recognise its responsibilities to future generations of Kenyans, by pursuing policies for the</p>	<p><i>in political activities and form political movements, organisations and parties without interference or control.</i></p> <p>(9) The Republic shall recognise the role of civil society in governance and facilitate its role in ensuring the accountability of government.</p> <p>(10) The Republic is fully committed to respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities.</p> <p><i>(11) The Republic shall ensure the fullest participation of all citizens (especially women, persons with disabilities, and the marginalised communities and sectors of society) in the</i></p>	<p>Minority opinion by Hon Delegate Julius Arunga that clause 14(12) should provide for either gender.</p>	<p>movements and associations.</p> <ul style="list-style-type: none"> <li>• It was not clear the extent to which the Republic would be required to “promote and facilitate” the civil society, hence the recommendation that the word “promote” be substituted with “recognize.”</li> <li>• This requirement on the Republic as relates to clause 11 was understood to extent to all citizens, not just the women, persons with disabilities and marginalized and</li> </ul>

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	<p>sustainable management of the environment.</p> <p>(17) The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity, equitable development and the promotion of human rights and fundamental freedoms.</p> <p>(18) At least once every year, the President shall report to Parliament and the nation all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter.</p>	<p><i>political, social and economic life of the country.</i></p> <p>(12) The State shall implement the principle that at least one-third of the members of all elective and appointive bodies shall be women.</p> <p>(13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material, moral and spiritual well-being, and, to that end, shall uphold the family as the fundamental unit of society and maintain respect for the institution of marriage.</p> <p><i>(14) The Republic shall be committed to social justice and, shall take progressive measures to ensure the realisation of the rights of all</i></p>		<p>therefore the recommendation that it be expanded accordingly with emphasis on these groups.</p> <ul style="list-style-type: none"> <li>The drafting of clause 12 was improved by inserting the words “at least” as without these words it could be interpreted to mean that the representation of women is only limited to one-third. It was noted that the Constitution has a bill of rights calls for equality and that the Constitution should not contemplate a situation where there will be a “marginalized</li> </ul>



ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>Kenyans to adequate food, shelter, clean water, sanitation, education, health, a clean environment, and security so that they live a life of dignity and comfort and can fulfil their potential.</i></p> <p><i>(15) The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people.</i></p> <p><i>(16) The Republic shall recognise its responsibilities to future generations of Kenyans, by pursuing policies for the sustainable management of all resources and the environment.</i></p>		<p>gender.”</p> <ul style="list-style-type: none"> <li>• Members recommended that under the national goals and principles the Republic ought to be obligated to recognize the family and marriage institutions and to ensure the spiritual well being of citizens.</li> <li>• Clause (14) harmonized with corresponding provisions of the Bill of Rights.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p>(17) <i>The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity.</i></p> <p>(18) At least once every year,-</p> <p>(c) each state organ shall report to the President and Parliament on its activities and the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter; and</p> <p>(d) the President shall report to Parliament on those matters, and publish a consolidated report to the nation on all such measures and progress.</p>		<ul style="list-style-type: none"> <li>• The phrase “equitable development and the promotion of human rights and fundamental freedoms” as it was not tied to the spirit</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
				<p>of the clause.</p> <ul style="list-style-type: none"> <li>• Clause (18) harmonized with the provisions on the chapter on the executive.</li> </ul>
<p><b>Article 15</b> <b>Duties of a Citizen</b></p>	<p><b>Duties of a Citizen</b></p> <p><b>15.</b> (1) In order to fulfill the national goals, values, and principles, all citizens have the duty to –</p> <p>(a) acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives;</p> <p>(b) uphold and defend the Constitution and the law;</p> <p>(c) exercise their democratic rights by voting and being involved in other forms of political participation;</p>	<p><b>Duties of a Citizen</b></p> <p><b>15.</b> (1) In order to fulfil the national goals, values, and principles, all citizens have the duty to –</p> <p>(p) acquire basic understanding of the provisions of the Constitution and promote its ideals and objectives;</p> <p>(q) uphold and defend the Constitution and the law;</p> <p>(r) exercise their</p>	<p>None</p>	<ul style="list-style-type: none"> <li>• The language of clause 15 1(a) was made simpler.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>(d) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;</p> <p>(e) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;</p> <p>(f) contribute to the welfare and advancement of the community where they live;</p> <p>(g) strive to foster national unity and live in harmony with others;</p> <p>(h) promote democracy and the rule of law;</p> <p>(i) promote family life and act responsibly in the context of the family;</p>	<p>democratic rights by voting and being involved in other forms of political participation;</p> <p>(s) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;</p> <p>(t) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;</p> <p>(u) contribute to the welfare and advancement of the</p>		<ul style="list-style-type: none"> <li>A new clause (g) was inserted on the basis that the citizen should be obligated to pay taxes.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>(j) protect and safeguard public property from waste and misuse;</p> <p>(k) protect the environment and conserve natural resources;</p> <p>(l) co-operate with law enforcement agencies for the maintenance of law and order;</p> <p>(m) desist from acts of corruption;</p> <p>(n) understand and enhance Kenya's place in the international community.</p> <p>(2) The duties set out in clause (1) apply equally wherever appropriate to non-citizens.</p>	<p>community where they live;</p> <p>(v) contribute to the welfare and advancement of the nation by paying all lawful taxes;</p> <p>(w) strive to foster national unity and live in harmony with others;</p> <p>(x) promote democracy, good governance and the rule of law;</p> <p>(y) promote family life and act responsibly in the context of the family;</p> <p>(z) protect and safeguard public property from waste and misuse;</p> <p>(aa) protect the environment and conserve natural</p>		<ul style="list-style-type: none"> <li>In recognition that the people have residual sovereignty in governance, clause (i) was expanded to recognize the duty of the citizen to promote good governance.</li> </ul>

ARTICLE	ARTICLE AS PRINTED IN THE DRAFT BILL	ARTICLE AS ADOPTED BY THE TWG	ARTICLE AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p>resources;</p> <p>(bb) co-operate with law enforcement agencies for the maintenance of law and order;</p> <p>(cc) desist from acts of corruption;</p> <p>(dd) understand and enhance Kenya's place in the international community.</p> <p>(2) The duties set out in clause (1) apply equally, wherever appropriate, to non-citizens <i>and juristic persons</i>.</p>		<ul style="list-style-type: none"> <li>• Provision enlarged to include legal entities.</li> </ul>

## ANNEXURE VI: LIST OF COMMITTEE MEMBERS

	NAME	DELEGATE NO.
1.	Hon.Billy Onwong'a	Convenor (457)
2.	Hon. Githu Muigai	Rapporteur
3.	Hon.Abdirahman Ali Hassan	3
4.	Hon.Alicen Chelaite Jematia	19
5.	Hon.Asha Ciku Wanje	493
6.	Hon.Benson Okwaro	449
7.	Hon.Charity Ngilu	143
8.	Hon.David L.A Erulu	397
9.	Hon.Francis Wabayale	588
10.	Hon.George Khaniri	55
11.	Hon.Gitu wa Kahengeri	316
12.	Hon.Ibrahim Ahmed Yussuf	525
13.	Hon.Ibrahim Omondi	542
14.	Hon.James Nthiga Gatiti	520
15.	Hon.Jane Kauka	375
16.	Hon.John Munyes	119
17.	Hon.Joseph Korir Kipkapt	75
18.	Hon.Julius Arunga	8
19.	Hon.Kavoo Kilonzo	479
20.	Hon.Kuria Simon Kanyingi	79
21.	Hon.Manoti Stephen	94
22.	Hon.Marie Rose Owino	400
23.	Hon.Mburugu Florence Ruhui	530
24.	Hon.Moffat Maitha	90
25.	Hon.Murtaza Jaffer	623
26.	Hon.Nalea G.Kithumbu	285
27.	Hon.Nginyo Kariuki	607
28.	Hon.Orwenyo Mary Obonyo	426
29.	Hon.Owidi peter Otieno	173
30.	Hon.Pascalina R.Lebarleiya	351
31.	Hon.Peter Anyang' Nyong'o	153
32.	Hon.Peter Oloo Aringo	212
33.	Hon.Rhoda Maende	298
34.	Hon.Sang Kipkorir Marisin	184
35.	Hon.W.R.Ole Ntimama	147
36.	Hon.Zuhura Zukira Wanje	236

### **Secretariat**

Jeremy Wainwright  
 Prof. Phil Knight  
 Prof. J.B. Ojwang

Draftsperson (Part of Bomas III)  
 Draftsperson (Part of Bomas III)  
 Draftsperson (Bomas II)

Stephen Njenga  
Silvia Nyaga  
Rozina Mngola  
Flora Wafula

Clerk  
Assistant Programme Officer  
Assistant Programme Officer  
Verbatim Recorder