

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “D” ON
THE EXECUTIVE**

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

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1. INTRODUCTION

This Technical Committee was established under Regulation 49 of the Constitution of Kenya Review Act (Cap 3A) and it comprised of 60 delegates including the Convener, Hon. Joseph Martin Shikuku, and the temporary convener, Hon. Dalmas Otieno.

The Secretariat attached to the Committee consisted of:

1. Comm. Dr. Charles Maranga	- Rapporteur
2. Comm. Alice Yano	- Rapporteur
3. Wycliffe Owade	- Asst. Program Officer
4. Lucky Waindi	- Asst. Program Officer
5. Halima Amran	- Verbatim Recorder
6. Prof. V.C. R. Crabbe	- Legal Draftsperson
7. Mr. Murumba Werunga	- Parliamentary Clerk

The Committee was concerned with the Executive, its composition and functions, which is covered in Articles 148 – 183, Chapter 8 of the Draft Bill.

The Technical Working Committee on the Executive held its first sitting on Monday 26th May, 2003, in tent 'D' at the Bomas of Kenya, Nairobi.

It managed to hold a total of thirty nine sittings through Bomas Phases I to III. Bomas I and II were largely dominated by a general debate and consideration of the Main Report of the Commission and the Draft Bill, while Bomas III revolved around debate, consideration and adoption of the Draft Bill.

The proceedings were guided by Regulations and Guidelines for the National Constitutional Conference and Rules for Ad hoc and Technical Working Committees. This was done with a lot of flexibility as a way forward in the deliberations.

The Committee benefited from debate of different experiences and expertise from various sources, namely presentations from various political parties and an expert presentation by Prof. Walter Ouma Oyugi, a lecturer at the University of Nairobi. Prof. Oyugi gave an in depth analysis of the comparative systems of Government all over the world namely the Presidential, Parliamentary and Hybrid systems of Government.

The Rapporteurs on the other hand were on standby to give information and clarify the background on various articles in the Draft Bill and the Main Report and to give guidance on the rules and procedures.

The secretariat worked tirelessly to supply information through adequate data and research including all the logistics necessary to ensure smooth deliberations.

The debate was very dramatic, lively and challenging in that in the final analysis consensus was reached on most articles. Those with the minority view had their opinions recorded.

The recommendations of the committee were finally forwarded to the Steering Committee and Plenary of the Conference for consideration and adoption.

1.1: Acknowledgment

A glowing tribute must be paid to the first Convener of the Committee, Hon. Mathews Anyara Emukukle, and the subsequent Convener, Hon. Martin Joseph Shikuku, who steered the committee to the end of its work. Tribute must also be paid to the Temporary Convener, Hon. Dalmas Otieno, Rapporteurs Commissioners Dr. Charles Maranga and Alice Yano, the Draftsperson Prof. V.C.R. Carbbe, the entire secretariat and support staff, for the immense role they played in ensuring the success of the deliberations.

2. MANDATE & METHOD OF WORK

2.1: Committee's Mandate

An important object of review under section 3 of the Constitution of Kenya Review Act (Cap 3A of the Laws of Kenya) is to:

... recognize and demarcate divisions of responsibility among the various State organs, including the Executive, the Legislature and the Judiciary, so as to create checks and balances between them and to ensure accountability of the Government and its officers to the people of Kenya.

The Technical Working Committee was required, upon the conclusion of the general debate by the Conference on the Commission's Report and Draft Bill, at the consideration stage, to debate and amend the Commission's Report and Draft Bill, with respect to issues relating to the Executive, and propose these amendments to the Conference, which shall then cause to be incorporated in the Draft Bill, the amendments (if any) approved during the consideration stage.

2.2: Committee's Method of Work

The Committee began its business by a general debate on the Commission's Report and the Rapporteur-General's Report. Thereafter, the Committee embarked on deliberations on the provisions of the Draft Bill with a general debate on Chapter 8. Subsequently, an Article-by-Article consideration of the Draft Bill was adopted, where the Articles were amended, adopted or deleted in preparation for presentation to the Conference.

3. THE COMMITTEE DEBATE

3.1: General issues raised about the Committee's work

Comments made on the committee's work were as herebelow stated-

Those members had to have regard to the views of 'wanjiku' in contributing to debate and subsequently making decisions.

That although members had to have an Article by Article consideration of the Draft, regard had to be had to the entire Chapter so as to ensure a whollistic debate on the same.

That in carrying out it's mandate, namely the discussion and making of a decision on the Chapter on the Executive, the committee had to consider the decisions made by other committee's and ensure harmonization of any cross-cutting decisions.

3.2: Issues relating to the Report

Members acknowledged the fundamental importance of the Report, given the fact that it embodies the proposals made by Kenyans on areas for review. It was generally agreed that all debate and decisions made would be faithful to Kenyan's views as embodied in the Report.

During the discussions on Article 151 (2), on the number of Cabinet and Deputy Ministers, a delegate reminded members of the committee that Kenyans had expressed the desire to have a leaner and more efficient Cabinet and particularly expressed preference for only fifteen Cabinet Ministers. The committee could not therefore depart from this spirit.

3.3: Issues relating to specific articles, sub articles and clauses of the Draft Bill

148. (2)(b) The use of the phrase 'power to serve the people rather than the power to rule' likely to cause confusion. Redrafting necessary to ensure clarity.

149. The committee having settled for the hybrid system of government, all key players of the National Executive have to be expressly mentioned.

150. The office of the President should be created in the constitution.

151. The President having been elected by Kenyans, should chair the cabinet so that he is informed of and is able to make a contribution to the day to day running of the Executive.

-Parliament will never be dissolved, as it shall have its own calendar.

-The leader of the political party enjoying majority support in Parliament may not be a MP, so it must clearly be stated that for such leader to become a PM, he must be a MP-Parliamentary leader.

-A leaner and efficient government is desirable.

-Commissions of Inquiry should be compelled to make their findings public.

One delegate felt that even if Parliament shall have its own Calendar, someone had to publish a legal notice for the dissolution of Parliament-this should be done by the President.

-Consultation between the Prime Minister and the President in the appointment of Cabinet ministers is necessary to enable teamwork and avoid confrontation.

155. It is important to have a set day for elections, to avoid manipulation by those in power, and the ambushing of other electoral candidates.

The date provided in the Draft for elections is most ideal.

156. Age comes with wisdom and experience, and as long as one is not senile, they should not be limited from holding the office of the President.

-If no upper age limit for Presidential candidates is set, it is only fair to scrap the lower age limit too.

-As long as there is a limit of two terms in office, the age of the President need not be limited.

-One need not have a degree to be able to lead. Literacy and basic understanding is the underlying objective.

-A number of the delegates felt that there ought to be a lower age limit for Presidential candidates, to ensure that those allowed to vie for the office are mature persons.

-That Presidential candidates ought to be educated persons, having at least a basic University Degree.

158. To save time spent on the determination of presidential election petitions and to promptly determine the person legitimately elected as President, it is important to give sole jurisdiction on the matter to the Supreme Court.

That it would be dangerous to give any court the first and final word on a matter, hence the validity of presidential elections should first be challenged in the high court and provision made for appeal in the Supreme Court.

159. The oath of office should be administered on the twenty-first day of declaration of the results of Presidential elections, to allow the resolution of any petitions that may have arisen.

160. It is fair to consider any part of a term a term, to avoid the possibility of one serving several parts of a term, with the consequence that the total duration served amounts to more than two terms of five years each.

161. Some delegates expressed the view that no proceedings of whatever nature should be brought against the President during his/her tenure of office, to avoid disrupting his/her ability to effectively serve in the office.

162. The Medical Practitioners and Dentists Board is the body that oversees Medical practice, and is therefore best suited to nominate members of the said tribunal.

-If the health of the President is to be put to question and subjected to a review, then it is only fair that a doctor appointed by the President sits on the tribunal.

-The votes needed to ratify the decision of the Tribunal must not be so high as to be unattainable, hence the requirement should be lowered to one-half of the members of the National Assembly.

164. Thirty days is too short for the nomination process, preparation of registers and the issuance of a notice by the ECK following a vacancy in the office of the President. A duration of sixty days would be sufficient.

170. Parliament must be involved in the development of the National Budget, and ultimately have a supervisory role in the implementation of the same.

The Constitution may provide functions for the Prime Minister which need not necessarily be executive.

171. The period in Clause (6) of the Article needs to be extended to **sixty**, as there is need to allow negotiations with a view to reaching a decision in the event of a deadlock in the appointment of a Prime Minister.

172. A similar time frame as that of the office of the President should be introduced for the term of office of a Prime Minister.

175. The Cabinet should be established in the Constitution.

- The approval of the National Assembly should be done away with in appointing Cabinet ministers to avoid rivalry among MPs for the posts.

- There should be a clear separation of powers; hence Parliament must not interfere with the Executive through the approval of Cabinet Ministers.

- Deputy Prime Ministers and Cabinet Ministers shall be sourced from Parliament.

- The Prime Minister having been given the responsibility of nominating ministers for appointment must have the power to recommend their dismissal.

- It is important to create the office of the Secretary to the Cabinet in the Constitution and clearly define its functions.

- The office of the Secretary to the Cabinet should be de-linked from the Civil Service.

176. The Cabinet ought to meet regularly, and the question of quorum is important to ensure that cabinet is collectively responsible for the decisions it makes.

- Once the decisions of the Cabinet are signed by both the President and the Prime Minister, both of them are bound by the said decision.

- A few delegates were of the view that making provision for Ministers to be individually accountable to the Prime Minister creates subjectivity.

178. Deputy Ministers should be empowered to deputize Cabinet Ministers, hence have more functions and powers than is the case currently.

Express provision must be made to ensure that Cabinet Ministers assign specific duties to the Deputy Ministers.

181. The term Permanent Secretaries should be discarded because their employment is not permanent.

- The term Principal Secretary is appropriate as it connotes their high ranking among the civil servants.

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

4.1: General Comments on the Main Report

The following were the general comments made on the Main Report:

- ❖ Power needs to be devolved from the Presidency to Prime Minister and Parliament as it reflects the views of Kenyans given to the Constitution of Kenya Review Commission.

- ❖ The Independence Constitution that has been amended several times should be adopted in the new Constitution.
- ❖ Some honorable delegates emphasized on the need for a pure parliamentary system in the country to ensure checks and balances and the devolution of power.
- ❖ Other honorable delegates emphasized the need for a strong presidential system to ensure stability and unity of the nation and accelerate rapid economic growth in the country.
- ❖ The Presidency should be de-linked from political parties.
- ❖ There were concerns that those lobbying for reforms towards a new Constitution have suddenly changed their mind and are now insisting on a strong presidency.
- ❖ Having two centers of power i.e. the President and Prime Minister, would lead to unnecessary conflicts and instability in the country.
- ❖ In a purely democratic system of government, sovereignty remains with the people and hence power should not be seen as exercised by office holders, but in their accountability to the people as they exercise it.
- ❖ A Parliamentary system can only exist where the state comprises of homogenous communities.
- ❖ The Hybrid system of government was not unique as it has successfully been tried elsewhere in the world.
- ❖ The honorable delegates were called upon to be reflective on the consequences of concentration of power in one individual.
- ❖ Power emanates from the people and should be safeguarded by a leader elected by people themselves, be he/she President or Prime Minister.
- ❖ The Prime Minister being leader of the majority Party, which forms the government, enjoys direct mandate of the people.
- ❖ Statistically, around the world, sharing of executive power between Parliament and the President has proved to be highly susceptible to failure and instability e.g. in Palestine and Sri Lanka.
- ❖ The executive system recommended in the Main Report and Draft Bill would strip the President a considerable amount of power.
- ❖ A Parliamentary system cannot guarantee that a Prime Minister would not abuse power just as a President would, since there would be mere transfer of power.
- ❖ There is no perfect system of government anywhere in the world. The success or otherwise of a system of government depends on the attitude of those vested with power.
- ❖ A mixed Presidential and Parliamentary system is favorable, with the President retaining sufficient powers for the sole reason that he is the Chief Executive and has been directly elected by the people.
- ❖ Power sharing between two individuals/offices could lead to civil unrest.
- ❖ Without the establishment of strong political parties, a Parliamentary system may not work effectively.

- ❖ The Tanzanian model of government (and in particular the power sharing scheme) is favorable since the President still retains a considerable amount of power.
- ❖ If power were to be properly defined and managed, there would be no need for creating many centers of power apart from strengthening the presidency with checks and balance through Parliament.
- ❖ The duties of the President and Prime Minister need to be clearly defined as a way forward and for the stability of the country.
- ❖ The views of Kenyans as have been recorded provide clear testimony that Kenyans are against a strong Presidential system and favor a Parliamentary system.
- ❖ While the views of the people should be respected, the honorable delegates are not bound by them as they debate the Chapter, hence the need for a continuous debate in order to reach a consensus.
- ❖ As the debate rages on, members should go beyond ethnic or regional alliances and have an objective approach.
- ❖ The honorable delegates must be conscious of the people's desire that power be decentralized.
- ❖ The Presidential powers have been tamed to a fixed two five-year terms and regular elections after every five years and hence there would be no need for further reduction of the Presidential powers.

Upon completion of the general debate, three motions were moved by **Hon. Kipkalya Kones (Delegate No. 216)**, **Hon. Otieno- Kajwang' (Delegate No. 037)** and **Hon. Stanislaus Kasoka (Delegate No. 296)** and debate on the three arose thereafter. An Amended Motion, moved by **Hon. J.M. Shikuku (Delegate No. 595)**, seeking to amend the motion moved by **Hon. Stanislaus Kasoka**, was debated and the amendment was agreed to.

4.2: General Recommendations on the Draft Bill

The following are the comments and recommendations made on Chapter 8 as a whole:

- ❖ The Presidential system should be retained and the excessive power be controlled by Parliament determining its own calendar and vetting presidential appointments.
- ❖ A purely parliamentary system would be desirable since it would ensure devolution of power. The Prime Minister would be directly elected by the people through Parliament, as is the current practice in many countries.
- ❖ A compromise ought to be reached so that Kenya adopts a hybrid system. The powers of the Executive should be shared between the President and the Premier and mechanisms ought to be put in place to deal with potential conflict areas between the President's and Prime Minister's powers.
- ❖ Power needs to be devolved horizontally by strengthening institutions like Parliament, Civil Service and the Judiciary without making the presidency ceremonial.

- ❖ If there was an option for an executive Prime Minister, then he/she should be directly elected by the people.
- ❖ The Constitution should state that the President and Vice-President should not come from one region or one religious sect.

An Article by Article consideration of the Draft Bill commenced during Bomas III and the following were the pertinent issues raised with regard to the specific Articles of Chapter 8 of the Draft Bill:

Article 148 Principles of Executive Authority

- ❖ **Clause (2) (a):** It was suggested that Executive authority should be exercised in accordance with the Constitution and the laws of Kenya.
- ❖ That executive powers should not only be exercised for the well-being of the people but also the communities of Kenya.

Article 149 Structure of the National Executive

- ❖ Some members felt that the term ‘Cabinet’ encompassed the Prime Minister, Deputy Prime Minister as well as the other cabinet Ministers so as to render it unnecessary to enumerate all these officers.
- ❖ Other delegates were of the view that pursuant to the resolution made by the committee that a mixed system of the executive be adopted; the Prime Minister and the Deputy Prime Ministers must clearly be stipulated to be part of the cabinet, for the avoidance of doubt. This view was adopted.

Article 150 Authority of the President

- ❖ The office of the President should be established. Consequently, the following words were introduced as clause (1) “There shall be a President of the Republic of Kenya”.
- ❖ The President should promote and respect not only the diversity of the people, but also that of the communities of Kenya.
- ❖ A delegate felt that if the President were to chair the Defence Council then he would usurp the powers of the Minister in charge of Defence.
- ❖ The chair explained that in the present system, where a hybrid system is to be adopted, the Ministers are to be answerable to the Prime Minister and not the President; hence the President should properly chair the Defence Council.
- ❖ That it is against the constitutional rights of Presidential candidates to deny them a chance to vie as MPs and exclude them from holding an office within a political party.
- ❖ That the provisions of Article 150(3) should be read in light of Article 150 (1) (b). Since the President is to be a symbol of Unity of the Nation, he must not represent a constituency but rather the whole country. The President must not hold any public office once elected.
- ❖ It should be clarified at what point the President should relinquish his other posts.

Article 151

State Functions of the President

- ❖ The President being the Chief Executive and having been elected by the people of Kenya, should have the mandate to supervise the cabinet by presiding over its meetings.
- ❖ Decisions made during cabinet meetings should be executed by the Prime Minister.
- ❖ There should not be seen to be two centers of power in the executive.
- ❖ A member was of the view that since Cabinet Ministers are to be recommended by the Prime Minister, the Prime Minister should therefore chair the Cabinet.
- ❖ In the absence of the President and Deputy President, there should be provision that the Cabinet should be chaired by the Prime Minister.
- ❖ A Motion was passed to the effect that:
The President is the Chairperson of the Cabinet; in the absence of the President the Deputy President shall chair the cabinet; in the absence of both the President and the Deputy President, the Prime Minister shall chair the Cabinet.

Article 151 (1)

- ❖ It was explained that Article 151 (1) (d) deals with the legal aspect of dissolution, not the power to dissolve parliament. Someone has to publish a legal notice on dissolution and this should be done by the President.
- ❖ That Parliament will never be dissolved, as it shall have its own calendar. Members shall remain in office until new ones are sworn in.
- ❖ *Motion moved and passed to delete Article 151 (1) (d).*

Article 151 (2)

- ❖ That it should clearly be stipulated that the Prime Minister is the parliamentary leader of the party with the majority in Parliament to avoid a scenario where a non-Parliamentary leader is appointed as Prime Minister.
- ❖ That Ministers to be appointed should be between 15-27 to take care of regional distribution and needs of posterity and especially the growth of the Kenyan population.
- ❖ That Kenyans want a leaner, efficient Cabinet. A number of 15-20 Ministers should be appointed.
- ❖ That there should be 18-30 deputies.

Article 151 (2) (b) amended to provide for between 15-20 Cabinet Ministers.

Article 151 (2) (b) amended to provide for between 15-20 Deputy Ministers.

- ❖ It was suggested that all Ministries should be named and their functions clearly stated in the Constitution.
- ❖ Some delegates felt that there was no need for too much detail in the Constitution as some details such as the naming of ministries could adequately be done through legislation.
- ❖ Other members explained that the Constitution was meant to take care of the needs of posterity and that naming ministries therein amounted to sealing changes in that regard, that may be necessitated by varying circumstances in the future.

- ❖ The Motion to tabulate Ministries and spell out their functions into the Constitution was defeated when the Question was put.
- ❖ It was proposed that the President should appoint members of the Cabinet **nominated** by the Prime Minister after **consultations** with the President. This would enable teamwork and avoid confrontation.
- ❖ Some members raised questions as to how consultation could be enforced by the law or how can it be gauged.
- ❖ A question also arose as to whether the number of Cabinet Ministers was to be inclusive of the two Deputy Prime Ministers, but it was agreed that although the Prime Minister could opt to assign ministries to the two Deputy Prime Ministers, in which case the ministries must not exceed twenty, the Deputy Prime Ministers should be apart from the number of the Cabinet Ministers.
- ❖ The Motion to amend **Article 151 (2) (ii) and (iii)** to include the requirement of consultation between the President and the Prime Minister in appointing the Cabinet was **rejected**.

Article 151 (2) (c)

- ❖ Motion moved to amend this article to read:
“The President shall appoint and may in accordance with this Constitution dismiss Judicial Officers in accordance with Article 205”.

Article 151 (3)

- ❖ The trend in the past has been that the public never receives a report of the findings of Commissions of Inquiry, hence provisions should be made making requirement of the same.
- ❖ A time frame should be stipulated for the working of Commissions of Inquiry and for release of their findings.
- ❖ Instruments of consent by Kenya to be bound by international agreements should be ratified by Parliament before being signed by the President.
- ❖ Motion moved and adopted to amend Article 151 (3) (b) to include the words; **“as provided in Article 102”** at the end of the sentence.
- ❖ Article 151 (3) (a) amended to include the words:
“...and shall cause the report thereof to be laid before Parliament within 21 days” **at the end of the clause**.

Article 151 (4)

- ❖ The National Security Council is the Supreme organ on matters of Defence and Security and should be involved in the question of declaration of war instead of the National Defence Council. This proposal was adopted.
- ❖ It should be clear on whom war is to be declared. The enemy should be well defined to avoid a scenario where a President may decide to declare war on a section of Kenyans.

Article 151(7)

- ❖ Where the President confers honors in the name of Kenyans, this should be done in consultation with the Ethics and Integrity Commission, rather than the Prime Minister, to ensure that such honors are conferred to deserving persons.

Article 152 Legislative Functions of the President

Clause (1) (b)

- ❖ That the President should be de linked from Parliament since he/she can collude with a Committee of Parliament to interfere with the sovereignty and independence of Parliament.
- ❖ That there was danger that the Technical Working Committee was increasingly leaning towards a Parliamentary system and that there was need to allow the President consult with respective Committees in Parliament if the need arose.
- ❖ That the Draft provides that the President can access Parliament at any time (including the state address of Parliament) and hence no further provision in this regard needs to be inserted into the Constitution.
- ❖ Consequently Article 151(1)(b) was deleted.

Article 152 (3)

- ❖ Was deleted as members felt that it was undesirable for the President to assent to and sign to Regulations; these should be done by Cabinet Ministers.

Article 152 (4) (b)

- ❖ Was amended to the effect that the word “**particular**” be deleted and to add the words “**or ministers concerned**” after the word Minister.

Article 153 Decisions of President

- ❖ The decisions of the President should be in writing, bearing the signature and seal of the President, for purposes of authenticity.

Article 155 Right to vote and Timing of Presidential elections.

- ❖ That it is important to fix an election calendar into the Constitution, to bar the President or any other authority from arbitrarily determining the elections date and using that power to ambush would be contenders in the General elections
- ❖ Others opposed it on grounds of culture, for instance circumcision ceremonies in Western Kenya are conducted during month of August.
- ❖ Other delegates supported the date and month on the basis of the weather, religious sensitivity and its convenience.

Article 156 Qualifications and Disqualifications for election as President

Clause (1) (b)

- ❖ As long as one is capable to work and not senile, they should not be limited due to age, from qualifying for Presidency. Further, age comes with wisdom and experience.
- ❖ As long as there is a limit of two terms in office, the age of the President need not be limited.
- ❖ You cannot put a lower limit and fail to have an upper limit. That would be against the rules of Natural Justice.
- ❖ Article 156 (1) (b) was deleted and replaced with the wording:
“**(b) is a registered voter**”.

Clause (1) (c)

- ❖ There is no standard imputed in the article to **gauge “high integrity and impeccable character.”**

- ❖ Clause 156 (1) (c) was deleted and the words of Article 108 (f) lifted and put in place thereof, thus reading:
“Satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament”.

Clause 156 (1) (d)

- ❖ The words of Article 108 (1) (e) were lifted and put in place of Article 156 (1) (d).

Article 156 (2)

- ❖ If the new Constitution shall allow dual citizenship, how will Article 156 (2) (a) be implemented?
- ❖ A person with dual citizenship must not be allowed to hold the office of Presidency, unless he renounces the other citizenship.
- ❖ Article 156 (2) (a) – (g) was adopted to stand as part of the Bill.
- ❖ The words of Article (108) (2) (b)-(d) and (f) lifted and added to Article 156 (2) and enumerated accordingly.

Article 158

Questions as to Validity of Presidential Elections

- ❖ Some delegates were of the opinion that it would be dangerous to give any court the first and last word on a matter, hence the validity of a presidential election should first be challenged in the High Court and provision made for appeal in the Supreme Court.
- ❖ Some felt that it was desirable to retain the Supreme Court as the only court with jurisdiction to determine presidential election petitions so as to save time spent on petitioning and avoid anxiety as Kenyans await the results of such petitions.
- ❖ The time during which petitions are to be determined should be limited to 21 days.
- ❖ A question arose as to whether the President elect, where there is an election petition challenging the election results, be sworn in before such petition is resolved.
- ❖ Some members felt that it would be an injustice to democracy, to allow a president elect whose election is invalid, to be sworn in and allowed to take up office and use the office’s resources pending resolution of a petition against his election. Presidential petitions should therefore be decided before the President elect is sworn in.
- ❖ Members resolved that Article 158 be adopted with an amendment requiring the resolution of a presidential election petition within 21 days of the declaration of results and before the swearing in ceremony.

Article 159

Assumption of Office of President

- ❖ The date of assumption of office of the President should be determined.
- ❖ The oath of office should be administered on the Twenty-first (21st) day of declaration of the results of the elections.
- ❖ A date should be set, when the President should be sworn in. Members agreed to set such date as the first Tuesday of September following the twenty-one

days after the date of the announcement of the results of the presidential election by the Electoral Commission.

- ❖ The powers of an outgoing President should be limited during the transition period of 21 days pending the swearing in of the incoming president, to avoid abuse of that office during such period.

Article 160 Term of Office of President

- ❖ There should be a provision to the effect that provided any President who has served two and half years of a term shall be deemed to have served a term.
- ❖ What if a President serves less than two and half years – will that not amount to a term? We do not want a situation where any person serves as a President for more than ten years.
- ❖ Members adopted Article 160 with amendment including a provision to the effect that: “Provided that a President who serves any part of a term is deemed to have served a full term”.

Article 161 Protection from legal proceedings.

- ❖ A proposal for amendment was made that all the words appearing after the words “**private nature**” in the sixth line to end of paragraph (b) of **Article 161 (2)** be deleted. The same was adopted.

Article 162 Removal of President on grounds of incapacity

Article 162 (1)

- ❖ It should be clear who originates a motion to remove the President on grounds of incapacity.
- ❖ It was agreed that a member of the National Assembly may, at any sitting of the Assembly move such motion.

Article 162 (2)

- ❖ Members of the tribunal should be appointed by the Medical Practitioners and Dentists Board.
- ❖ If the health of the President is to be put to question and be subjected to a review, then it is only just that a doctor appointed by the President sits on the tribunal. In the event that the president is mentally incapacitated with the effect that he is unable to nominate a person, such a chance should be given to a close family member or relative of his.

Article 162 (5)

- ❖ A member suggested that the tribunal ought to submit a report whether positive or negative.
- ❖ A time frame should be put for the submission of the report. A limit of fourteen days was adopted.

Article 162 (8)

- ❖ The requirement of two thirds is too high.
- ❖ Once doctors have made a decision on the capability or otherwise of the President, why should Parliament proceed to vote on it? Once the tribunal reports that the President is incapacitated, the President should cease to hold office forthwith.

- ❖ Some delegates were of the view that once a report (such as that on the health of the President) is laid before Parliament, it has to be debated, then adopted or rejected.
- ❖ The delegates finally adopted the clause as amended thus:
- ❖ Adding the words: “If the tribunal reports that the President is incapable of discharging the functions of the office”, at the beginning of the clause and adding the words “half of its members” after the words “votes of” in the second line.

Article 163

Impeachment and Removal of President

Article 163 (1)

- ❖ It should be set out clearly that there shall be need to impeach the President, and the grounds on which such impeachment are to be carried out, as well as the person who initiates such motion should be stipulated.

Article 163(2) and (4)

- ❖ Delegates made various suggestions on the required vote in the house on impeachment and removal proceedings against the President namely, one half, two-thirds or a simple majority. A vote of two-thirds was settled for
- ❖ There was further contribution on Article 163 (4) (a) that since the Chief Justice is a public servant, it was not proper to make him/her chair the special Committee dealing with impeachment.
- ❖ Others felt that since the proceedings shall be of both political and legal nature, there was need for the Chief Justice to guide, arbitrate and preside over such a meeting.
- ❖ A further issue was raised as to what happens in situations where the President lodges a suit at the Supreme Court if he/she feels, he/she was not accorded a fair trial for impeachment and yet the Chief Justice himself presides at the Supreme Court.
- ❖ It was further argued that Parliament being an independent institution that makes laws, it could not be taken to court on issues of the Constitution and especially on impeachment charges since there were clear separation of powers between Parliament and the Judiciary.

Article 164

Vacancy in the Office of President

Article 164 (2)

All references to the Vice-President should be corrected to read Deputy-President.

That in order to reflect a previous decision of the Committee that “a term was a term” regardless of the period served, the Deputy President shall also be deemed to have served a full Presidential term upon assuming office as President following a vacancy arising in that office in terms of this Article.

Article 164 (5)

- ❖ Some honourable delegates were of the opinion that the thirty days provided were insufficient and gave a suggestion of ninety days, citing issues like the nomination process, preparation of registers, notice by the Electoral Commission, days required for campaign, e.t.c, all of which would require allocation of reasonable time.

- ❖ Others supported thirty days as in the Draft Bill saying that the office is of paramount importance to the nation and that exceeding that period might plunge the country into chaos.
- ❖ Some honourable delegates suggested forty-five days to accommodate both the thirty and ninety days proposed while others were for sixty days. Finally the period of sixty days was adopted.
- ❖ A delegate sought to know what would happen in the event that both the President and Deputy President dies half-way before finishing their term in office and whether the date and period of elections changes contrary to provision in Article 155 (1) (a).

Article 167 Functions of the Vice-President

- ❖ Some delegates felt that there was need to clearly define the functions of the Deputy President.
- ❖ Some suggested the functions to include that he/she shall be the Speaker of the Senate and that he/she shall preside over the Cabinet in the absence of the President.
- ❖ It was proposed and accepted that the Deputy President should be a member of the National Security Council.
- ❖ Since the Deputy President shall be the Principal Assistant of the President, his/her functions shall mainly be those assigned by the President.
- ❖ In Article 167 (4), the word **“temporarily”** was inserted between the words **“is”** and **“incapacitated”** and the clause adopted as amended to stand part of the Bill.

Article 168 Death before assuming office

- ❖ That Article 168 (4) should be tied with Article 164 (2) in terms of the election period.
- ❖ It was proposed that thirty days be enlarged to 90 days in view of factors like practicality of holding elections (for instance during the period of mourning of a President), the days for campaign, giving a period for various political parties to nominate their candidates and several other logistics associated with elections.
- ❖ Some delegates proposed forty-five days to be provided arguing that this will be just a by-election, which does not need several logistical preparations.
- ❖ Others recommended sixty days as a compromise period while others were for the thirty days recommended in the Draft to avoid a vacuum in the vital national office of the President. This proposal received the majority support.

Article 170 Prime Minister

- ❖ It was suggested that Article 170 (1) should be deleted and in place thereof the office of the Prime Minister be created.
- ❖ That the Prime Minister should be the Chief Executive of the Government.
- ❖ Majority of the members felt that it should expressly be provided for that the Prime Minister, who shall be in charge of the day to day running of the government, is the Head of Government.
- ❖ Other members were of the view that it was **not** practical for the Prime Minister to head government whilst the President chairs the cabinet. Further,

that the President having been subjected to an adult suffrage, had the mandate from the people to head the government and oversee the running of the country.

- ❖ That the Prime Minister should preside over Cabinet in the absence of the President and the Deputy President.
- ❖ Developing of the national budget should be done by the Cabinet in conjunction with Parliament.
- ❖ That the Prime Minister should be the Chief Operating Officer of the Cabinet.
- ❖ The term “executive” in clause (2) (e) should be deleted. What if the constitution provides powers to the Prime Minister, which are not executive, won’t they be exercised?

Article 171 ***Appointment of the Prime Minister***

- ❖ It should be clear that the summoning referred to in clause (1) is after a general election.
- ❖ A delegate sought to know what would happen in the event that the President is to be sworn in twenty-one days after election results. Who would summon Parliament for purposes of the appointment of the Prime Minister?
- ❖ Other delegates observed that there would never arise a lacuna as both the incumbent President and the Speaker would be in office until the new ones were sworn in.
- ❖ Others delegates explained that there was no cause for alarm, as Parliament will have the power to define its own calendar.
- ❖ That “thirty days” in the first line, be deleted and replaced by “sixty days” as there was need to exercise some patience to allow negotiations to reach a solution in case of a deadlock in electing a Prime Minister.
- ❖ The committee agreed to a proposal that in the event that the two nominees proposed by the President are rejected by the National Assembly, the National Assembly shall propose a person who commands the support of Parliament, and the President shall appoint such person as Prime Minister.
- ❖ That in the event that if in the third instance as afore stated no person is appointed Prime Minister, then the National Assembly shall stand dissolved.

Article 174 ***Dismissal of Prime Minister***

- ❖ Provision should be made indicating who originates a motion of no confidence for the dismissal from office of the Prime Minister. It was agreed that any member of the National Assembly would, at any sitting of the Assembly, move such motion.
- ❖ It was later accepted that the President could also originate a motion to dismiss the Prime Minister, which motion must be supported by at least fifty percent of the members of the National Assembly.

Article 175 ***Cabinet***

Clause 175 (1)

- ❖ It should be reflected in the clause that the Prime Minister nominates Cabinet Ministers.
- ❖ The question of “Majority of the members of the National Assembly” should be well defined. Is it 50% or 2/3 of the all the members?

- ❖ The approval of the National Assembly should be done away with in appointing Cabinet Ministers to avoid rivalry among MPs for the posts.
- ❖ The Cabinet should be established in the Constitution.
- ❖ We need to place a check on the Prime Minister's power to nominate Cabinet Ministers for appointment, which check should be done by the National Council.
- ❖ There should be a clear separation of powers, hence Parliament must not interfere with the Executive through its approval of Cabinet Ministers' appointments.
- ❖ The clause was consequently amended to read thus:
Article 175 (1); "The President shall appoint the remaining members of the Cabinet and Deputy Ministers nominated by the Prime Minister from among members of the National Assembly".
Article 175 (2)
- ❖ It was renumbered 175 (2) (a) and the words "and Deputy Ministers" inserted between the words "Cabinet" and "other" in the third line. The clause was consequently adopted as amended.
- ❖ A new paragraph (b) was inserted to provide:
"The President shall dismiss (a) Cabinet Minister(s) or Deputy Minister(s) upon such recommendation by the Prime Minister".
- ❖ It was resolved that a new Article, 175A be introduced, providing for the office of the Secretary to the Cabinet.
- ❖ Some members felt that the Secretary to the Cabinet should also be the Head of the Public Service.
- ❖ That the Secretary to the Cabinet should be part of the National Executive. This was not accepted.
- ❖ That the Civil Service should be completely delinked from politics and hence should be independent and autonomous right from the Head of the Public Service. They should be employees of the Public Service Commission and answerable to the PSC on implementation of policies of the Government.
- ❖ The Secretary to the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet.
- ❖ The Secretary shall be deemed to have been appointed to such office on the recommendation of the Public Service Commission.
- ❖ The Secretary to the Cabinet shall before assuming the duties of his or her office, take and subscribe the oath of allegiance and oath of secretary to the Cabinet as specified to this constitution.

Article 176

Decisions, responsibility and accountability of Cabinet

Clause 1

- ❖ Two amendment motions were moved, merged and adopted to provide thus:
(a)The Cabinet shall meet at least once a month with a quorum of at least one half of the entire membership and all decisions made thereof shall be in writing.
(b)A decision of the Cabinet shall not be valid and not be implemented unless signed by the Prime Minister and the President.

(c) A decision of Cabinet invalidated as in (b) may be referred to the National Assembly which shall decide on the matter by a two-thirds majority vote to validate the decision.

Article 177 Assignment of Functions

Clause 1

- ❖ That the clause was in order since it states clearly that the Prime Minister shall implement government business while the President will be informed accordingly with respect to any matter relating to the Government.

Clause 2

- ❖ Some delegates felt that the article conflicts with Article 152 (4) (b) and enquired if the same could be harmonized. Others felt that Article 152 (4) (b) dealt with the general issues of the Cabinet being assigned responsibilities while Article 177 (4) dealt with the specifics of who shall ensure those responsibilities were performed.
- ❖ A question was raised as to whether the Cabinet could assign a duty to a Deputy Minister. In response it was stated that, because of collective responsibility, this was possible.

Article 177 (4)

- ❖ It was clarified that Deputy Ministers are not members of Cabinet. They Cabinet since they do not attend Cabinet meetings nor do they participate in swearing in of the Cabinet and hence may only perform certain functions of a Minister.
- ❖ It was further argued that the powers or functions of a Minister could only be transferred to another Cabinet Minister but not the Deputy Ministers.
- ❖ One delegate suggested that since the Deputy Ministers will not have powers, the title “Assistant Minister” as it is in the current constitution should remain.
- ❖ It was further argued that the philosophy behind the term “Deputy” was to give them additional responsibility and hence recommended that it should be stated that “in the absence of the Cabinet Minister, the Deputy Minister can perform all functions” and that this will all be in an acting capacity.

Article 178 Conduct of members of the Cabinet

- ❖ Members decided to introduce a new Article, 178A, providing for the Functions of Cabinet Ministers and Deputy Ministers.

Article 180 Absence of Deputy-President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers from the Republic.

- ❖ An amendment that sub-clause (2) be deleted for the sake of protocol and to ensure that only leave of the President had to be sought since she/he is the appointing authority all these officers was proposed and adopted.
- ❖ It was queried whether the provisions of this Article would apply even when the officers covered were going on Holiday away from the Republic, and delegates decided that leave of the President would be required even in such instances.

Article 181 Principal Secretaries

- ❖ That the word “Permanent” be discarded since it would seem to imply that one in such a position cannot be dismissed or leave the office, yet there is nothing permanent about the office.
- ❖ That the title “Principal” was more appropriate since it was higher in the grading structure in the Civil Service.
- ❖ That since the duties of the office have been clearly defined in the Constitution, the issue of the title should be left for legislation.
- ❖ That the Principal Secretary shall be an executive head of the Ministry.
- ❖ That there should be established the office of Principal Secretary in the Constitution.

Clause 5

- ❖ There was need to desist from politicizing the Civil Service and hence the Article providing that on assumption to office of a new Government, Principal Secretaries should cease to hold office, should be deleted.
- ❖ That the Civil Servants need to do their duties impartially and professionally without any interruption or interference.
- ❖ There was need for continuity in the Civil Service and more specifically to ensure smooth transition as a new government takes over.
- ❖ That the Principal Secretaries are appointed in consultation with the Public Service Commission and hence on merit and experience and should therefore be retained in the service even with the coming into power of a new Government.
- ❖ Consequently, the clause was deleted.

Article 182 *Oath or Affirmation of Cabinet Ministers, Deputy Ministers and Permanent Secretaries*

- ❖ That it should clearly be stipulated that this Article applies to both Cabinet Ministers and deputy Ministers.

Article 183 *Offices of Public Service*

- ❖ Changes to the title from: ‘Offices of the Republic to Offices of Public Service’.
- ❖ It was suggested that this Article in its entirety should be transferred to the Chapter on Public Service. Members were in agreement with his proposal.

4.3: Specific Recommendations on the amendments to the Draft Bill

4.3.1 Noting new provisions

The following new provisions were inserted in the Draft Bill:-

150. (1) There shall be a President of the Republic of Kenya.

151. (1) The President-

- (a) shall preside at the meetings of the Cabinet.
- (b) Shall be the chairperson of the National Security Council.
- (2)(d) The President shall, once every year,

- (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in Chapter Three; and
 - (ii) cause to be published in the Gazette the details of the measures and progress referred to in sub-paragraph (i).
- (5) Thereport of a Commission of Inquiry appointed by the President shall be laid before Parliament within twenty-one days of the receipt of the report by the President.
- 156.** (1) A person qualifies for nomination as a Presidential candidate if that person:-
- (b) is a registered voter
 - (c) satisfies any moral and ethical requirements prescribed by this Constitution or an Act of Parliament.
- 157.** (7) A new election shall be held under clause (6) within sixty days of the time for the previous election.
- 158.** (1) A person may file a petition at the Supreme Court to challenge the election of the President-elect.
- (2) The petition shall be filed within seven days after the date of the announcement of the results of the presidential election by the Electoral Commission.
- (3) The Supreme Court shall, within seven days of the filing, determine the petition.
- 159.** The President-elect,
- (a) shall be sworn in-
 - (i) on the first Tuesday of September following the twenty one days after the date of the announcement of the results of the presidential election by the Electoral Commission; or
 - (ii) within seven days of the determination by the Supreme Court of the election petition filed under Article 158;
 - (b) assumes office by taking and subscribing:
 - (i) the oath or affirmation of allegiance, and
 - (ii) the oath or affirmation for the execution of the functions of office as prescribed in the Fourth Schedule, before the Chief Justice or a Judge of the Supreme Court on the date when the term of office of the incumbent President expires.
- 160.** (3) A President who serves any part of a term of office shall be deemed to have served a full term.
- 162.** (1) A member of the National Assembly may, at any sitting of the Assembly move a motion for the removal from office of the President on the ground of physical or mental capacity of the President to perform the functions of office.
- (7) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.
- 163.** (1) A member of the National Assembly may, at any sitting of the Assembly, move a motion for the impeachment of the President on the grounds of,
- (a) a violation of a provision of this Constitution, or

(b) gross misconduct.

170. (1) There shall be a Prime Minister of the Republic of Kenya, who shall be Head of Government.

(4) In the absence of the President and the Deputy President, the Prime Minister shall chair the meetings of the Cabinet.

(5) In the absence of the Prime Minister, one of the Deputy Prime Ministers shall perform the functions of the Prime Minister.

(6) The Deputy Prime Minister when performing the functions of the Prime Minister under clause (4) shall not exercise a function of the Prime Minister in relation to-

(a) nomination or recommendation for appointment to a public office.

(b) The allocation of functions to or transfer of function from a Deputy Prime Minister, Cabinet Minister or Deputy Minister.

174. (1) The President may propose to the National Assembly the dismissal of a Prime Minister.

(2) The proposal of the President under clause (1) passes if it is supported by the votes of not less than fifty percent of all the members of the National Assembly.

(3) A member of the National Assembly supported by not less than a third of the members may, at any time during a sitting of the National Assembly, move a motion of no confidence for the dismissal from office of the Prime Minister.

(5) The Prime Minister, the two Deputy Prime Ministers and the Cabinet shall continue in office until a new Prime Minister assumes office.

175. (3) The President shall dismiss the Cabinet and the Deputy Ministers on the recommendations of the Prime Minister.

(5) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.

175A. (1) There shall be a Secretary to the Cabinet.

(2) The Secretary to the Cabinet shall be appointed by the President on the recommendations of the Prime Minister

(3) The office of the Secretary to the Cabinet shall be a public office.

(4) The Secretary to the Cabinet shall -

(a) have charge of the Cabinet office;

(b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;

(c) convey the decisions of the Cabinet to the appropriate persons or authorities; and

(d) have any other functions as directed by the Cabinet.

(5) The Secretary to the Cabinet-

(a) may be dismissed or replaced by the President on the recommendations of the Prime Minister, or

(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on the receipt of the letter of resignation by the President.

(6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.

176. (1) The Cabinet shall meet at least once a month

(2) The quorum at a meeting of the Cabinet shall not be less than one half of all the members of the Cabinet.

(4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the President and the Prime Minister.

(5) A decision of the Cabinet which does not comply with clause (4) may be referred to the National Assembly which shall decide on the matter by a resolution supported by the votes of two-thirds of all the members of the National Assembly.

177. (5) When a matter arises or is likely to arise at a cabinet meeting-

(a) relating to the operation of paragraph (b) of clause (2), or

(b) relating to the conduct of the affairs of a Ministry, or Department, or

(c) relating to the duties of a Minister under Article 178A(1),

and the responsible Cabinet Minister is unable to attend the meeting of the Cabinet, the Prime Minister may invite the Deputy Minister to attend.

178A. (1) As may be provided for by the other articles of this Constitution, the functions of a Minister are,

(a) to advise the President, the Prime Minister and the Cabinet;

(b) to exercise general direction and control over the appropriate ministry, departments and other statutory bodies;

(c) to initiate and prepare government legislation for introduction in Parliament;

(d) to develop the national budget in conjunction with Parliament;

(e) to implement the national budget and policy;

(f) to appear before Parliament or a committee of Parliament when requested to do so and answer any questions that may be put to the Minister;

(g) to take responsibility for the administration and implementation of legislation assigned to the Minister;

(h) to provide Parliament with full and regular reports concerning matters under the control of the Minister;

(i) to account to the Prime Minister for the performance of the functions assigned to the Minister;

(j) to account individually and collectively for the administration of their ministries and work of the Cabinet

(k) to assign functions to the Deputy Minister;

(l) to carry out any other functions as may be prescribed by Parliament, Act of Parliament or in accordance with this Constitution.

(2) As may be provided for by the other articles of this Constitution, the functions of a Deputy Minister are,

(a) to perform the functions assigned by the Prime Minister or the Minister

(b) to deputize for the Minister in the performance of the Minister's functions;

(c) to perform the functions of the Minister during the temporary incapacity or absence of the Minister from the Republic of Kenya.

4.3.2: Noting where words are added

148. (1): Insertion of the words '*and the communities*' between the words 'people' and 'of' in the second line.

(2) (b): Adding the words '*and the laws*' after the last word-the Constitution.

149. Addition of the words '*the Pime Minister, The Deputy Prime Ministers*' after the word 'Vice President', and after the word 'Cabinet', insertation of the word '*Ministers*'.

150. (1)(b): Addition of the words '*and the communities of Kenya*' between the words 'people' and 'and' in the fifth line.

Further, addition of the words '*ensure the protection of*' after the word and in the fifth line.

151. (2)(a)(iii) and (b) Insertion of the words '*and more than twenty*' after the word 'fifteen'.

(3)(c): Addition of the words '*as`provided in Article 205*' after the word officers.

(4)(b): Insertion of the words '*in accordance with Article 102*' after the word 'agreements'.

152. (2) (a): Addition of '*124 and*' after the word 'accordance'.

(4) (b): Insertion of the words '*or Cabinet Ministers concerned*' at the end of the paragraph.

153.: Addition of the words '*seal and* ' after the words 'bear the' in the second line.

156. Insertion of the words '*and Disqualifications*' in the title.

(1)(a): Inseerion of the words '*and of sound mind*' after the word 'birth'.

162. (4) formerly clause (3): Addition of the words '*within seven days*' after the word 'tribunal'.

(5) formerly clause (2): Insertation of the words

(a)..... '*within fourteen days of the appointment and send a copy direct to the Speakerof the National Assembly, or*

(b) *to the Speaker of the National assembly within fourteen days of the appointment of the tribunal by the Speaker.*

167. (4): Insertiaon of the word '*temporarily*' between the word 'is' and 'incapacitated'.

171. (1)(a): Addition of the words '*the member of the National Assembly who is*' at the beginning of the clause.

(b): Addition of the words '*the member of the National assembly who is*' at the beginning of the clause.

174. (7) formerly (2): Addition of the words '*the two Deputy Prime Ministers, the Cabinet Ministers and the Deputy Ministers*' after the word 'Priem Minister'.

175. (1): Insertion of the words '*and Deputy Ministers*' after the word 'Cabinet' in the second line.

177. (2)(b): Insertion of the word '*Cabinet*' between the words 'a' and 'Minister'.

(4) Inclusion of the words '*Deputy Prime Minister,*' after the words 'assign to a' and the insertion of the words '*or Deputy Minister*' after the words 'Cabinet member'.

Further, insertion of the words *'but a Prime Minister shall not assign a power or function of the President or Deputy President.'*

182. Title amended by inserting the words *'Cabinet'* immediately before the word *'Ministers'* and an addition of the words *'Deputy Ministers'* after the word *'Ministers'*.

4.3.3: Noting where words are deleted altogether

150. (1)(a): The words *'and the Chairperson of the Defence Council'* are deleted.

151. (1)(b): Deletion of the words *'as provided for in Article 14'* in the second line.

(d): Deletion of original Clause (d) providing that *'The President may dissolve Parliament only in the circumstances contemplated in Article 142.'*

(2)(a): Deletion of all the words appearing between the words *'Prime Minister'* and *'as provided'*.

(4): Deletion of the words *'and the National Defence Council'* in the first line.

(4)(a): Deletion of the words *'subject to Article 71'* at the end of the clause.

152. (1)(b): deleted in its entirety.

(2)(b): Deleted in its entirety.

156. (1)(d): Deleted in its entirety.

161. (2)(a) and (b) deleted.

175. (3) (a) and (b) deleted.

177. (2)(b): The word *'jointly'* at the end of the paragraph is deleted.

4.3.4: Noting where words are deleted and new ones (or other words) are inserted in place thereof

Generally, the words *'Vice President'* are deleted wherever they appear in the Draft Bill and replaced by the words *'Deputy President'*.

The words *'National Council'* are deleted wherever they appear in the Draft Bill and substituted by the word *'Senate'*.

148(2)(b): Deletion of the words *'rather than the power to rule'* and inserting in place thereof the words *'and not act in a manner incompatible with the principle of service to the people'*.

151. (2): Substitution of the word *'more'* in clause (a)(iii) and (b) with the word *'less'*.

(4): Substitution of the word *'consultation with'* with the words *'approval of'* in the first line.

(5) (e): Deletion of the words *'in consultation with the Prime Minister'* and inserting in place thereof the words *'acting in accordance with the advice of the Ethics and Integrity Commission'*.

152. (1)(a): Substitution of the word *'Parliament'* with the word *'National Assembly'*.

(4) (b): Deletion of the word *'particular'* in the last line and substitution thereof by the word *'Cabinet'*.

157. (3) (a): Deletion of the word ‘parliamentary’ in the second line and the insertion of the word ‘*general*’ in place thereof.

(4) Substitution of the word ‘twenty’ in the fourth line with the word ‘*twenty five*’. Further, the substitution of the word ‘Provinces’ in the fifth line with the word ‘*regions*’.

(6) New words inserted thus: ‘*A Presidential election shall be cancelled and a new election held if...*’, to replace the words ‘Where in a Presidential election’ in the first line.

162. (5): The words ‘two thirds’ in the second line substituted by the words ‘*one half*’.

168. (4): The words ‘thirty days’ are substituted by the words ‘*sixty days*’ in the last line of the clause.

171. (6): In place of the words ‘thirty days’, the words ‘*sixty days*’ are adopted. Further, the words ‘dissolve Parliament’ in paragraph (a) are substituted by the words ‘*the National Assembly shall stand dissolved*’.

174. (1): The words ‘more than’ are replaced by the words ‘*not less than*’ in the first line.

175. (1): Deletion of the words ‘in accordance with recommendations of’ and insertion in place thereof the words ‘*nominated by*’. Further, the substitution of the words ‘National Assembly’ by the word ‘*Senate*’.

(2) Substitution of the word ‘vote’ in the first line by the word ‘*resolution*’.

(4) (c) (ii): Deletion of the word ‘Parliament’ in the second line and insertion in place thereof the words ‘*National Assembly*’.

174. Deletion of the word ‘member’ and the use of the word ‘*Minister*’ in place thereof.

183. The title amended by deleting the word ‘of the Republic’ and using in place thereof the words ‘*in the Republic*’.

4.4: Decisions reached as Recommendations to the Conference (by consensus or voting)

CHAPTER EIGHT THE EXECUTIVE

Part 1 – Principles and Structure of the National Executive

Principles of executive authority.

148. (1) The powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya.

(2) Executive authority assigned to an office bearer by or in terms of this Constitution –

(a) vests in that office bearer the power to serve the people, and not to act in a manner incompatible with the principle of service to the people; and

(b) shall be exercised in a manner consistent with the purpose and objects of the Constitution and the laws.

Structure of the National Executive

149. The National Executive of the Republic of Kenya comprises the President, the Deputy President, the Prime Minister, the Deputy Prime Minister and the Cabinet ministers appointed under Article 151.

Part II – The President and Deputy President

Authority of President

150. (1) There shall be a President of the Republic of Kenya.

(2) President –

(a) is the Head of State, Commander-in-Chief of the Armed Forces;

(b) is a symbol of national unity, and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the Republic, promote and respect the diversity of the people, and ensure the protection of their human rights and fundamental freedoms; and

(c) shall uphold, safeguard, and respect the Constitution and the rule of law.

(3) The powers of the President shall be exercised in accordance with this Constitution and the laws.

(4) The President shall not hold any other public office including any elected or appointed office within a political party.

State functions of President

151. (1) The President –

(a) shall preside at the meetings of the Cabinet.

(b) shall be the chairperson of the National Security Council.

(2) The President-

(a) shall address the opening of each newly elected Parliament in accordance with Article 141;

(b) shall address a special sitting of Parliament once each year, as provided for in Article 14 (18);

(c) may address Parliament at any other time; and

(d) shall report in an address to the nation in accordance with Article 14(18).

(3) The President shall appoint and may in accordance with this Constitution dismiss–

(a) the Cabinet consisting of –

(i) the Prime Minister as provided for in Article 171;

(ii) the two Deputy Prime Ministers nominated by the Prime Minister as provided for in Article 175;

(iii) not less than fifteen and not more than twenty Ministers nominated by the Prime Minister as provided for in Article 175;

(b) not less than fifteen and not more than twenty Deputy Ministers nominated by the Prime Minister.

(c) Judicial Officers as provided for in Article 205.

(d) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation.

(4) With the prior consent of Parliament, the President may–

- appoint Commissions of Inquiry; or
- sign instruments of consent by Kenya to be bound by international agreements in accordance with Article 102.
- (5) The report of a Commission of Inquiry appointed by the President shall be laid before Parliament within twenty-one days.
- (6) After approval of the Cabinet, the President may, subject to Article 71, and in accordance with Article 102-
 - (a) declare a state of emergency, or
 - (b) declare war.
- (7) The President may –
 - (a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National Assembly; and may dismiss them;
 - (b) receive foreign diplomatic and consular representatives;
 - (c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution;
 - (d) pardon or reprieve offenders and remit fines, penalties or forfeitures, in accordance with Article 211; and
 - (e) acting in accordance with the advice of the ethics and integrity Commission, confer honours in the name of the people and Republic of Kenya.
- (7) The President shall ensure that-
 - (a) the international obligations of the Republic are fulfilled and submit a progress report to Parliament annually; and
 - (b) the courts and Constitutional Commissions and officers are able to secure their independence, impartiality, dignity, accessibility and effectiveness, as contemplated in this Constitution.

Legislative functions of President

- 152.** (1) The President may initiate a proposed legislation, and refer it to the Cabinet with a request that the Cabinet approve the submission of that proposed legislation to the National Assembly as a Government Bill;
- (2) When presented with a Bill passed by Parliament, the President shall do one of the following:
- (a) refer the Bill back to Parliament for re-consideration in accordance with Articles 124 and 126; or
 - (c) assent to the Bill.
- (3) The President shall ensure that –
- (a) public participation requirements concerning the enactment of legislation and regulations have been satisfied; and
 - (b) the Cabinet assigns responsibility for the implementation and administration of every Act of Parliament to a Cabinet Minister or Cabinet Ministers concerned.

Decisions of President

- 153.** A decision by the President under the authority of this Constitution or of any other law shall be in writing and shall bear the seal and signature of the President.

Curtailement of Presidential powers

154. (1) This Article applies to a person who holds the office of President, or who is authorized in terms of the Constitution, to exercise the powers of the President –

(a) during a period commencing on the date of the first vote in a Presidential election, and ending when the newly elected President assumes office; or

(b) while the President is temporarily absent or incapacitated, as contemplated in Article 167;

(2) During a period referred to in clause (1), a person to whom this Article applies may not exercise any power of the President referred to or contemplated in the following Articles;

(a) Articles 151 and 194 relating to the nomination or appointment of judicial officers.

(b) Article 197 relating to a complaint leading to the removal of a judicial officer;

(c) Article 151 relating to the nomination or appointment of any other public officer who the Constitution or legislation requires the President to appoint;

(d) Article 151 relating to the appointment or dismissal of persons to represent the Republic of Kenya as high commissioners, ambassadors, or diplomatic or consular representatives;

(e) Article 211 relating to the authority to grant a pardon, reprieve offenders, or remit fines, penalties or forfeitures; and

(f) Article 151 relating to the authority to confer honours in the name of the people and Republic of Kenya.

Right to vote and timing of presidential elections.

155. (1) The election of the President shall be direct by adult suffrage through a secret ballot and shall be conducted in accordance with this Part and with any Act of Parliament regulating Presidential elections.

(2) An election of the President shall be held –

(a) on the second Tuesday in August, and thereafter, on the second Tuesday in August every fifth year; or

(b) in the circumstances contemplated by Article 164.

Qualifications and Disqualifications for election as President

156. (1) A person is qualified for nomination as a presidential candidate if that person –

(a) is a citizen of Kenya by birth, and of sound mind;

(b) is not an undischarged bankrupt;

(c) is not serving a sentence of imprisonment for the commission of a crime;

(d) has not been removed from public office on the ground of gross misconduct;

(e) is a registered voter;

(f) satisfies any moral and ethical requirements prescribed by this Constitution or an Act of Parliament;

(g) is otherwise qualified to be elected as a member of the National Assembly; and

(h) is nominated by a registered political party; or

(i) is nominated as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each province.

(2) A person is not qualified for nomination as a presidential candidate if the person –

(a) is under an oath of allegiance to a foreign state;

(b) holds or is acting in any office in the public service, including the office of judge, magistrate or other judicial office, or an office to which Article 103 applies, in the defense forces of the Republic, or in a local government authority;

(c) is a member of any Constitutional Commission or other constitutional institution;

(d) is a member of Parliament;

(e) is a candidate for election as a member of Parliament;

(f) has ever been removed from office on grounds of any violation of this Constitution or for gross misconduct; or

(g) is disqualified from holding the office of President under this Article.

Procedure at presidential election

157. (1) If only one candidate for President is nominated, the candidate is elected as President.

(2) If more than one candidate for President is nominated, a poll shall be taken in each constituency for the election of the President.

(3) In a presidential election–

(a) all persons registered as voters for the purposes of parliamentary elections shall be entitled to vote;

(b) the poll shall be taken by a secret ballot on the day specified in Article 155 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; and

(c) after counting of the votes in the polling stations, the Electoral Commission shall declare the result.

(4) The candidate for President who receives more than fifty percent of all the votes cast in the election and who, in addition, receives a minimum of twenty five percent of the votes cast in more than half of the regions shall be elected as the President.

(5) If no candidate is elected, a fresh election shall be held within three weeks of the previous poll and in that election, the only candidates shall be–

(a) the candidate who receives the largest number of votes;

(b) the candidate who receives the second largest number of votes; and the candidate who receives the largest number of votes is elected as President

(6) Where in a presidential election –

(a) no candidate has been nominated before the expiry of the time set for the delivery of nominations; or

(b) a candidate dies on or before any of the days on which the poll is taken; or

(c) a candidate who would, but for their death, have been entitled to be declared elected as President, dies after the taking of the poll has begun but before the candidate is declared elected as President;

an election shall be held within sixty days of the time for the previous presidential election.

(7) The chairperson of the Electoral Commission shall deliver a written declaration of the results of a presidential election to the incumbent President and to the Chief Justice within seven days of the election.

Questions as to validity of presidential election

158. (1) A person may file a petition at the Supreme Court to challenge the election of the President-elect.

(2) The petition shall be filed within seven days after the date of the announcement of the results of the presidential election by the Electoral Commission.

(3) The Supreme Court shall, within seven days of the filing, determine the petition.

Assumption of office of President

159. The person elected as President-

(a) shall be sworn in –

(i) on the first Tuesday of September following the twenty one days after the date of the announcement of the results of the presidential election by the Electoral Commission; or

(ii) within seven days of the determination by the Supreme Court of the election petition filed under Article 158.

(b) assumes office by taking and subscribing

(i) the oath or affirmation of allegiance, and

(ii) the oath or affirmation for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a judge of the Supreme Court on the date when the term of office of the incumbent President ends.

Term of office of President

160. (1) The President shall hold office for a term not exceeding five years, beginning from the date of assumption of office.

(2) A person shall not hold office as the President for more than two terms of five years each.

(3) A President who has served any part of a term of office shall be deemed to have served a full term.

Protection of President in respect of legal proceedings during office

161. (1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.

(2) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under the Constitution during their tenure of office unless such proceedings are wholly of a private nature;

(3) Parliament shall enact a law to provide for the operation of clause (2).

(4) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which the

person holds or performs the functions of the office of the President shall not be taken into account in calculating any period of time prescribed by that law.

Removal of President on grounds of incapacity.

162. (1) A member of the National Assembly may, at any sitting of the Assembly move a motion for the removal from office of the President on the ground of the physical or mental capacity of the President to perform the functions of the office.

(2) If it is resolved by one half of all the members of the National Assembly that the question of the physical or mental capacity of the President to perform the functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,

(a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and

(b) the other one nominated by the President or a close relative or a member of the family of the President.

(3) Where the National Assembly resolves that the question of the physical or mental capacity of the President to perform the functions of the office be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (1) reports that the President is incapable of performing the functions of the office, whichever is earlier, continue to perform the functions of the office.

(4) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker of the National Assembly shall appoint a tribunal within seven days.

(5) The tribunal shall inquire into the matter and report –

(a) to the Chief Justice within fourteen days of the appointment and send a copy direct to the Speaker of the National Assembly, or

(b) to the Speaker of the National Assembly within fourteen days of the appointment of the tribunal by the Speaker.

(6) The Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and take the certificate together with the report of the tribunal before the National Assembly.

(7) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.

(8) If the tribunal reports that the President is incapable of performing the functions of the office, the National Assembly shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the President shall cease to hold office.

Impeachment and removal of President.

163. (1) A member of the National Assembly may, at any sitting of the assembly, move a motion for the impeachment of the President on the grounds of,

(a) a violation of a provision of this Constitution, or

- (b) gross misconduct.
- (2) If two thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the Speaker of the National Council shall convene a meeting of the National Council to hear charges against the President.
- (3) The Speaker of the National Council shall –
- (a) if the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within seven days; or
- (b) if the National Council is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.
- (4) If a motion is passed under clause (3), for the impeachment of the President, the Senate shall appoint thirteen of its members in accordance with the Standing Orders of the Senate, taking into account the proportional representation of the political parties represented in the Senate, to investigate the matter.
- (5) The special committee shall investigate the matter and shall, within ten days, report to the National Council whether it finds the particulars of the allegations against the President to have been substantiated.
- (6) The President shall have the right to appear and be represented before the special committee during its investigations.
- (7) If the special committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.
- (8) If the special committee reports that the particulars of any allegation against the President have been substantiated, the National Council shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.

Vacancy in the office of President.

- 164.** (1) If there is a vacancy in the office of the President by reason of the President's death, resignation or ceasing to hold office by virtue of Articles 162 and 163, the Deputy President shall assume office as the President.
- (2) A term served by the Deputy President as President under clause (1) shall be deemed to be a full presidential term for the purposes of Article 160.
- (3) Where a vacancy occurs in the office of the President and that of the Deputy President, the Speaker of the National Assembly shall assume the office of the President.
- (4) Where the Speaker of the National Assembly cannot for any reason assume the office of the President under clause (3), the Speaker of the Senate shall assume those functions.
- (5) For the purposes of clauses (3) and (4), the Electoral Commission shall conduct a Presidential election within sixty days of the vacancy in the office of the Deputy President.

Office of Deputy President

- 165.** (1) There shall be a Deputy President of Kenya.

- (2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Deputy President.
- (3) The Electoral Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President.
- (4) A person declared elected as the Deputy President shall assume the office by taking and subscribing to the oath of allegiance and the oath for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice.
- (5) The term of office of the Deputy President shall run from the date the President assumes office and shall terminate –
 - (a) when the next President assumes office; or
 - (b) upon the Deputy President assuming the office of President; or on resignation, death or removal from office.
- (6) The Deputy President may, at any time, resign from office by notice in writing addressed to the President and the resignation shall take effect on the date and at the time specified in the notice, if any, or if no date is specified, at noon on the day after the notice is delivered.
- (7) The provisions of Articles 162 and 163 as to the removal from office and impeachment of the President shall, with the necessary alterations, apply to the office of the Deputy President.
- (8) The Deputy President shall not serve for more than two terms of five years each.

Vacancy in the office of Deputy President.

- 166.** (1) If there is a vacancy in the office of the Deputy President, the President shall nominate a candidate qualified in terms of Article 165 for the Deputy President.
- (2) A nomination under clause (1) shall be in writing and shall be submitted to the Speakers of Parliament within fourteen days of the vacancy.
 - (3) Parliament may, by a resolution supported by the votes of two-thirds of its members, approve the person nominated under this Article as the Deputy President.
 - (4) A person approved as the Deputy President under clause (3) shall assume office in the manner specified in Article 165(4).
 - (5) The term of office of a Deputy President approved under this Article shall run from the date the Deputy President assumes office and shall terminate in the manner specified in Article 165(5).

Functions of the Deputy President

- 167.** (1) The Deputy President shall be the principal assistant of the President in the execution of his or her functions.
- (2) The Deputy President shall perform the functions conferred by this Constitution and such other functions as the President may, from time to time, assign.

(3) While in office, the Deputy President shall not, directly or indirectly, hold any other public office, including any office in a political party, or any other paid office in the employment of any person.

(4) The Deputy President shall act on behalf of the President when the President is temporarily incapacitated or absent from the Republic.

Death before assuming office

168. (1) If a person elected as President dies before assuming office, the person declared elected as the Deputy President shall assume the office of President.

(2) Upon assuming the office of the President under clause (1), the office of the Deputy President shall fall vacant.

(3) If a person declared elected as the Deputy President dies before assuming office, the office of the Deputy President shall be deemed vacant upon the assumption of office by the person declared elected as the President.

(4) If both the persons declared elected as the President and the Deputy President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within sixty days of the second such death.

Salaries and allowances of President and Deputy President

169. (1) The President and the Deputy President shall receive such salary, allowances and benefits as may be prescribed by the Salaries and Remuneration Commission.

(2) A person who has held the office of President or Deputy President shall receive such pension, gratuity and other retirement benefits as may be determined by the Salaries and Remuneration Commission.

(3) The salary and allowances payable to the President or Deputy President, including any pension or gratuity payable on retirement, shall be charged on the Consolidated Fund.

(4) The salary, allowances and privileges of the President or Deputy President shall not be varied to their disadvantage while in office.

(5) The pension, gratuity and other retirement benefits payable to the President or Deputy President on retirement and the facilities available to them shall not be varied to their disadvantage during their lifetime.

Part III – The Prime Minister and Cabinet

Prime Minister

170. (1) There shall be a Prime Minister of the Republic of Kenya, who shall be the Head of Government.

(2) The Prime Minister shall co-ordinate the work of the ministries, shall prepare legislation, and shall be responsible to the Cabinet and Parliament.

(3) The Prime Minister and the other members of the Cabinet exercise executive authority within the Republic by -

(a) developing, in conjunction with Parliament, and implementing national budgets and policy;

- (b) preparing and initiating government legislation for introduction in Parliament;
- (c) implementing and administering Acts of Parliament;
- (d) co-ordinating the functions of ministries and departments; and
- (e) performing any other functions provided for by this Constitution or an Act of Parliament, except those functions assigned to the President.
- (4) In the absence of the President and the Deputy President, the Prime Minister shall chair the meetings of the Cabinet.
- (5) In the absence of the Prime Minister, one of the Deputy Prime Ministers shall perform the functions of the Prime Minister.
- (6) The Deputy Prime Minister when performing the functions of the Prime Minister under clause (4) shall not exercise a power of the Prime Minister in relation to –
 - (a) nomination or recommendation for appointment to a public office.
 - (b) the allocation of functions to or the transfer of functions from a Deputy Prime Minister, Cabinet Minister or Deputy Minister.

Appointment of Prime Minister.

- 171.** (1) Within seven days following the summoning of the National Assembly, or whenever necessary to fill a vacancy in the office of Prime Minister, the President shall propose to the Speaker of the National Assembly the appointment as Prime Minister of –
- (a) the member of the National Assembly who is the leader of the majority political party, or coalition of parties, represented in the National Assembly; or
 - (b) the member of the National Assembly who is the leader of the minority political party, or coalition of parties represented in the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly; or
- (2) Where neither person contemplated in paragraph (a) or (b) of clause (1) has been able to command or retain the confidence of National Assembly, then the President shall propose to the National Assembly the name of a member who, in the President's opinion, may be able to command or retain the confidence of the National Assembly.
- (3) On receiving a proposal from the President in terms of this Article, the Speaker shall summon the National Assembly and introduce the proposal from the President.
- (4) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by the President.
- (5) A vote contemplated in clause (3) passes if it is supported by at least fifty percent of the members of the National Assembly.
- (6) If the National Assembly fails to confirm the appointment of a person proposed by the President, National Assembly shall by a vote supported by the majority of members present and voting nominate a member of the National Assembly for appointment as the Prime Minister.

(7) If, within sixty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed, the National Assembly shall stand dissolved and the Electoral Commission Shall conduct a fresh general election for the National Assembly.

Term of office

172. (1) A person whose appointment as Prime Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and the Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before the Speaker and Members of Parliament.

(2) The term of office of the Prime Minister continues until –

- (a) the Prime Minister dies, resigns or is dismissed from office; or
- (b) until the next person appointed Prime Minister following a general election assumes office.

Resignation of Prime Minister.

173. (1) The Prime Minister may resign from office by delivering a written statement of resignation to the President.

(2) The resignation of the Prime Minister takes effect -

- (a) on the date and at the time specified in the resignation, if any; or
- (b) at noon on the day after it is delivered, in any other case.

Dismissal of Prime Minister.

174. (1) The President may propose to the National Assembly the dismissal of the Prime Minister.

(2) The proposal of the President under clause (1) passes if it is supported by the votes of not less than fifty percent of all the members of the National Assembly.

(3) A member of the National Assembly supported by not less than a third of the members, may at any time during a sitting of the National Assembly, move a motion of no confidence for the dismissal of the Prime Minister.

(4) If Parliament, by a resolution supported by the votes of more than fifty per cent of its members, passes a motion of no confidence in the Prime Minister, the Prime Minister shall submit to the Speaker of the National Assembly notice of the Prime Minister's resignation and that of the two Deputy Prime Ministers, the Cabinet Ministers and the Deputy Ministers.

(5) The Prime Minister, the two Deputy Prime Ministers and the Cabinet shall continue in office until a new Prime Minister assumes office.

(6) If the Prime Minister does not submit the notice in accordance with clause (4), within seven days of the passing of the resolution, the President shall dismiss the Prime Minister, the two Deputy Ministers, the Cabinet Ministers and the Deputy Ministers, and the relevant provisions of Article 171 shall apply regarding the appointment of a new Prime Minister.

(7) President may not dismiss the Prime Minister, the two Deputy Prime Ministers, the Cabinet Ministers and the Deputy Ministers in any circumstances other than those contemplated in this Article.

Cabinet

175. (1) The President shall appoint the remaining members of the Cabinet and Deputy Ministers nominated by the Prime Minister from among the members of the National Assembly.

(2) If the National Assembly, by a resolution supported by the votes of more than fifty percent of its members, passes a motion of no confidence in a member of the Cabinet or a Deputy Minister other than the Prime Minister, the President shall remove that member or Deputy Minister.

(3) The President shall dismiss the Cabinet and the Deputy Ministers on the recommendations of the Prime Minister.

(4) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister -

(a) assumes office by swearing or affirming faithfulness to the people and to the Republic of Kenya and obedience to the Constitution, in accordance with the Fourth Schedule before the Speaker and Members of Parliament;

(b) may resign by delivering a written statement of resignation to the Prime Minister and the President; and

(c) continues in office until -

(i) that person dies, resigns or is dismissed from office; or

(ii) until the next person appointed to that office, following a general election for the National Assembly assumes office.

(5) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.

Secretary to the Cabinet

175A. (1) There shall be a Secretary to the Cabinet.

(2) The Secretary to the Cabinet shall be appointed by the President on the recommendations of the Prime Minister

(3) The office of the Secretary to the Cabinet shall be a public office.

(4) The Secretary to the Cabinet shall -

(a) have charge of the Cabinet office;

(b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;

(c) convey the decisions of the Cabinet to the appropriate persons or authorities; and

(d) have any other functions as directed by the Cabinet.

(5) The Secretary to the Cabinet-

(a) may be dismissed or replaced by the President on the recommendations of the Prime Minister, or

(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on the receipt of the letter of resignation by the President.

(6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.

Decisions, responsibility and accountability of cabinet

176. (1) The Cabinet shall meet at least once a month.

(2) The quorum at a meeting of the Cabinet shall not be less than one half of all the members of the Cabinet.

(3) A decision by the Cabinet shall be in writing.

(4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the President and the Prime Minister.

(5) A decision of the Cabinet which does not comply with clause (4) may be referred to the National Assembly which shall decide on the matter by a resolution supported by the votes of two-thirds of all the members of the National Assembly.

(6) Members of the Cabinet are accountable collectively, and individually, to Parliament for -

(a) the exercise of their powers and the performance of their functions; and

(b) the administration and implementation of legislation assigned to them.

(7) Deputy Prime Ministers, Cabinet Ministers and Deputy Ministers are individually accountable to the Prime Minister for the performance of the functions assigned to each of them respectively.

(8) A Cabinet Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister.

(9) Members of the Cabinet shall –

(a) act in accordance with this Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.

Assignment of functions

177. (1) The Prime Minister shall keep the President fully informed concerning the general conduct of the Government and shall furnish the President with any information that the President may request with respect to any matter relating to the Government.

(2) The Prime Minister, by order of Cabinet, shall assign responsibility for the implementation and administration of any Act of Parliament to -

(a) a Deputy Prime Minister; or

(b) to a Minister and a Deputy Minister.

(3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of any Act of Parliament from one member of Cabinet to another.

(4) The Prime Minister may assign to a Deputy Prime Minister, Cabinet Minister or Deputy Minister any power or function of another Cabinet member or Deputy Minister who is absent from office or temporarily unable to exercise that power or perform that function; but a Prime Minister shall not assign a power or function of the President or Deputy President.

(5) When a matter would arise at a Cabinet meeting -

- (a) relating to the operation of paragraph (b) of clause (2), or
 - (b) relating to the conduct of the affairs of a Ministry, or Department, or
 - (c) relating to the duties of a Minister under Article 178(A)(1),
- and the responsible Cabinet Minister is unable to attend the meeting of the Cabinet, the Prime Minister may invite the Deputy Minister to attend.

Conduct of members of the Cabinet

178. (1) A member of Cabinet shall -

- (a) avoid any situation involving a risk of conflict between the member's private interests and official responsibilities;
- (b) not act in a way that is inconsistent with the member's official responsibilities;
- (c) not use the member's office, the authority of that office or any information entrusted to the member, to enrich the member or improperly benefit another person.

(2) Each member of Cabinet shall comply with the Leadership Code, set out in the Fifth Schedule.

(3) A member of the Cabinet or a Deputy Minister may not hold any other employment, or any other public office, during their respective terms of office.

Functions of Ministers and Deputy Ministers

178A. (1) As may be provided for by the other articles of this Constitution, the functions of a Minister are,

- (a) to advise the President, the Prime Minister and the Cabinet;
 - (b) to exercise general direction and control over the appropriate ministry, departments and other statutory bodies;
 - (c) to initiate and prepare government legislation for introduction in Parliament;
 - (d) to develop the national budget in conjunction with Parliament;
 - (e) to implement the national budget and policy;
 - (f) to appear before Parliament or a committee of Parliament when requested to do so and answer any questions that may be put to the Minister;
 - (g) to take responsibility for the administration and implementation of legislation assigned to the Minister;
- (h) to provide Parliament with full and regular reports concerning matters under the control of the Minister;
- (i) to account to the Prime Minister for the performance of the functions assigned to the Minister;

- (j) to account individually and collectively for the administration of their ministries and work of the Cabinet
 - (k) to assign functions to the Deputy Minister;
 - (l) to carry out any other functions as may be prescribed by Parliament, Act of Parliament or in accordance with this Constitution.
- (2) As may be provided for by the other articles of this Constitution, the functions of a Deputy Minister are,
- (a) to perform the functions assigned by the Prime Minister or the Minister
 - (b) to deputize for the Minister in the performance of the Minister's functions;
 - (c) to perform the functions of the Minister during the temporary incapacity or absence of the Minister from the Republic of Kenya.

Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Ministers

179. The Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers shall receive such salaries, allowances and benefits as may be determined by the Salaries and Remuneration Commission.

Absence of Deputy President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers from the Republic

180. The Deputy President, the Prime Minister, a Deputy Prime Minister, a Cabinet Minister or a Deputy Minister shall not be absent from the Republic except with the leave of the President.

Principal Secretaries

181. (1) There is established the office of Principal Secretary that is an office in the public service.

(2) Each Government Ministry shall be under the supervision of a Principal Secretary.

(3) A Principal Secretary shall be nominated by the Prime Minister in consultation with the Public Service Commission for appointment by the President in accordance with articles 102 and 103(4).

(4) A Principal Secretary

(a) may be dismissed by the President on the recommendations of the Prime Minister, or

(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on receipt of the letter of resignation by the President.

Oath or Affirmation of Cabinet Deputy Ministers and Principal Secretaries

182. A Minister, a Deputy Minister or a Principal Secretary shall not enter upon the duties of the office before taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the office prescribed in the Fourth Schedule.

Offices of the Public Service

183. (1) Except where there is a contrary provision in this Constitution or in any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission.

(2) Except where there is a contrary provision in this Constitution or in any other law, the power to appoint persons to hold or to act in the offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall, vest in the Public Service Commission

5. LIST OF APPENDICES

APPENDIX A

Minority Report

**GEORGE OMARI NYAMWEYA
DELEGATE NO. 615
MINORITY REPORT**

CHAPTER EIGHT

THE EXECUTIVE

Part I – Principles and Structure of the National Executive

Structure of the National Executive

149. The National Executive of the Republic of Kenya comprises the President, the Deputy President, ~~the Prime Minister, the Deputy, Prime Ministers and the Cabinet Ministers~~ appointed under Article 151.

Part II - The President and the Deputy President

Authority of President

150. (I) There shall be a President of the Republic of Kenya –

(2) The President-

(a) is the Head of State, Commander-in-Chief of the ~~Defence~~ *armed* Forces. ~~the Chairperson of the National Security Council and the Chairperson of the Defence Council;~~

(b) is a symbol of the unity of the nation, and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the Republic, promote and respect the diversity of the people, and *shall ensure the protection of* ~~protect their~~ human rights and fundamental freedoms; and shall uphold, safeguard, and respect the Constitution and the rule of law.

(3) The powers of the President shall be exercised in accordance with this Constitution and the laws.

(4) The President shall not hold any other public office including any elected or appointed office within a political party.

State functions of President

151. (1) The President shall preside at the meetings of the Cabinet, ~~and in the absence of the President, the Deputy President shall preside; in the~~

~~absence of the President and the Deputy President, the Prime Minister shall preside at the meetings of the Cabinet~~

(2) The President shall chair the National Security Council.

(3) The President –

(a) shall address the opening of each newly elected Parliament in accordance with Article 141;

(b) shall address a special sitting of Parliament once each year, as provided for in Article 14;

(c) may address Parliament at any other time; and may dissolve Parliament only in the circumstances contemplated in Article 142.

(3)4 The President shall appoint and may in accordance with this Constitution dismiss –

(a) the Cabinet consisting of –

(i) the Prime Minister ~~who is the parliamentary leader of the political party or the coalition of political parties that enjoys the majority support in the National Assembly subject to the approval of Parliament~~ as provided for in Article 171;

(ii) the two Deputy Prime Ministers *in consultation with the president*, nominated by the Prime Minister as provided for in Article 175;

(iii) not less than fifteen and not more than twenty Ministers *in consultation with the president* nominated by the Prime Minister as provided for in Article 175;

(b) not less than fifteen and not more than twenty *five* Deputy Ministers *in consultation with President* nominated by the Prime Minister;

(c) Judicial Officers as provided for in Article 205;

(d) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation.

(7) The President ~~may~~ *shall* –

(a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National Assembly, and may dismiss them;

(b) receive foreign diplomatic and consular representatives;

(c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution; *as and when such need arises*;

(d) pardon or reprieve offenders and remit fines, penalties or forfeitures, in accordance with Article 211; and

(e) *in consultation with the Prime Minister*, confer honours in the name of the people and the Republic of Kenya.

Legislative functions of President

152. (1) The President may initiate a proposed legislation and refer it to the Cabinet for approval and submission of that proposed legislation to the National Assembly as a Government Bill.

Qualifications and Disqualifications for election as President

156. (1) A person is qualified for nomination as a presidential candidate if that person –
- (a) is a citizen of Kenya by birth, and of sound mind;
 - (b) is not an undischarged bankrupt;
 - (c) is not serving a sentence of imprisonment for the commission of a crime;
 - (d) has not been removed from public office on the ground of gross misconduct;
 - (e) is a registered voter;
 - (f) (is of a high moral integrity and impeccable character;)
 - (g) is otherwise qualified to be elected as a member of the National Assembly; and
 - (h) is nominated by a registered political party; or
 - (i) is nominated as an independent candidate by at least seven thousand registered voters Each from atleast fifty per cent of the Republic's Districts.
- (j) has attained the age of thirty five years.*
- (k) holds a degree from a recognized university or comparable professional or other qualifications.*
- (2) A person is not qualified for nomination as a presidential candidate if that person –
- (a) is under an oath of allegiance to a foreign state;
 - (b) holds or is acting in any office in the public service, including the office of judge, magistrate or any other judicial office, or an office to which Article 103 applies, in the defense forces of the Republic, or in a local government authority;
 - (c) is a member of any Constitutional Commission or any other constitutional institution;
 - (d) a person elected as President or Deputy President and also as a member of Parliament shall immediately vacate his seat as member of parliament.*
 - (e) is a candidate for election as a member of Parliament;
 - (f) has ever been removed from office on grounds of any violation of this Constitution or for gross misconduct; or
 - (g) is disqualified from holding the office of President under this Article.

Procedure at presidential election

157. (1) If only one candidate for President is nominated, the candidate is elected as President.
- (2) If more than one candidate for President is nominated, a poll shall be taken in each constituency for the election of the President.
- (3) In a presidential election –
- (a) all persons registered as voters for the purposes of general elections are entitled to vote;

- (b) the poll shall be taken by a secret ballot on the day specified in Article 155 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament;
- (c) after counting of the votes in the polling stations, the Electoral Commission shall declare the result.
- (4) The candidate for President who receives more than fifty percent of all the votes cast in the election and who in addition, receives a minimum of twenty percent of votes cast in more than half of the ~~regions~~ **Districts** shall be elected as the President.
- (5) If no candidate is elected, a fresh election shall be held within three weeks of the previous poll and in that election, the only candidates shall be
 - (a) the candidate who scored the largest number of votes and
 - (b) the candidate who secured the second largest numbers of votes;
 and the candidate who receives the largest number votes is elected as President.
- (6) Where in a presidential election –
 - (a) no candidate has been nominated before the expiry of the time set for the delivery of nominations, or
 - (b) a candidate dies on or before any of the days on which the poll is taken, or
 - (c) a candidate who would, but for their death, have been entitled to be declared elected as President, dies after the taking of the poll has began but before the candidate is declared elected as President, an election shall be within thirty days of the time for the previous presidential election.
- (7) The chairperson of the Electoral Commission shall deliver a written declaration of the results of a presidential election to the incumbent President and to the Chief Justice within seven days of the election.

Questions as to validity of presidential election

158. *Commence in the High Court to the Supreme Court on a point of law.* The Supreme Court shall determine any question arising as to whether any provision of the Constitution or other law relating to presidential elections has been complied with; or whether any person has been elected as President under Article 157.

Assumption of office of President

- 159.** The person elected as President
- (a) ~~shall be sworn in within twenty one days after the date the Electoral Commission announces the result of the presidential elections; and~~
 - (b) assumes office by taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a judge of the Supreme Court on the date when the term of office of the incumbent President ends.

Protection of President in respect of legal proceedings during office

- 161.** (1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.
- (2) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under this Constitution during their tenure of office. ~~unless the proceedings are wholly of a private nature.~~
- (3) Parliament shall enact a law to provide for the operation of clause (2).
- (4) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which the person holds or performs the functions of the office of the President shall not be taken into account in calculating any period of time prescribed by that law.

Removal of President on grounds of incapacity

- 162.** (1) If it is resolved by one half of all the members of the National Assembly that the question of the physical or mental capacity of the President to perform the functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,
- (a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and
- (b) the other one nominated by the President.
- (2) Where the National Assembly resolves that the question of the physical or mental capacity of the President to perform the functions of the office be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (1) reports that the President is incapable of performing the functions of the office, whichever is earlier, cease to perform the functions of the office.
- (3) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker of the National Assembly shall appoint a tribunal within seven days.
- (4) The tribunal shall inquire into the matter and report –
- (a) to the Chief Justice within fourteen days of the appointment and send a copy direct to the Speaker, or
- (b) to the Speaker within fourteen days of the appointment of the tribunal by the Speaker.
- (5) The Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and take the certificate together with the report of the tribunal before the National Assembly.
- (6) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.
- (7) If the tribunal reports that the President is incapable of performing the functions of the office, the National Assembly shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the President shall cease to hold office.

(8) A motion for the purposes of clause (1) may be proposed by any member of the National Assembly at any time during any meeting of the National Assembly.

Impeachment and removal of President

163. (1) If two thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the *Deputy* Speaker of the National Council shall convene a meeting of the National Council to hear charges against the President.

(2) The *Deputy* Speaker of the National Council shall,

(a) if the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within seven days; or

(b) if the National Council is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.

(3) If a motion is passed under clause (2), the *Deputy* Speaker of the National Assembly shall constitute a special committee comprising,

(a) the Chief Justice, who shall be the Chairperson, and

(b) thirteen members appointed by the National Council in accordance with the Standing Orders of the Council, taking into account the proportional representation of the political parties represented in the Council, to investigate the matter.

(4) The special committee shall investigate the matter and shall, within ten days, report to the National Council whether it finds the particulars of the allegations against the President to have been substantiated.

(5) The President shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.

(7) If the special committee reports that the particulars of any allegation against the President have been substantiated, the National Council shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.

Vacancy in the office of President

164. (1) If there is a vacancy in the office of the President by reason of the President's death, resignation or ceasing to hold office by virtue of Articles 162 and 163, the Deputy President shall assume the functions of the office except that if the residual term of the President exceeds two and a half years, it shall be deemed to be a full presidential term for the purpose of Article 160.

(2) If there is a vacancy in the office of the President and that of the Deputy President, the Speaker of the National Assembly and, if there is no Speaker of the National Assembly, the *Deputy* Speaker of the National Council, shall assume the functions of the office of the President and the Electoral Commission shall

conduct an election for the President and Deputy President within sixty days of the vacancy in the office of the Deputy President.

Functions of the Deputy President

167. (1) The Deputy President shall be the principal assistant of the President in the execution of his or her functions.

(2) *The Deputy President shall be the Speaker of the National Assembly.*

(3) The Deputy President shall perform the functions conferred by this Constitution and such other functions as the President may, from time to time assign.

(4) While in office, the Deputy President shall not, directly or indirectly, hold any other public office, including any office in a political party, or any other paid office in the employment of any person.

(5) The Deputy President shall act on behalf of the President when the President is temporarily incapacitated or absent from the Republic of Kenya

Removal of the Deputy President on grounds of incapacity

167A. (1) *If it is resolved by one half of all the members of the National Assembly that the question of the physical or mental capacity of the Deputy President to perform the functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,*

(a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and

(b) the other one nominated by the Deputy President.

(2) *Where the National Assembly resolves that the question of the physical or mental capacity of the Deputy President to perform the functions of the office be investigated, the Deputy President shall, until another person assumes the office of Deputy President or the tribunal appointed under clause (1) reports that the Deputy President is incapable of performing the functions of the office, whichever is earlier, cease to perform the functions of the office.*

(3) *If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker of the National Assembly shall appoint a tribunal within seven days*

(4) The tribunal shall inquire into the matter and report –

(a) to the Chief Justice within fourteen days of the appointment and send a copy direct to the Speaker, or

(b) to the Speaker within fourteen days of the appointment of the tribunal by the Speaker.

(5) *The Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and take the certificate together with the report of the tribunal before the National Assembly.*

(6) *Where the tribunal reports that the Deputy President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.*

(7) If the tribunal reports that the Deputy President is incapable of performing the functions of the office, the National Assembly shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the Deputy President shall cease to hold office.

(8) A motion for the purposes of clause (1) may be proposed by any member of the National Assembly at any time during any meeting of the National Assembly.

Impeachment and removal of Deputy President

167B. *(1) If two thirds of the members of the National Assembly approve a motion for the impeachment of the deputy President for violation of the Constitution or gross misconduct, the Deputy Speaker of the National Council shall convene a meeting of the National Council to hear charges against the deputy President.*

(2) The Deputy Speaker of the National Council shall,

(a) if the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within seven days;or

(b) if the National Council is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.

(3) If a motion is passed under clause (2), the Deputy Speaker of the National Assembly shall constitute a special committee comprising,

(a) the Chief Justice, who shall be the Chairperson, and

(b) thirteen members appointed by the National Council in accordance with the Standing Orders of the Council, taking into account the proportional representation of the political parties represented in the Council, to investigate the matter.

(4) The special committee shall investigate the matter and shall, within ten days, report to the National Council whether it finds the particulars of the allegations against the Deputy President to have been substantiated.

(5) The Deputy President shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the Deputy President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.

(7) If the special committee reports that the particulars of any allegation against the Deputy President have been substantiated, the National Council shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.

Death before assuming office

168. *(1) If a person elected as president dies before assuming office, the person declared elected as the Deputy President shall assume the office of President.*

(2) Upon assuming the office of the President under clause (1), the office of the Deputy President shall fall vacant.

(3) If a person declared elected as the Deputy President dies before assuming office, the office of the Deputy President shall be deemed vacant upon the assumption of office by the person declared elected as the President.

(4) If both the persons declared elected as the President and the Deputy President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within sixty days of the second death.

Salaries and allowances of President and Deputy-President

169. (1) The President and the Deputy President shall receive such salary, allowances and benefits as may be prescribed by the Salaries and Remuneration Commission.

(2) A person who has held the office of President or Deputy President shall receive such pension, gratuity and other retirement benefits as may be determined by the Salaries and Remuneration Commission.

(3) The salary and allowances payable to the President or Deputy President, including any pension or gratuity payable on retirement, shall be charged on the Consolidated Fund.

(4) The salary, allowances and privileges of the President or Deputy President shall not be varied to their disadvantage while in office.

(5) The pension, gratuity and other retirement benefits payable to the President or Deputy President on retirement and the facilities available to them shall not be varied to their disadvantage during their lifetime.

Part III – The Prime Minister and Cabinet

Prime Minister

170. (1) There shall be a Prime Minister of the Republic of Kenya.

(2) The Prime Minister ~~and the other members of the Cabinet exercise executive authority within the Republic by~~ ***shall chair inter-ministerial committees set up by the President and Cabinet;***

The Prime Minister shall coordinate the implementation of cabinet decisions and shall be responsible for:-

(a) developing, in conjunction with Parliament, and implementing national budgets and policy;

(b) preparing and initiating government legislation for introduction in Parliament;

(c) implementing and administering Acts of Parliament;

(d) co-ordinating the functions of ministries and departments; and

(e) performing any other functions provided for by this Constitution or an Act of Parliament, except those functions assigned to the President.

(3) In the absence of the President and the Deputy President, the Prime Minister shall chair the meetings of the Cabinet.

Appointment of Prime Minister

171. (1) Within seven days following the summoning of the National Assembly or whenever necessary to fill a vacancy in the office of Prime Minister, the President

shall propose to the Speaker of the National Assembly the appointment as Prime Minister of –

(a) the leader of the majority political party, or coalition of parties represented in the National Assembly; or

(b) the leader of the minority political party, or coalition of participants represented in the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly; or

(c) if neither person contemplated in paragraph (a) or (b) has been able to command or retain the confidence of the National Assembly, then any other member of the National Assembly who, in the President's opinion, may be able to command or retain the confidence of the National Assembly.

(2) Upon receiving a proposal from the President in terms of this Article, the Speaker shall summon the National Assembly and introduce the proposal from the President.

(3) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by the President.

(4) A vote contemplated in clause (3) passes if it is supported by at least fifty percent of the members of the National Assembly.

(5) If the National Assembly fails to confirm the appointment of a person proposed by the President, the President shall propose another person within one week after the vote in the National Assembly.

(6) If, within sixty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed, the *President shall dissolve the National Assembly shall stand dissolved and require* the Electoral Commission to conduct a fresh general election for Parliament.

Term of office

172. (1) A person whose appointment as Prime Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and the Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before *the president*, the Speaker and Members of Parliament.

(2) The term of office of the Prime Minister continues until -

(a) the Prime Minister dies, resigns or is dismissed from office; or

(b) until the next person appointed Prime Minister following a general election assumes office.

(3) *A person shall not hold office as the Prime Minister for more than two terms of five years each.*

Resignation of Prime Minister

173. (1) The Prime Minister may resign from office by delivering a written statement of resignation to the President.

(2) The resignation of the Prime Minister takes effect -

(a) on the date and at the time specified in the resignation, if any; or

(c) at noon on the day after it is delivered, in any other case.

Removal of Prime Minister on grounds of incapacity

173A. (1) If it is resolved by one half of all the members of the National Assembly that the question of the physical or mental capacity of the Prime Minister to perform the functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,

(a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and

(b) the other one nominated by the Prime Minister.

(2) Where the National Assembly resolves that the question of the physical or mental capacity of the Prime Minister to perform the functions of the office be investigated, the Prime Minister shall, until another person assumes the office of Prime Minister or the tribunal appointed under clause (1) reports that the Prime Minister is incapable of performing the functions of the office, whichever is earlier, cease to perform the functions of the office.

(3) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker of the National Assembly shall appoint a tribunal within seven days.

(4) The tribunal shall inquire into the matter and report –

(a) to the Chief Justice within fourteen days of the appointment and send a copy direct to the Speaker, or

(b) to the Speaker within fourteen days of the appointment of the tribunal by the Speaker.

(5) The Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and take the certificate together with the report of the tribunal before the National Assembly.

(6) Where the tribunal reports that the Prime Minister is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.

(7) If the tribunal reports that the Prime Minister is incapable of performing the functions of the office, the National Assembly shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the Prime Minister shall cease to hold office.

(8) A motion for the purposes of clause (1) may be proposed by any member of the National Assembly at any time during any meeting of the National Assembly.

Dismissal of Prime Minister

174. (1) If the National Assembly, by a resolution supported by the votes of more than fifty per cent of its members, passes a motion of no confidence in the Prime Minister, the President shall dismiss the Prime Minister, and the Cabinet Ministers.

(2) The President may not dismiss the Prime Minister in any circumstances other than those contemplated in clause (1).

Cabinet

175. (1) The President shall appoint the remaining members of the Cabinet and Deputy Ministers nominated by the Prime Minister from among the members of the National Assembly.

(2) If the National Assembly, by a resolution supported by the votes of more than fifty percent of its members, passes a motion of no confidence in a member of the Cabinet or a Deputy Minister other than the Prime Minister, the President shall remove that member or Deputy Minister.

(3) The President shall dismiss the Cabinet and the Deputy Ministers on the recommendations of the Prime Minister.

(4) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister -

(a) assumes office by swearing or affirming faithfulness to the people and to the Republic of Kenya and obedience to the Constitution, in accordance with the Fourth Schedule before the Speaker and Members of Parliament;

(b) may resign by delivering a written statement of resignation to the Prime Minister and the President; and

(c) continues in office until -

(i) that person dies, resigns or is dismissed from office; or

until the next person appointed to that office, following a general election for the National Assembly assumes office.

(5) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.

(6) There shall be a Secretary to the Cabinet.

(7) The Secretary to the Cabinet shall be appointed by the President on the recommendations of the Prime Minister

(8) The office of the Secretary to the Cabinet shall be a public office.

(9) The Secretary to the Cabinet shall -

(a) have charge of the Cabinet office;

(b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;

(c) convey the decisions of the Cabinet to the appropriate persons or authorities; and

(d) have any other functions as directed by the Cabinet.

(10) The Secretary to the Cabinet

(a) may be dismissed or replaced by the President on the recommendations of the Prime Minister, or

(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on the receipt of the letter of resignation by the President.

(11) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.

Decisions, responsibility and accountability of Cabinet

176. (1) The Cabinet shall meet at least once a month.

(2) The quorum at a meeting of the Cabinet shall not be less than one half of all the members of the Cabinet.

(3) A decision by the Cabinet shall be in writing.

(4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the President and the Prime Minister.

(5) A decision of the Cabinet which does not comply with clause (4) may be referred to the National Assembly which shall decide on the matter by a resolution supported by the votes of two-thirds of all the members of the National Assembly.

(6) Members of the Cabinet are accountable collectively, and individually, to Parliament for -

(a) the exercise of their powers and the performance of their functions; and

(b) the administration and implementation of legislation assigned to them.

~~(7) Deputy Prime Ministers, Ministers and Deputy Ministers are individually accountable to the Prime Minister for the performance of the functions assigned to each of them respectively.~~

(8) A Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister.

(9) Members of the Cabinet shall –

(a) act in accordance with this Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.

Assignment of functions

177. (1) The Prime Minister shall keep the President fully informed concerning the general conduct of the Government and shall furnish the President with any information that the President may request with respect to any matter relating to the Government.

(2) The Prime Minister, by order of Cabinet, shall assign responsibility for the implementation and administration of any Act of Parliament to -

(a) a Deputy Prime Minister; or

(b) to a Minister and a Deputy Minister.

(3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of any Act of Parliament from one member of Cabinet to another.

(4) The Prime Minister may assign to a Cabinet member any power or function of another Cabinet member who is absent from office or temporarily unable to exercise that power or perform that function.

(5) When a matter would arise at a Cabinet meeting -

(a) relating to the operation of paragraph (b) of clause (2), or

(b) relating to the conduct of the affairs of a Ministry, or Department, or

(c) relating to the duties of a Minister under Article 178(A)(1),

and the responsible Cabinet Minister is unable to attend the meeting of the Cabinet, the Prime Minister may invite the Deputy Minister to attend.

Conduct of members of the Cabinet

178. (1) A member of the Cabinet or a Deputy Minister shall –

- (a) avoid any situation involving a risk of conflict between the member's private interests and official responsibilities;
- (b) not act in a way that is inconsistent with the member's official responsibilities;
- (c) not use the member's office, the authority of that office or any information entrusted to the member, to enrich the member or improperly benefit another person.

(2) Each member of the Cabinet or a Deputy Minister shall comply with the Leadership Code, set out in the Fifth Schedule.

(3) A member of the Cabinet or a Deputy Minister may not hold any other employment, or any other public office, during their respective terms of office.

Functions of Ministers and Deputy Ministers

178A. (1) As may be provided for by the other articles of this Constitution, the functions of a Minister are,

- (a) to advise the President, the Prime Minister and the Cabinet;
- (b) to exercise general direction and control over the appropriate ministry, departments and other statutory bodies;
- (c) to initiate and prepare government legislation for introduction in Parliament;
- (d) to develop the national budget in conjunction with Parliament;
- (e) to implement the national budget and policy;
- (f) to appear before Parliament or a committee of Parliament when requested to do so and answer any questions that may be put to the Minister;
- (g) to take responsibility for the administration and implementation of legislation assigned to the Minister;
- (h) to provide Parliament with full and regular reports concerning matters under the control of the Minister;
- (i) to account to the Prime Minister for the performance of the functions assigned to the Minister;
- (j) to account individually and collectively for the administration of their ministries and work of the Cabinet
- (k) to assign functions to the Deputy Minister;
- (l) to carry out any other functions as may be prescribed by Parliament, Act of Parliament or in accordance with this Constitution.

(2) As may be provided for by the other articles of this Constitution, the functions of a Deputy Minister are,

- (a) to perform the functions assigned by the Prime Minister or the Minister
- (b) to deputize for the Minister in the performance of the Minister's functions;
- (c) to perform the functions of the Minister during the temporary incapacity or absence of the Minister from the Republic of Kenya.

Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Minister.

179. The Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers shall receive such salaries, allowances and benefits as may be determined by the Salaries and Remuneration Commission.

Absence of Deputy President, Prime Minister, Deputy Prime Ministers, Cabinet Ministers and Deputy Ministers from the Republic of Kenya.

180. The Deputy President, the Prime Minister, a Deputy Prime Minister, a Cabinet Minister or a Deputy Minister shall not be absent from the Republic except with the leave of the President.

Principal Secretaries

181. (1) There is established the office of Principal Secretary which is an office in the public service.

(2) Each Government Ministry shall be under the supervision of a Principal Secretary.

(3) A Principal Secretary shall be nominated by the Prime Minister in consultation with the Public Service Commission for appointment by the President in accordance with articles 102 and 103(4).

(4) A Principal Secretary

(a) may be dismissed by the President on the recommendations of the Prime Minister, or

(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on receipt of the letter of resignation by the President.

(c) On assumption of a new Government, a principal secretary shall cease to hold that office.

Oath or Affirmation of Ministers and Principal Secretaries

182. A Minister or a Deputy Minister or a Principal Secretary shall not enter upon the duties of the office before taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the office prescribed in the Fourth Schedule.

Offices in the Public Service

183. (1) Except where there is a contrary provision on this Constitution or in any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission.

(2) Except where there is a contrary provision in this Constitution or in any other law, the power to appoint persons to hold or to act in the offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall vest in the Public Service Commission.

APPENDIX B

List of Formal Motions for Amendment of the Main Report & Draft Bill agreed to by the Committee

The following are the motions that were tabled before the Committee:

I. Hon. Kipkalya Kones (Delegate No. 216)

GIVEN THAT since 1964 Kenya adopted the Presidential system of Government, where Executive Authority is vested in the President and rejected the Parliamentary system where Executive Authority is vested in the Prime Minister, this Committee resolves that the Presidential system of Government be retained in the New Constitution with the powers of the Presidency being tamed through appropriate mechanisms but that there be the office of Prime Minister created in the New Constitution and that the Prime Minister shall be appointed by the President and who can be removed from office by the President or by the National Assembly; shall be the leader of Government business in Parliament and shall carry out such other functions as may be assigned to him/her by the President; and that the 'CKRC' Technical Committee shall effect all necessary amendments in the Draft Bill consequential to the adoption of the MOTION.

Seconded Hon. George Nyamweya (Delegate No. 615)

II. Hon. Otieno Kajwang' (Delegate No. 037)

THAT, at Independence, Kenya adopted a Parliamentary system of Government where the Executive Authority was exercised by the Governor-General on the advice of the Prime Minister.

AWARE, that since 1963 the Independence Constitution has been amended thirty-eight times changing its character completely consequently creating a largely Presidential system of Government.

CONSIDERING, that during the collection of views of the people of Kenya, citizens expressed their displeasure with concentration of power in the hands of a strong Presidency.

WHEREAS, the Draft Constitution has proposed a dual executive where the Executive Authority is exercised by the Presidency and the Prime Minister creating two centers of power.

NOW, this Committee resolves that we adopt a purely parliamentary system of government in which the President shall be the Head of State and a joint sitting of the Members of the National Assembly and National Council will elect the Prime Minister.

Seconded by Hon. William Ruto (Delegate No. 179)

III. Hon. Stanislaus Wambua Kasoka (Delegate No. 296)

GIVEN THAT: - The people of Kenya when giving views to the Constitution of Kenya Review Commission asked for the powers of the President to be reduced, and called for creation of office of Prime Minister. **NOW** this Committee resolves to adopt a middle ground of a mixed Parliamentary and a Presidential system in which the executive authority is vested in the President elected directly by the

people of Kenya and is assisted by a Vice-President, Prime Minister and the Cabinet whose functions shall be in the Constitution clearly defined to facilitate harmonious exercise of the executive authority.

Seconded by Hon. Dubat Ali Amey (Delegate No. 252)

The following is an Amendment to the Motion by Hon. Stanislaus Kasoka that was moved and agreed to by the Committee.

Amendment to Motion by Hon. Stanislaus Kasoka moved by Hon. Joseph Martin Shikuku (Delegate No. 595)

To be amended as follows:

By deleting the words ‘... and is assisted by a...’

The amended motion to read as follows:

GIVEN THAT: the people of Kenya when giving views to Constitution of Kenya Review Commission asked for the powers of the President to be reduced and called for the creation of the office of a Prime Minister.

NOW this Committee resolves to adopt a middle ground of a mixed Parliamentary and a Presidential system in which the executive authority vested in the President, Vice President directly elected by the people of Kenya, Prime Minister and the Cabinet whose functions shall be in the Constitution clearly defined to facilitate harmonious exercise of the executive authority.

Seconded by Hon. Nick Salat (Delegate No.182)

Amended Motion made and question proposed.

Question put and Amended motion carried.

IV. Hon. Ogembo Masese (Delegate No. 591)

THAT the Prime Minister may assign a deputy minister the power to function as a cabinet minister in the absence from office of the Cabinet Minister or if the Minister be temporarily unable to exercise their power or perform their function.

Seconded by Hon. Sammy Amunga Aswani (Delegate No. 382)

Motion carried

V. Hon Otieno Kajwang’ (Delegate No. 037)

THAT The Prime Minister is the Chief Executive officer of the cabinet and presides at meeting of the cabinet in the absence of both the President and Deputy President.

Functions of the Prime Minister

The Prime Minister-

- (1) is responsible to perform any executive functions assigned by this constitution and legislation;
- (2) manages and coordinates
 - (a) the development and implementation of national budget and policy.\
 - (b) the preparation and introduction of government legislation in Parliament;
 - (c) the implementation and administration of Acts of Parliament; and
 - (b) the functions of ministries and departments
- (3) The Prime Minister
 - (a) recommends to the President the appointment and dismissal of Ministers

- (b) in consultation with the Public Service Commission, appoints, assigns, and may dismiss Permanent secretaries in accordance with Articles 168
- (c) performs any other function assigned by this consultation or legislation.

(4) The Prime Minister-

- (a) Shall assign responsibility for the implementation and administration of every Act of Parliament to a member of the cabinet; and
- (b) May permanently transfer responsibility administration of any Act of Parliament from one member of cabinet to another, and
- (c) May assign to a cabinet member any power or function of another cabinet member who is absent from office or temporarily unable to exercise that power or perform that function.

Motion seconded by Hon. Mike Olievo (Delegate No. 613) but lost.

VI. Hon. Otieno Kajwang' (Delegate No. 037)

Motion to amend Article 160(2)

THAT a President who serves any part of a term of office shall be deemed to have served a full term.

Seconded by Hon. William Ruto (Delegate No. 179)

Motion carried.

VII. Hon. Dalmas Otieno (Delegate No. 614)

Motion 175(1)

THAT (1)(a) There shall be a Cabinet of the Republic of Kenya which shall consist of the President as Chairperson, the Deputy President, the Prime Minister, Deputy Prime Ministers and other Cabinet Ministers.

(b) The President shall appoint ... 'as in present (1)'.

Motion not seconded, hence lost.

VIII. Hon. George Omari Nyamweya (Delegate No. 615)

A motion to amend Article 170 thus:

1. There shall be a Prime Minister of the Republic of Kenya.
2. The Prime Minister shall chair inter-ministerial cabinet committees set up by the President and cabinet.
3. The Prime Minister shall co-ordinate the implementation and reporting of cabinet decisions and together with other members of the cabinet shall be responsible for-

- (a) as per the draft
- (b) as per the draft
- (c) as per the draft
- (d) as per the draft
- (e) performing any other function provided for by the Constitution or an Act of Parliament, except those functions assigned to the President.

Motion seconded by Hon. Boniface Mghanga (Delegate No. 100)

Motion defeated.

IX. Hon. William Kabogo (Delegate No. 027)

A motion to amend Article 170 (1)(a) to read as follows:

'developing in conjunction with Parliament, and implementing national budgets and policy.'

Motion seconded by Hon. Nyiva Mwendwa (Delegate No.134)

Motion carried.

X. Dalmas Otieno (Delegate No. 614)

A motion to amend Article 170(1) as follows:

There shall be a Prime Minister of the Republic of Kenya who shall be the Chief Operating officer of the Cabinet.

Motions seconded by Hon. Stansilus Kasoka.

Motion defeated.

XI. Mike Oliewo (Delegate No. 613)

A motion to amend Article 176(1) to read as follows-

The Cabinet shall meet at least fortnightly with a quorum of at least one half of the entire membership and all decisions made thereof shall be in writing.

The motion was seconded by Hon. Joseph K. Lagat (Delegate No.065).

Following debate, the motion was further amended to provide for a meeting atleast once a month.

Motion carried.

XII. Rihal Singh (Delegate No. 487)

A motion to amend Article 176 by inserting the following provisions-

(1) A decision by the Cabinet shall-

(a) be in writing

(b) not be valid and not be implemented unless signed by the Prime Minister and the President.

(2) A decision of Cabinet invalidated as in (1)(b) may be referred to the National Assembly which shall decide on the matter by a two-thirds majority vote to validate the decision.

XIII. Hon. George Omari Nyamweya (Delegate No. 615)

A motion to amend Article 158 by deleting the words 'Supreme Court' and inserting in place thereof the 'High Court'. An additional provision to the effect that 'an appeal from the High court shall in the Supreme Court, only on points of law. The election petition should be resolved within twenty-one days of the declaration of Presidential election results.

Seconded by Hon. Kitambi Digore (Delegate No. 231)

Motion partly accepted and partly defeated, to the extent that a Presidential petition lies only in the Supreme Court and such petition is to be resolved within twenty-one days of the declaration results of the Presidential election.

XIV. Hon. William Ruto (Delegate No. 179)

A motion to amend Article 175(1) to provide **THAT** the President shall appoint the remaining members of the Cabinet nominated by the Prime Minister from among the members of the National Assembly.

Seconded by Hon. Rihal Singh (Delegate No. 487)

Motion carried.

XV. Hon. Mwalimu Kitambi Digore (Delegate No. 231)

A motion to amend Article 175(2)(b) to provide **THAT** the President shall dismiss Cabinet Ministers or Deputy Ministers upon such recommendation by the Prime Minister.

Motion was carried.

XVI. Hon George Omari Nyamweya (Delegate No. 615)

Motion to amend Article 151 (2)(a)(ii) and (iii) to provide **THAT**:

The President shall appoint and may in accordance with this Constitution dismiss-

- (iii) two Deputy Prime Ministers in consultation with the Prime Minister.

- (iv) not less than fifteen and not more than twenty-seven Ministers in consultation with the Prime Minister.

Motion seconded by Hon. Gacuru wa Karengi (Delegate No.314).

Motion not carried but adopted as a minority position.

XVII. Hon. Maasai Maroa (Delegate No. 422)

THAT the minimum number of Cabinet and Deputy Ministers should be fifteen while the maximum is twenty.

Motion seconded by Hon. Sammy Amunga Aswani (Delegate No. 382).

Motion carried.

XVIII. Hon. Ajaa Olubayi (Delegate No. 395)

THAT Article 159 on the assumption of office of the President be redrafted to reflect the views of the committee to the effect that a successful Prresidential candidate shall be sworn in twenty-one days after the date the Electoral Commission declares the results of the Presidential election.

Motion seconded by Hon. Rihal Singh (Delegate No. 487).

Motion carried.

XIX. Hon. Ajaa Olubayi (Delegate No. 395)

THAT all the words appearing after the words 'private nature' in the sixth line , to the end of paragraph (b) of Article 161(2) be deleted.

Motion Seconded by Hon. William Ruto (Delegate No. 179)

Motion carried.

APPENDIX C

List of Committee Members

NAME	DELEGATE NO.	
1. Hon. Ajaa Olubayi	395	District Delegate
2. Hon. Beatrice W. Kamamia	315	District Delegate
3. Hon. Boniface Mghanga	100	Parliament
4. Hon. Bonny Khalwale	052	Parliament
5. Hon. Dalmas Otieno	614	Political Parties
6. Hon. David Musila	125	Parliament
7. Hon. David Oginde Rev.	534	Religious Organisations
8. Hon. David Oyao	416	District Delegate
9. Hon. Dubat Ali Amey	252	District Delegate
10. Hon. Edward C. Ohare	386	District Delegate
11. Hon. Elizabeth Okelo	414	District Delegate
12. Hon. Enock Kibunguchy	056	Parliament
13. Hon. Ernest Kaitany	341	District Delegate
14. Hon. Fred Gumo	030	Parliament
15. Hon. Gacuru wa Kareng'e	314	District Delegate
16. Hon. George Nyamweya	615	Political Parties
17. Hon. George Saitoti	181	Parliament
18. Hon. Gideon Moi	109	Parliament
19. Hon. Gideon Ndambuki	138	Parliament
20. Hon. Gonzi Rae	177	Parliament
21. Hon. Hannah N. Kimani	318	District Delegate
22. Hon. Hellen Yego	468	NGOs
23. Hon. Hussein M. Mohammed	105	Parliament
24. Hon. Jimmy Angwenyi	007	Parliament
25. Hon. Joel Chebii	441	Trade Unions
26. Hon. John arap Koech	049	Parliament
27. Hon. John Gitari Munyi	284	District Delegate
28. Hon. John Michuki	101	Parliament
29. Hon. Joseph K. Lagat	065	Parliament
30. Hon. Joseph M. Shikuku	595	Political Parties
31. Hon. Kellan Wavomba	390	District Delegate
32. Hon. Kipkalya arap Kones	216	Parliament
33. Hon. Leshore Prisa Sammy	081	Parliament
34. Hon. Lucas Maitha	091	Parliament
35. Hon. Maasai Maroa	422	District Delegate
36. Hon. Maina Kamanda	039	Parliament
37. Hon. Michael Sengech	337	District Delegate
38. Hon. Mike Olievo	613	Political Parties
39. Hon. Mwalimu K. Digore	231	District Delegate
40. Hon. Mwangi Kiunjuri	068	Parliament

41. Hon. Moses Wetangula	209	Parliament
42. Hon. Nick K. Salat	182	Parliament
43. Hon. Nyiva Mwendwa	134	Parliament
44. Hon. Oburu Oginga	157	Parliament
45. Hon. Ogembo Masese	591	Political Parties
46. Hon. Orie Rogo-Manduli	594	Political Parties
47. Hon. Otieno Kajwang'	037	Parliament
48. Hon. Paul K. Muite	114	Parliament
49. Hon. P.K.G Muriithi	120	Parliament
50. Hon. Raphael Muriungi	122	Parliament
51. Hon. Reuben Ndolo	141	Parliament
52. Hon. Reuben Tsumah	235	District Delegate
53. Hon. Rihal B. Singh	487	Professional Organisations
54. Hon. Sally Chepkoech	348	District Delegate
55. Hon. Sammy A. Amunga	382	District Delegate
56. Hon. Sanislous W. Kasoka	296	District Delegate
57. Hon. Thimangu J. Muketha	272	District Delegate
58. Hon. Wahu Kaara	521	Religious Organisations
59. Hon. William arap Ruto	179	Parliament
60. Hon. William Kabogo	027	Parliament

APPENDIX D

SPECIFIC RECOMMENDATIONS ON THE AMENDMENTS TO THE DRAFT BILL

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE TWC-D	AS FORMULATED BY THE MINORITY (IF ANY)	EXPLANATORY NOTES
148.	<p>Principles of executive authority.</p> <p>(1)The powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya.</p> <p>(2) Executive authority assigned to an office bearer by or in terms of this Constitution –</p> <p>(a)vests in that office bearer the power to serve the people, rather than the power to rule; and</p> <p>(b) shall be exercised in a manner consistent with the purpose and objects of the Constitution.</p>	<p>Principles of executive authority</p> <p>(1)The powers of the Executive are to be exercised for the well-being and benefit of the people and the communities of the Republic of Kenya.</p> <p>(2)Executive authority assigned to an office bearer by or in terms of this Constitution -</p> <p>(a) vests in that office bearer the power to serve the people, and not to act in a manner incompatible with the principle of service to the people; and</p> <p>(b) shall be exercised in a manner consistent with the purpose and objects of the Constitution and the laws.</p>		<ul style="list-style-type: none"> The use of the phrase ‘power to serve the people rather than the power to rule’ likely to cause confusion. Redrafting necessary to ensure clarity.
149.	<p>Structure of the National Executive</p> <p>The National Executive of the Republic of Kenya comprises the President, the Vice President, and the Cabinet appointed under Article 151.</p>	<p>Structure of the National Executive</p> <p>The National Executive of the Republic of Kenya comprises the President, the Deputy President, the Prime Minister, the Deputy Prime Ministers and the Cabinet Ministers appointed under Article 151.</p>	Minority position recorded.	<ul style="list-style-type: none"> The committee having settled for the hybrid system of government, all key players of the National Executive

				have to be expressly mentioned.
150.	<p>Authority of President</p> <p>(1) The President –</p> <p>(a) is the Head of State, Commander-in-Chief of the Defense Forces, the Chairperson of the National Security Council and the Chairperson of the Defense Council;</p> <p>(b) is a symbol of the unity of the nation, and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the Republic, promote and respect the diversity of the people, and protect their human rights and fundamental freedoms; and</p> <p>(c) shall uphold, safeguard, and respect the Constitution and the rule of law.</p> <p>(2)The powers of the President shall be exercised in accordance with the Constitution and the laws.</p> <p>(3)The President shall not hold any other public office including any elected or appointed office within a political party.</p>	<p>Authority of President</p> <p>(I) There shall be a President of the Republic of Kenya .</p> <p>(2) The President-</p> <p>(a) is the Head of State, Commander-in-Chief of the Armed Forces, and the Chairperson of the National Security Council;</p> <p>(b) is a symbol of national unity and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the Republic, promote and respect the diversity of the people and the communities of Kenya and ensure the protection of their human rights and fundamental freedoms; and</p> <p>(c) shall uphold, safeguard, and respect the Constitution and the rule of law.</p> <p>(3)The powers of the President shall be exercised in accordance with this Constitution and the laws.</p> <p>(4)The President shall not hold any other public office including any elected or appointed office within a political party.</p>		<ul style="list-style-type: none"> • The office of the President should be created in the constitution.

151.	<p>State functions of President</p> <p>(1)The President –</p> <p>(a) shall address the opening of each newly elected Parliament in accordance with Article 141;</p> <p>(b)shall address a special sitting of Parliament once each year, as provided for in Article 14;</p> <p>(c) may address Parliament at any other time; and</p> <p>(d) may dissolve Parliament only in the circumstances contemplated in Article 142</p> <p>(2) The President shall appoint and may in accordance with this Constitution dismiss–</p> <p>(a) the Cabinet consisting of –</p> <p>(i) a Prime Minister who shall be the leader of the political party that enjoys the majority support in parliament subject to the approval of Parliament as provided for in Article 171</p> <p>(ii) two Deputy Prime Ministers nominated by the Prime Minister as provided for in Article 175</p> <p>(iii) not more than fifteen</p>	<p>State functions of President</p> <p>(1)The President –</p> <p>(a) shall preside at the meetings of the Cabinet.</p> <p>(b) shall be the chairperson of the National Security Council.</p> <p>(2)The President –</p> <p>(a) shall address the opening of each newly elected Parliament in accordance with Article 141;</p> <p>(b) shall address a special sitting of Parliament once each year;</p> <p>(c) may address Parliament at any other time.</p> <p>(d) shall, once every year,</p> <p>(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in Chapter 3, and</p> <p>(ii) cause to be published in detail in the Kenya gazette the measures and progress referred to in paragraph (a).</p> <p>(3)The President shall appoint and may in accordance with this Constitution dismiss –</p>	<p>State functions of President</p> <p>(1)The President –</p> <p>(a)shall address the opening of each newly elected Parliament in accordance with Article 141;</p> <p>(b)shall address a special sitting of Parliament once each year, as provided for in Article 141;</p> <p>(c) may address Parliament at any other time; and</p> <p>(d) may dissolve Parliament only in the circumstances contemplated in Article 142</p> <p>(2) The President shall appoint and may in accordance with this Constitution dismiss–</p> <p>(a) the Cabinet consisting of –</p> <p>(i) a Prime Minister</p>	<ul style="list-style-type: none"> • The President having been elected by Kenyans, should chair the cabinet so that he is informed of and is able to make a contribution to the day to day running of the Executive. • Parliament will never be dissolved as it shall have its own calendar. • The leader of the political party enjoying majority support in Parliament may not be a MP, so it must clearly be stated that for such leader to become a PM, he must be a MP-Parliamentary leader. • A leaner and

<p>Ministers. nominated by the Prime Minister as provided for in Article 175.</p> <p>(b) not more than fifteen Deputy Ministers nominated by the Prime Minister.</p> <p>(c) Judicial Officers.</p> <p>(d) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation.</p> <p>(3) With the prior consent of the Cabinet, the President may-</p> <p>(a) appoint Commissions of Inquiry; or</p> <p>(b) sign instruments of consent by Kenya to be bound by international agreements.</p> <p>(4)After consultation with the Cabinet and the National Defense Council, the President may –</p> <p>(a) declare a state of emergency, subject to Article 71;</p> <p>(b)declare war,</p> <p>(5) The President may –</p> <p>(a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National</p>	<p>(a) the Cabinet consisting of –</p> <p>(i) the Prime Minister as provided for in Article 171;</p> <p>(ii) the two Deputy Prime Ministers nominated by the Prime Minister as provided for in Article 175;</p> <p>(iii) not less than fifteen and not more than twenty Ministers nominated by the Prime Minister as provided for in Article 175;</p> <p>(b) not less than fifteen and not more than twenty Deputy Ministers nominated by the Prime Minister;</p> <p>(c) Judicial Officers as provided for in Article 205;</p> <p>(d) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation.</p> <p>(4)With the prior consent of the Parliament, the President may -</p> <p>(a) appoint Commissions of Inquiry; or</p> <p>(b) sign instruments of consent by Kenya to be bound by international agreements in accordance with Article 102.</p> <p>(5) The report of a Commission of Inquiry appointed by the President shall be laid before Parliament within twenty-one days.</p> <p>(6) After approval of the Cabinet the President may, subject to Article 71, and</p>	<p>who shall be the leader of the political party that enjoys the majority support in parliament subject to the approval of Parliament as provided for in Article 171</p> <p>(ii) two Deputy Prime Ministers nominated by the Prime Minister in consultation with the President as provided for in Article 175</p> <p>(iii) not more than twenty Ministers nominated by the Prime Minister in consultation with the President as provided for in Article 175.</p> <p>(b) not more than twenty five Deputy Ministers nominated by the Prime Minister in consultation with the President.</p> <p>(c) Judicial Officers.</p> <p>(d) any other public officer who the Constitution requires</p>	<p>efficient government is desirable.</p> <ul style="list-style-type: none"> • Commissions of Inquiry should be compelled to make their findings public. <p>Minority Position</p> <ul style="list-style-type: none"> • Someone has to publish a legal notice for the dissolution of Parliament-this should be done by the President. • Consultation between the Prime Minister and the President in the appointment of Cabinet ministers is necessary to enable team work and avoid confrontation.
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	<p>Assembly; and may dismiss them;</p> <p>(b) receive foreign diplomatic and consular representatives;</p> <p>(c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution;</p> <p>(d) pardon or reprieve offenders and remit fines, penalties or forfeitures, in accordance with Article 211 and</p> <p>(e) in consultation with the Prime Minister, confer honors in the name of the people and Republic of Kenya.</p> <p>(6) The President shall ensure that-</p> <p>(a) the international obligations of the Republic are fulfilled and submit a progress report to Parliament annually; and</p> <p>(b) the courts and Constitutional Commissions and officers are able to secure their independence, impartiality, dignity, accessibility and effectiveness, as contemplated in this Constitution.</p>	<p>in accordance with Article 102-</p> <p>(a) declare a state of emergency, or</p> <p>(b) declare war.</p> <p>(7) The President may -</p> <p>(a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National Assembly, and may dismiss them;</p> <p>(b) receive foreign diplomatic and consular representatives;</p> <p>(c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution;</p> <p>(d) pardon or reprieve offenders and remit fines, penalties or forfeitures, in accordance with Article 211; and</p> <p>(e) acting in accordance with the advice of the Ethics and Integrity Commission, confer honors in the name of the people and the Republic of Kenya.</p> <p>(8) The President shall ensure that -</p> <p>(a) the international obligations of the Republic are fulfilled and submit a progress report to Parliament annually, and</p> <p>(b) the Courts and Constitutional Commissions and officers are able to secure their independence, impartiality,</p>	<p>the President to appoint, subject to the applicable provisions of the Constitution or legislation.</p> <p>(5) The President shall -</p> <p>(a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National Assembly; and may dismiss them;</p> <p>(b) receive foreign diplomatic and consular representatives;</p> <p>(c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution as and when such need arises</p> <p>(d) pardon or reprieve</p>	
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		dignity, accessibility and effectiveness as contemplated in this Constitution.	offenders and remit fines, penalties or forfeitures, in accordance with Article 211 and (e) confer honors in the name of the people and Republic of Kenya.	
152.	Legislative functions of President (1) The President may initiate a proposed legislation, and - (a) refer it to the Cabinet with a request that the Cabinet approve submission of that proposed legislation to Parliament as a Government Bill; or (b) refer it to a committee of Parliament, with a request that the committee introduce the Bill as a Committee Bill. (2) When presented with a Bill enacted by Parliament, the President shall do one of the following: (a) refer the Bill back to parliament for re-consideration in accordance with Article 126; (b) refer the Bill to the Supreme	Legislative functions of President (1) The President may initiate a proposed legislation and refer it to the Cabinet with a request that the Cabinet approve the submission of that proposed legislation to the National Assembly as a Government Bill. (2) When presented with a Bill passed by Parliament, the President shall do one of the following: (a) refer the Bill back to Parliament for re-consideration in accordance with Article 124 and 126; (b) assent to the Bill in accordance with article 124(2). (3) The President shall ensure that - (a) public participation requirements concerning the enactment of legislation and regulations have been satisfied; and (b) the Cabinet assigns responsibility for the implementation and administration of every Act of Parliament to a Cabinet		<ul style="list-style-type: none"> The President could work with a committee of Parliament and use it to interfere with the sovereignty and independence of Parliament.

	<p>Court of Kenya for an opinion on the constitutionality of the Bill in accordance with Articles 124 and 125; or</p> <p>(c) assent to and sign the Bill.</p> <p>(3) The President, with prior approval of the Cabinet and of the relevant committee of Parliament, shall assent to and sign any regulation authorized in terms of an Act of Parliament.</p> <p>(4) The President shall ensure that –</p> <p>(a) public participation requirements concerning the enactment of legislation and regulations have been satisfied; and</p> <p>(b) the Cabinet assigns responsibility for the implementation and administration of every Act of Parliament to a particular minister.</p>	Minister or Cabinet Ministers concerned.		
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153.	<p>Decisions of President A decision by the President under the authority of the Constitution or any law shall be in writing and shall bear the signature of the President.</p>	<p>Decisions of President A decision by the President under the authority of this Constitution or of any other law shall be in writing and shall bear the seal and signature of the President.</p>		<ul style="list-style-type: none"> • Decisions of the President ought to be signed and sealed for legitimacy.
	<p>Curtailment of Presidential powers (1) This Article applies to a person who holds the office of President, or who is authorized in terms of the Constitution, to exercise the powers of the President – (a) during a period commencing on the date of the first vote in a Presidential election, and ending when the newly elected President assumes office; or (b) while the President is temporarily absent or incapacitated, as contemplated in Article 167; (2) During a period referred to in clause (1), a person to whom this Article applies may not exercise any power of the President referred to or contemplated in the following Articles; (a) Articles 151 and 194 relating to the nomination or appointment of</p>	<p>Curtailment of presidential powers (1) This Article applies to a person who holds the office of President, or who is authorized in terms of this Constitution, to exercise the powers of the President: (a) during a period commencing on the date of the first vote in a presidential election, and ending when the newly elected President assumes office; or (b) while the President is temporarily absent or incapacitated, as contemplated in Article 167. (2) During a period referred to in clause (1), a person to whom this Article applies may not exercise any power of the President referred to or contemplated in the following Articles: (a) Articles 151 and 194, relating to the nomination or appointment of judicial officers. (b) Article 197, relating to a complaint leading to the removal of a judicial officer; and (c) Articles 151, relating to the nomination</p>		

	<p>judicial officers.</p> <p>(b) Article 197 relating to a complaint leading to the removal of a judicial officer; and</p> <p>(c) Articles 151 relating to the nomination or appointment of any other public officer who the Constitution or legislation requires the President to appoint;</p> <p>(d) Article 151 relating to the appointment or dismissal of persons to represent the Republic of Kenya as high commissioners, ambassadors, or diplomatic or consular representatives;</p> <p>(e) Article 211 relating to the authority to grant a pardon, reprieve offenders, or remit fines, penalties or forfeitures;</p> <p>(f) Article 151 relating to the authority to confer honors in the name of the people and Republic of Kenya.</p>	<p>or appointment of any other public officer who the Constitution or legislation requires the President to appoint;</p> <p>(d) Article 151, relating to the appointment or dismissal of persons to represent the Republic of Kenya as high commissioners, ambassadors, or diplomatic or consular representatives;</p> <p>(e) Article 211, relating to the authority to grant a pardon, reprieve offenders, or remit fines, penalties or forfeitures; and</p> <p>(f) Article 151, relating to the authority to confer honors in the name of the people and the Republic of Kenya.</p>		
155.	<p>Right to vote and timing of presidential elections.</p> <p>(1) The election of the President shall be direct by adult suffrage through a secret ballot and shall be conducted in accordance with this Part and with any Act of</p>	<p>Right to vote and timing of presidential elections</p> <p>(1) The election of the President shall be direct by adult suffrage through a secret ballot and shall be conducted in accordance with this Part and with any Act of Parliament regulating presidential</p>		<ul style="list-style-type: none"> • It is important to have a set day for elections, to avoid manipulation by those in power, and the ambushing of

	<p>Parliament regulating Presidential elections.</p> <p>(2) An election of the President shall be held</p> <p>(a) on the second Tuesday in August, and thereafter, on the second Tuesday in August every fifth year; or</p> <p>(b) in the circumstances contemplated by Article 164.</p>	<p>elections.</p> <p>(2) An election of the President shall be held</p> <p>(a) on the second Tuesday in August, and thereafter, on the second Tuesday in August every fifth year; or</p> <p>(b) in the circumstances contemplated by Article 164.</p>		<p>other electoral candidates.</p> <ul style="list-style-type: none"> • The date provided in the Draft for elections is most ideal.
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	<p>Qualifications for election as President</p> <p>(1) A person is qualified for nomination as a presidential candidate if the person –</p> <p>(a) is a citizen of Kenya by birth;</p> <p>(b) has attained the age of thirty-five years but is below the age of seventy years;</p> <p>(c) is of high moral integrity and impeccable character;</p> <p>(d) holds a degree from a recognized university; and</p> <p>(e) is nominated by a registered political party; or</p> <p>(f) is nominated as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each province.</p> <p>(2) A person is not qualified for nomination as a presidential candidate if the person –</p> <p>(a) is under an oath of allegiance to a foreign state;</p> <p>(b) holds or is acting in any office in the public service (including the office of judge, magistrate or other judicial office, or an office to which Article 108 applies), in the</p>	<p>Qualifications and Disqualifications for election as President</p> <p>(1) A person is qualified for nomination as a presidential candidate if that person –</p> <p>(a) is a citizen of Kenya by birth, and of sound mind;</p> <p>(b) is not an undischarged bankrupt;</p> <p>(c) is not serving a sentence of imprisonment for the commission of a crime;</p> <p>(d) has not been removed from public office on the ground of gross misconduct;</p> <p>(e) is a registered voter;</p> <p>(f) satisfies any moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and</p> <p>(g) is nominated by a registered political party; or</p> <p>(h) is nominated as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each province.</p> <p>(2) A person is not qualified for nomination as a presidential candidate if that person –</p> <p>(a) is under an oath of allegiance to a foreign state;</p> <p>(b) holds or is acting in any office in the public service, including the office of judge, magistrate or any other judicial</p>	<p>Qualifications for election as President</p> <p>(1) A person is qualified for nomination as a presidential candidate if the person –</p> <p>(a) is a citizen of Kenya by birth;</p> <p>(b) has attained the age of thirty-five years;</p> <p>(c) is of high moral integrity and impeccable character;</p> <p>(d) holds a degree from a recognized university or comparable professional or other qualifications; and</p> <p>(e) is nominated by a registered political party; or</p> <p>(f) is nominated as an independent candidate by at least seven thousand registered voters each from at least fifty percent of the Republic's Districts.</p> <p>(2) A person is not qualified for nomination as a</p>	<ul style="list-style-type: none"> • Age comes with wisdom and experience, and as long as one is not senile, they should not be limited from holding the office of the President. • If no upper age limit for Presidential candidates is set, it is only fair to scrap the lower age limit too. • As long as there is a limit of two terms in office, the age of the President need not be limited. • One need not have a degree to be able to lead. Literacy and basic understanding is the underlying objective. <p><u>Minority Position</u></p>
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	<p>defense forces of the Republic, or in a local government authority</p> <p>(c) is a member of any constitutional Commission or other constitutional institution;</p> <p>(d) is a member of Parliament;</p> <p>(e) is a candidate for election as a member of Parliament;</p> <p>(f) has ever been removed from office on grounds of any violation of the Constitution or for gross misconduct; or</p> <p>(g) is disqualified from holding the office of President under this Article.</p>	<p>office, or an office to which Article 103 applies, in the defense forces of the Republic, or in a local government authority;</p> <p>(c) is a member of any Constitutional Commission or any other constitutional institution;</p> <p>(d) is a member of Parliament;</p> <p>(e) is a candidate for election as a member of Parliament;</p> <p>(f) has ever been removed from office on grounds of any violation of this Constitution or for gross misconduct; or</p> <p>(g) is disqualified from holding the office of President .</p>	<p>presidential candidate if the person –</p> <p>(a) is under an oath of allegiance to a foreign state;</p> <p>(b) holds or is acting in any office in the public service (including the office of judge, magistrate or other judicial office, or an office to which Article 108 applies), in the defense forces of the Republic, or in a local government authority</p> <p>(c) is a member of any constitutional Commission or other constitutional institution;</p> <p>(d) has ever been removed from office on grounds of any violation of the Constitution or for gross misconduct; or</p> <p>(e) is disqualified from holding the office of President under this Article..</p>	<ul style="list-style-type: none"> • There ought to a lower age limit for Presidential candidates, to ensure that those allowed to vie for the office are mature persons. • Presidential candidates ought to be educated persons, having at least a basic University Degree.
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			Provided, a person elected as President or Deputy President and also as a Member of Parliament shall immediately vacate his seat as Member of Parliament.	
157	Procedure at presidential election (1) If only one candidate for President is nominated, that candidate is elected as President. (2) If more than one candidate for President is nominated, a poll shall be taken in each constituency for the election of a President. (3) In a presidential election – (a) all persons registered as voters for the purposes of parliamentary elections shall be entitled to vote; (b) the poll shall be taken by a secret ballot on the day specified in Article 155 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; and (c) after counting of the votes in the polling stations, the Electoral Commission shall declare the	Procedure at presidential election (1) If only one candidate for President is nominated, the candidate is elected as President. (2) If two or more candidates for President is nominated, a poll shall be taken in each constituency for the election of the President. (3) In a presidential election – (a) all persons registered as voters for the purposes of general elections are entitled to vote; (b) the poll shall be taken by a secret ballot on the day specified in Article 155 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; (c) after counting of the votes in the polling stations, the Electoral Commission shall declare the result. (4) The candidate for President who receives more than fifty percent of all the votes cast in the election and who in	Minority position recorded.	

	<p>result.</p> <p>(4)The candidate for President who receives more than fifty percent of all the votes cast in the election and who, in addition, receives a minimum of twenty percent of the votes cast in more than half of the provinces shall be elected as the President.</p> <p>(5)If no candidate is elected, a fresh election shall be held within three weeks of the previous poll and in that election, the only candidates shall be the candidate who scored the largest number of votes and the candidate who secured the second largest number of votes. The candidate who receives the largest number of votes is elected as President</p> <p>(6) Where in a presidential election –</p> <p>(a) no candidate has been nominated before the expiry of the time set for the delivery of nominations; or</p> <p>(b) a candidate dies on or before any of the days on which the poll is taken; or</p> <p>(c) a candidate who would, but</p>	<p>addition, receives a minimum of twenty-five percent of votes cast in more than half of the regions shall be elected as the President.</p> <p>(5) If no candidate is elected, a fresh election shall be held within three weeks of the previous poll and in that election, the only candidates shall be</p> <p>(a) the candidate who receives the largest number of votes;</p> <p>(b) the candidate who receives the second largest numbers of votes;</p> <p>and the candidate who receives the largest number votes is elected as President.</p> <p>(6) A presidential election shall be cancelled and a new election held if–</p> <p>(a) no candidate has been nominated before the expiry of the time set for the delivery of nominations, or</p> <p>(b) a candidate dies on or before any of the days on which the poll is taken, or</p> <p>(c) a candidate who would, but for their death, have been entitled to be declared elected as President, dies after the taking of the poll has began but before the candidate is declared elected as President.</p> <p>(7) A new election shall be held under clause (6) within sixty days of the time for the previous presidential election.</p> <p>(8) The chairperson of the Electoral Commission shall deliver a written</p>		
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	<p>for their death, have been entitled to be declared elected as President, dies after the taking of the poll has begun but before the candidate is declared elected as President; an election shall be held within thirty days of the time for the previous presidential election.</p> <p>(7)The chairperson of the Electoral Commission shall deliver a written declaration of the results of a presidential election to the incumbent President and to the Chief Justice within seven days of the election.</p>	<p>declaration of the results of a presidential election to the incumbent President and to the Chief Justice within seven days of the election.</p>		
158.	<p>Questions as to validity of presidential election</p> <p>The Supreme Court shall determine any question arising as to whether any provision of the Constitution or other law relating to presidential elections has been complied with; or whether any person has been elected as President under Article 188.</p>	<p>Questions as to validity of presidential election</p> <p>(1) A person may file a petition at the Supreme Court to challenge the election of the President-elect.</p> <p>(2) The petition shall be filed within seven days after the date of the announcement of the results of the Presidential election by the Electoral Commission.</p> <p>(3) The Supreme Court shall, within seven days of the filing, determine the petition.</p>	<p>Questions as to validity of presidential election</p> <p>The High court shall have Original jurisdiction to determine any question arising as to whether any provision of the Constitution or other law relating to Presidential elections has been complied with; or whether any</p>	<ul style="list-style-type: none"> • To save time spent on the determination of presidential election petitions and to promptly determine the person legitimately elected as President, it is important to give sole jurisdiction on the matter to the Supreme Court. <p>Minority Position:</p>

			<p>person has been elected as President under Article 157 and an appeal shall lie in the Supreme Court on questions of law.</p>	<ul style="list-style-type: none"> • It would be dangerous to give any court the first and final word on a matter, hence the validity of presidential elections should first be challenged in the high court and provision made for appeal in the Supreme Court.
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	<p>Assumption of office of President</p> <p>The person elected as President assumes office by taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a judge of the Supreme Court on the date when the term of office of the incumbent President ends.</p>	<p>Assumption of office of President</p> <p>The President-elect,</p> <ul style="list-style-type: none"> (a) shall be sworn in on the first Tuesday of September following the twenty-one days after the date of the announcement of the result of the presidential election by the Electoral Commission; or (b) shall be sworn in within seven days of the determination by the Supreme Court of the election petition filed under Article 158; (c) assumes office by taking and subscribing to <ul style="list-style-type: none"> (i) the oath or affirmation of allegiance, and (ii) the oath or affirmation for the due execution of the functions of the office <p>as prescribed in the Fourth Schedule, before the Chief Justice or a judge of the Supreme Court on the date when the term of office of the incumbent President ends.</p>		<ul style="list-style-type: none"> • The oath of office should be administered on the twenty-first day of declaration of the results of Presidential elections, to allow the resolution of any petitions that may have arisen.
	<p>Term of office of President</p> <p>(1) The President shall hold office for a term not exceeding five years, beginning from the date of assumption of office.</p> <p>(2) A person shall not hold office as the President for more than two</p>	<p>Term of office of President</p> <p>(1) The President shall hold office for a term not exceeding five years, beginning from the date of assumption of office.</p> <p>(2) A person shall not hold office as the President for more than two terms of five years each.</p>		<p>It is fair to consider any part of a term a term, to avoid the possibility of one serving several parts of a term, with the consequence</p>

	terms of five years each.	(3) A President who has served any part of a term of office shall be deemed to have served a full term.		that the total duration served amounts to more than two terms of five years each.
161.	<p>Protection of President in respect of legal proceedings during office</p> <p>(1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.</p> <p>(2) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under the Constitution during their tenure of office unless such proceedings are wholly of a private nature; and –</p> <p>(a) at least thirty days' notice of the proceedings has been served on the President or the person performing the functions of the office; and</p> <p>(b) the nature of the proceedings,</p>	<p>Protection from legal proceedings</p> <p>(1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.</p> <p>(2) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under this Constitution during their tenure of office unless the proceedings are wholly of a private nature.</p> <p>(3) Parliament shall enact a law to provide for the operation of clause (2).</p> <p>(4) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which that person holds or performs the functions of the office of the President shall not be taken into account in calculating the period of time prescribed by that law.</p>	<p>Protection of President in respect of legal proceedings during office</p> <p>(1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.</p> <p>(2) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under the Constitution during their tenure of office.</p>	<p>Minority Position:</p> <p>No proceedings of whatever nature should be brought against the President during his/her tenure of office, to avoid disrupting his/her ability to effectively serve in the office.</p>

	<p>the cause of action, the name and the address of the claimant and the relief sought are specified in the notice.</p> <p>(3) Parliament shall enact a law to provide for the operation of clause (2).</p> <p>(4) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which the person holds or exercises the functions of the office of the President shall not be taken into account in calculating any period of time prescribed by that law.</p>		<p>(3)Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which the person holds or exercises the functions of the office of the President shall not be taken into account in calculating any period of time prescribed by that law.</p>	
162.	<p>Removal of President on grounds of incapacity.</p> <p>(1) If it is resolved by one-half of all the members of the National Assembly that the question of the physical or mental capacity of the President to discharge the functions of the office ought to be investigated and they so inform the Chief Justice, the Chief Justice shall within seven days of the resolution, appoint a tribunal consisting of five persons qualified</p>	<p>Removal of President on grounds of incapacity</p> <p>(1) A member of the National Assembly may, at any sitting of the Assembly move a motion for the removal from office of the President on the ground of the physical or mental capacity of the President o perform the functions of office.</p> <p>(2) If it is resolved by one half of all the members of the National Assembly that the question of the physical or mental capacity of the President to perform the</p>		<ul style="list-style-type: none"> • The Medical Practitioners and Dentists Board is the body that oversees Medical practice, and is therefore best suited to nominate members of the said tribunal. • If the health of the President is to be put to

	<p>as medical practitioners under the laws of Kenya to investigate the matter.</p> <p>(2) The tribunal shall inquire into the matter and report to the Chief Justice.</p> <p>(3) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the National Assembly may, by a resolution supported by two-thirds of all its members, authorize the Speaker of the National Assembly to appoint a tribunal.</p> <p>(4) If the tribunal reports that the President is incapable of discharging the functions of the office, the Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and table the certificate together with the report of the tribunal before the National Assembly.</p> <p>(5) The National Assembly may, on a motion supported by the votes of two thirds of its members-</p> <p>(a) ratify the decision of the tribunal, and thereupon the President shall cease to hold office; or</p>	<p>functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,</p> <p>(a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and</p> <p>((b) the other one nominated by the President or a close relative or a member of the family of the President.</p> <p>(3) Where the National Assembly resolves that the question of the physical or mental capacity of the President to perform the functions of the office be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (1) reports that the President is incapable of performing the functions of the office, whichever is earlier, continue to perform the functions of the office.</p> <p>(4) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker of the National Assembly shall appoint a tribunal within seven days.</p> <p>(5) The tribunal shall inquire into the matter and report –</p> <p>(a) to the Chief Justice within fourteen</p>		<p>question and subjected to a review, then it is only fair that a doctor appointed by the President sits on the tribunal.</p> <ul style="list-style-type: none"> • The votes needed to ratify the decision of the Tribunal must not be so high as to be unattainable, hence the requirement should be lowered to one-half of the members of the National Assembly.
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	<p>(b) reject the decision of the tribunal and cause a further inquiry into the matter and shall thereafter decide on such question by a two-thirds majority vote, which decision shall be final.</p> <p>(6) Where the National Assembly resolves that the question of the physical or mental capacity of the President to discharge the functions of the office be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (1) reports that the President is not incapable of discharging the functions of his office, whichever is earlier, cease to perform the functions of the office.</p> <p>(7) A motion for the purposes of clause (1) may be proposed at any meeting of the National Assembly.</p>	<p>days of the appointment and send a copy direct to the Speaker of the National Assembly, or</p> <p>(b) to the Speaker of the National Assembly within fourteen days of the appointment of the tribunal by the Speaker.</p> <p>(6) The Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly and take the certificate together with the report of the tribunal before the National Assembly.</p> <p>(7) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.</p> <p>(8) If the tribunal reports that the President is incapable of performing the functions of the office, the National Assembly shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the President shall cease to hold office.</p>		
<p>163.</p> <hr/>	<p>Impeachment and removal of President.</p> <p>(1) If two thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the</p>	<p>Impeachment and removal of President</p> <p>(1) A member of the National Assembly may, at any sitting of the Assembly, move a motion for the impeachment of the President on the grounds of,</p> <p>(a) a violation of a provision of this</p>		

	<p>Constitution or gross misconduct, the Speaker of the National Council shall convene a meeting of the National Council to hear charges against the President.</p> <p>(2) The Speaker of the National Council shall –</p> <p>(a) if the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within seven days; or</p> <p>(b) if the National Council is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.</p> <p>(3) If a motion is passed under clause (2), the Speaker shall constitute a special committee comprising-</p> <p>(a) the Chief Justice, who shall be the chairperson; and</p> <p>(b) thirteen members appointed by the National Council in accordance with the Standing Orders of the Council, taking into account the proportional representation of the political parties represented in that House, to investigate the matter.</p>	<p>Constitution, or</p> <p>(b) gross misconduct.</p> <p>(2) If two thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President.</p> <p>(3) The Speaker of the Senate shall,</p> <p>(a) if the Senate is then sitting or has been summoned to meet, bring the motion to the notice of the Senate for its consideration within seven days; or</p> <p>(b) if the Senate is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.</p> <p>(4) If a motion is passed under clause (3), for the impeachment of the President, the Speaker of the National Assembly shall constitute a special committee comprising-</p> <p>(a) the Chief Justice as the chairperson, and</p> <p>(b) thirteen members appointed by the Senate in accordance with the Standing Orders of the Senate, taking into account the proportional representation of the political parties represented in the Senate, to investigate the matter.</p>		
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	<p>(4) The special committee shall investigate the matter and shall, within ten days, report to the National Council whether it finds the particulars of the allegations against the President to have been substantiated.</p> <p>(5) The President shall have the right to appear and be represented before the special committee during its investigations.</p> <p>(6) If the special committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.</p> <p>(7) If the special committee reports that the particulars of any allegation against the President have been substantiated, the National Council shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.</p>	<p>(5) The special committee shall investigate the matter and shall, within ten days, report to the Senate whether it finds the particulars of the allegations against the President to have been substantiated.</p> <p>(6) The President shall have the right to appear and be represented before the special committee during its investigations.</p> <p>(7) If the special committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.</p> <p>(8) If the special committee reports that the particulars of any allegation against the President have been substantiated, the Senate shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.</p>		
164	Vacancy in the office of President.	Vacancy in the office of President (1) Where a vacancy occurs in the office of		<ul style="list-style-type: none"> • Thirty days is too short for the

	<p>(1) If there is a vacancy in the office of the President by reason of the President's death, resignation or ceasing to hold office by virtue of Articles 162 and 163, the Vice-President shall assume the functions of the office except that if the residual term of the President exceeds two and a half years, it shall be deemed to be a full presidential term for the purposes of Article 160.</p> <p>(2) If there is a vacancy in the office of the President and that of the Vice President, the Speaker the National Assembly and, if there is no Speaker of the National Assembly, the Speaker of the National Council shall assume the functions of the office of the President and the Electoral Commission shall conduct an election for President and Vice president within thirty days of the vacancy in the office of the Vice-President.</p>	<p>the President by reason of the President's death, resignation or ceasing to hold office by virtue of Articles 162 and 163, the Deputy President shall assume office as the President.</p> <p>(2) A term served by the Deputy President as President under Clause (1) shall be deemed to be a full presidential term for the purposes of Article 160.</p> <p>(3) Where a vacancy occurs in the office of the President and that of the Deputy President, the Speaker of the National Assembly shall assume the functions of the office of the President.</p> <p>(4) Where the Speaker of the National Assembly cannot for any reason assume the office of the President under clause (3), the Speaker of the Senate shall assume those functions.</p> <p>(5) For purposes of clauses (3) and (4), the Electoral Commission shall conduct a presidential election within sixty days of the vacancy in the office of the Deputy President.</p>		<p>nomination process, preparation of registers and the issuance of a notice by the ECK following a vacancy in the office of the President. A duration of sixty days would be sufficient.</p>
165.	<p>Office of Vice-President</p> <p>(1) There shall be a Vice-President</p>	<p>Office of Deputy President</p> <p>(1) There shall be a Deputy President of</p>		

	<p>of Kenya.</p> <p>(2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Vice-President.</p> <p>(3) The Electoral Commission shall not conduct a separate election for the Vice-President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Vice-President.</p> <p>(4) A person declared elected as the Vice-President shall assume the office by taking and subscribing to the oath of allegiance and the oath for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice.</p> <p>(5) The term of office of the Vice-President shall run from the date the President assumes office and shall terminate –</p> <p>(a) when the next President assumes office; or</p> <p>(b) upon the Vice-President assuming the office of President;</p>	<p>Kenya.</p> <p>(2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Deputy President</p> <p>(3) The Electoral Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President.</p> <p>(4) A person declared elected as the Deputy President shall assume the office by taking and subscribing to the oath of allegiance and the oath for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice.</p> <p>(5) The term of office of the Deputy President shall run from the date the President assumes office and shall terminate -</p> <p>(a) when the next President assumes office; or</p> <p>(b) upon the Deputy President assuming the office of President; or on resignation, death or removal from office.</p> <p>(6) The Deputy President may, at any time, resign from office by notice in</p>		
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	<p>or on resignation, death or removal from office.</p> <p>(6) The Vice-President may, at any time, resign from office by notice in writing addressed to the President and such resignation shall take effect on the date and at the time specified in the notice, if any, or if no date is specified, at noon on the day after the notice is delivered.</p> <p>(7) The provisions of Articles 162 and 163 as to the removal from office and impeachment of the President shall, with the necessary alterations, apply to the office of the Vice-President.</p> <p>(8) The Vice-President shall not serve for more than two terms of five years each.</p>	<p>writing addressed to the President and the resignation shall take effect on the date and at the time specified in the notice if any, or if no date is specified, at noon on the day after the notice is delivered.</p> <p>(7) The provisions of Articles 162 and 163 as to the removal from office and impeachment of the President shall, with the necessary alterations, apply to the office of the Deputy President.</p> <p>(8) The Deputy President shall not serve for more than two terms of five years each.</p>		
166.	<p>Vacancy in the office of Vice-President.</p> <p>(1) If there is a vacancy in the office of the Vice-President, the President shall nominate a candidate qualified in terms of Article 165 for the Vice-President.</p> <p>(2) A nomination under clause (1) shall be in writing and shall be submitted to the Speaker of</p>	<p>Vacancy in the office of Deputy President</p> <p>(1) If there is a vacancy in the office of the Deputy President, the President shall nominate a candidate qualified in terms of Article 165 to be the Deputy President.</p> <p>(2) A nomination under clause (1) shall be in writing and shall be submitted to the Speakers of Parliament within fourteen days of the vacancy.</p>		

	<p>Parliament within fourteen days of the vacancy.</p> <p>(3) Parliament may, by a resolution supported by the votes of two-thirds of its members, approve the person nominated under this Article as the Vice-President.</p> <p>(4) A person approved as the Vice-President under clause (3) shall assume office not later than fourteen days of the approval, in the manner specified in Article 165(4).</p> <p>(5) The term of office of a Vice-President approved under this Article shall run from the date the Vice-President assumes office and shall terminate in the manner specified in Article 119 (5).</p>	<p>(3) Parliament may, by a resolution supported by the votes of two-thirds of its members, approve the person nominated under this Article as the Deputy President.</p> <p>(4) A person approved as the Deputy President under clause (3) shall assume office forthwith in the manner specified in Article 165(4).</p> <p>(5) The term of office of a Deputy President approved under this Article shall run from the date the Deputy President assumes office and shall terminate in the manner specified in Article 165(5).</p>		
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	<p>Functions of the Vice-President</p> <p>(1) The Vice-President shall be the principal assistant of the President in the execution of his or her functions.</p> <p>(2) The Vice-President shall perform the functions conferred by the Constitution and such other functions as the President may, from time to time, assign.</p> <p>(3) While in office, the Vice-President shall not, directly or indirectly, hold any other public office, including any office in a political party, or any other paid office in the employment of any person.</p> <p>(4) The Vice President shall act on behalf of the President when the President is incapacitated or absent from the Republic.</p>	<p>Functions of the Deputy President</p> <p>(1) The Deputy President shall be the principal assistant of the President in the execution of his or her functions.</p> <p>(2) The Deputy President shall perform the functions conferred by this Constitution and any other functions as the President may, from time to time assign.</p> <p>(3) While in office, the Deputy President shall not, directly or indirectly, hold any other public office, including any office in a political party, or any other paid office in the employment of any person.</p> <p>(4) The Deputy President shall act on behalf of the President when the President is temporarily incapacitated or absent from the Republic of Kenya</p>		<ul style="list-style-type: none"> • The Deputy President can only act on behalf of the President if the President is temporarily, not permanently incapacitated, because in the latter case, the Deputy President would assume the office of the President.
168.	<p>Death before assuming office</p> <p>(1) If a person elected as President dies before assuming office, the person declared elected as the Vice-President shall assume the office of President.</p> <p>(2) Upon assuming the office of the President under clause (1), the office of the Vice-President shall fall vacant.</p>	<p>Death before assuming office</p> <p>(1) If a person elected as president dies before assuming office, the person declared elected as the Deputy President shall assume the office of President.</p> <p>(2) Upon assuming the office of the President under clause (1), the office of the Deputy President shall fall vacant.</p> <p>(3) If a person declared elected as the Deputy President dies before assuming</p>		<ul style="list-style-type: none"> • Thirty days is too short for the nomination process, preparation of registers and the issuance of a notice by the ECK following a vacancy in the office of the

	<p>(3) If a person declared elected as the Vice-President dies before assuming office, the office of the Vice-President shall be deemed vacant upon the assumption of office by the person declared elected as the President.</p> <p>(4) If both the persons declared elected as the President and the Vice-President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within thirty days of the second such death.</p>	<p>office, the office of the Deputy President shall be deemed vacant upon the assumption of office by the person declared elected as the President.</p> <p>(4) If both the persons declared elected as the President and the Deputy President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within sixty days of the second death.</p>		<p>President. A duration of sixty days would be sufficient.</p>
169.	<p>Salaries and allowances of President and Vice-President</p> <p>(1) The President and the Vice-President shall receive such salary, allowances and benefits as may be prescribed by the Salaries and Remuneration Commission.</p> <p>(2) A person who has held the office of President or Vice-President shall receive such pension, gratuity and other retirement benefits as may be determined by the Salaries and Remuneration Commission.</p>	<p>Salaries and allowances of President and Deputy-President</p> <p>(1) The President and the Deputy President shall receive such salary, allowances and benefits as may be prescribed by the Salaries and Remuneration Commission.</p> <p>(2) A person who has held the office of President or Deputy President shall receive such pension, gratuity and other retirement benefits as may be determined by the Salaries and Remuneration Commission.</p> <p>(3) The salary and allowances payable to</p>		

	<p>(3)The salary and allowances payable to the President or Vice-President, including any pension or gratuity payable on retirement, shall be charged on the Consolidated Fund.</p> <p>(4)The salary, allowances and privileges of the President or Vice-President shall not be varied to their disadvantage while in office.</p> <p>(5)The pension, gratuity and other retirement benefits payable to the President or Vice-President on retirement and the facilities available to them shall not be varied to their disadvantage during their lifetime.</p>	<p>the President or Deputy President, including any pension or gratuity payable on retirement, shall be charged on the Consolidated Fund.</p> <p>(4) The salary, allowances and privileges of the President or Deputy President shall not be varied to their disadvantage while in office.</p> <p>(5) The pension, gratuity and other retirement benefits payable to the President or Deputy President on retirement and the facilities available to them shall not be varied to their disadvantage during their lifetime.</p>		
170.	<p>Prime Minister</p> <p>(1) The Prime Minister is the leader of the Cabinet and presides at meetings of the Cabinet.</p> <p>(2)The Prime Minister and the other members of the Cabinet exercise executive authority within the Republic by -</p> <p>(a) developing and implementing national budgets and policy;</p> <p>(b) preparing and initiating government legislation for introduction in Parliament;</p> <p>(c) implementing and</p>	<p><u>Prime Minister</u></p> <p>(1)There shall be a Prime Minister of the Republic of Kenya.</p> <p>(2)The Prime Minister and the other members of the Cabinet exercise executive authority within the Republic by -</p> <p>(a)developing, in conjunction with Parliament, and implementing national budgets and policy;</p> <p>(b)preparing and initiating government legislation for introduction in Parliament;</p> <p>(c)implementing and administering Acts of Parliament;</p>		<ul style="list-style-type: none"> • The President and not the Prime Minister shall chair the Cabinet. • Parliament must be involved in the development of the National Budget, and ultimately have a supervisory role in the implementation of the same.

	<p>administering Acts of Parliament; (d) co-ordinating the functions of ministries and departments; and (e) performing any other executive function provided for by the Constitution or an Act of Parliament, except those functions assigned to the President.</p>	<p>(d)co-ordinating the functions of ministries and departments; and (e) performing any other functions provided for by this Constitution or an Act of Parliament, except those functions assigned to the President. (3)In the absence of the President and the Deputy President, the Prime Minister shall chair the meetings of the Cabinet. (4) In the absence of the Prime Minister, one of the Deputy Prime Ministers shall perform the functions of the Prime Minister. (5) The Deputy Prime Minister when performing the functions of the Prime Minister under clause (4) shall not exercise a power of the Prime Minister in relation to – (a) nomination or recommendation for appointment to a public office. (b) the allocation of functions to or the transfer of functions from a Deputy Prime Minister, Cabinet Minister or Deputy Minister.</p>		<ul style="list-style-type: none"> • The Constitution may provide functions for the Prime Minister which need not necessarily be executive
171.	<p>Appointment of Prime Minister. (1)Within seven days following the summoning of the National Assembly, or whenever necessary to fill a vacancy in the office of Prime Minister, the President shall</p>	<p>Appointment of Prime Minister (1)Within seven days following the summoning of the National Assembly or whenever necessary to fill a vacancy in the office of Prime Minister, the President shall propose to the Speaker of the</p>		<ul style="list-style-type: none"> • The period in Clause (6) of the Article needs to be extended to sixty, as there is need to allow negotiations

	<p>propose to the Speaker of the National Assembly the appointment as Prime Minister of –</p> <p>(a) the leader of the majority political party, or coalition of parties, represented in the National Assembly; or</p> <p>(b) the leader of the minority political party, or coalition of parties represented in the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly; or</p> <p>(c) if neither person contemplated in paragraph (a) or (b) has been able to command or retain the confidence of National Assembly, then any other member of the National Assembly who, in the President’s opinion, may be able to command or retain the confidence of the National Assembly.</p> <p>(2) Upon receiving a proposal from the President in terms of this Article, the Speaker shall summon the National Assembly and introduce the proposal from the</p>	<p>National Assembly the appointment as Prime Minister of –</p> <p>(a) the member of the National Assembly who is the leader of the majority political party, or coalition of parties represented in the National Assembly; or</p> <p>(b) the member of the National Assembly who is the leader of the minority political party, or coalition of parties represented in the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly; or</p> <p>(c) if neither person contemplated in paragraph (a) or (b) has been able to command or retain the confidence of the National Assembly, then any other member of the National Assembly who, in the President’s opinion, may be able to command or retain the confidence of the National Assembly.</p> <p>(2) Upon receiving a proposal from the President in terms of this Article, the Speaker shall summon the National Assembly and introduce the proposal from the President.</p> <p>(3) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by</p>		<p>with a view to reaching a decision in the event of a deadlock in the appointment of a Prime Minister.</p>
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	<p>President.</p> <p>(3) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by the President.</p> <p>(4) A vote contemplated in clause (3) passes if it is supported by at least fifty percent of the members of the National Assembly.</p> <p>(5) If the National Assembly fails to confirm the appointment of a person proposed by the President, the President shall propose another person within one week after the vote in the National Assembly.</p> <p>(6) If, within thirty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed by the National Assembly the President shall –</p> <p>(a) dissolve Parliament; and</p> <p>(b) require the Electoral Commission to conduct a fresh general election for Parliament.</p>	<p>the President.</p> <p>(4) A vote contemplated in clause (3) passes if it is supported by at least fifty percent of the members of the National Assembly.</p> <p>(5) If the National Assembly fails to confirm the appointment of a person proposed by the President, the President shall propose another person within one week after the vote in the National Assembly.</p> <p>(6) If, within sixty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed, the National Assembly shall stand dissolved and the Electoral Commission shall conduct a fresh general election for National Assembly.</p>		
172.	<p>Term of office</p> <p>(1) A person whose appointment</p>	<p>Term of office</p> <p>(1) A person whose appointment as Prime</p>	<p>Term of office</p> <p>(1) A person whose</p>	<p><u>Minority Position</u></p> <ul style="list-style-type: none"> • A similar

	<p>as Prime Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before the Speaker and Members of Parliament.</p> <p>(2) The term of office of the Prime Minister continues until –</p> <p>(a) the Prime Minister dies, resigns or is dismissed from offices; or</p> <p>(b) until the next person appointed Prime Minister following a general election assumes office.</p>	<p>Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and the Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before the Speaker and Members of Parliament.</p> <p>(2) The term of office of the Prime Minister continues until –</p> <p>(a) the Prime Minister dies, resigns or is dismissed from office; or</p> <p>(b) until the next person appointed Prime Minister following a general election assumes office.</p>	<p>appointment as Prime Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before the Speaker and Members of Parliament.</p> <p>(2) The term of office of the Prime Minister continues until –</p> <p>(a) the Prime Minister dies, resigns or is dismissed from offices; or</p> <p>(b) until the next person appointed Prime Minister following a general election assumes office.</p> <p>(c) A person shall not hold office as the Prime minister for</p>	<p>time frame as that of the office of the President should be introduced for the term of office of a Prime Minister.</p>
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			more than two terms of five years each.	
173.	Resignation of Prime Minister. (1) The Prime Minister may resign from office by delivering a written statement of resignation to the President. (2)The resignation of the Prime Minister takes effect - (a) on the date and at the time specified in the resignation, if any; or (b) at noon on the day after it is delivered, in any other case.	Resignation of Prime Minister (1)The Prime Minister may resign from office by delivering a written statement of resignation to the President. (2)The resignation of the Prime Minister takes effect - (a)on the date and at the time specified in the resignation, if any; or (b)at noon on the day after it is delivered, in any other case.		
174.	Dismissal of Prime Minister. (1)If Parliament, by a vote supported by a vote of more than fifty per cent of its members, passes a motion of no confidence in the Prime Minister, the President shall dismiss the Prime Minister, and the other members of the Cabinet. (2)The President may not dismiss the Prime Minister in any circumstances other than those contemplated in clause (1).	Dismissal of Prime Minister (1) A member of the National Assembly may, at any time during a sitting of the National Assembly, move a motion of no confidence for the dismissal from office of the Prime Minister. (2) If the National Assembly, by a resolution supported by the votes of more than fifty per cent of its members, passes the motion of no confidence in the Prime Minister, the Prime Minister, the two Deputy Prime Ministers, the Cabinet Ministers and the		

		<p>Deputy Ministers shall resign.</p> <p>(3) If the Prime Minister does not resign in accordance with clause (1), within seven days of the passing of the resolution, the President shall dismiss the Prime Minister, the two Deputy Prime Ministers, the Cabinet Ministers and the Deputy Ministers.</p> <p>(4) The President shall not dismiss the Prime Minister, the two Deputy Ministers, the Cabinet Ministers and the Deputy Ministers in any circumstances other than those contemplated in this Article.</p>		
175.	<p>Cabinet</p> <p>(1) The President shall appoint the remaining members of the Cabinet in accordance with recommendations of the Prime Minister and with the approval of the majority of the members of the National Assembly.</p> <p>(2) If the National Assembly, by a vote supported by a vote of more than fifty percent of its members, passes a motion of no confidence in a member of the Cabinet other than the Prime Minister, the President shall remove that member.</p> <p>(3) The President shall not appoint -</p>	<p>Cabinet</p> <p>(1) The President shall appoint the remaining members of the Cabinet and Deputy Ministers nominated by the Prime Minister from among the members of the National Assembly, and subject to the approval of the Senate.</p> <p>(2) If the National Assembly, by a resolution supported by the votes of more than fifty percent of its members, passes a motion of no confidence in a member of the Cabinet or a Deputy Minister other than the Prime Minister, the President shall remove that member or Deputy Minister.</p> <p>(3) The President shall dismiss the Cabinet and the Deputy Ministers on the recommendations of the Prime Minister.</p>		<ul style="list-style-type: none"> • The Cabinet should be established in the Constitution. • The Prime Minister nominates the Cabinet ministers. • The approval of the National Assembly should be done away with in appointing Cabinet ministers to avoid rivalry among MPs for the posts.

	<p>(a) a Member of Parliament to the office of Minister or Deputy Minister; or</p> <p>(b) a person other than a Member of Parliament to the office of Deputy Prime Minister.</p> <p>(4) Each person appointed as a Deputy Prime Minister, Minister or Deputy Minister-</p> <p>(a) assumes office by swearing or affirming faithfulness to the people and Republic of Kenya and obedience to the Constitution, in accordance with the Fourth Schedule before the Speaker and Members of Parliament;</p> <p>(b) may resign by delivering a written statement of resignation to the Prime Minister and the President; and</p> <p>(c) continues in office until –</p> <p>(i) the person dies, resigns or is dismissed from office; or</p> <p>(ii) until the next person appointed to that office, following a general election for Parliament, assumes office.</p>	<p>(4) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister -</p> <p>(a) assumes office by swearing or affirming faithfulness to the people and to the Republic of Kenya and obedience to the Constitution, in accordance with the Fourth Schedule before the Speaker and Members of Parliament;</p> <p>(b) may resign by delivering a written statement of resignation to the Prime Minister and the President; and</p> <p>(c) continues in office until –</p> <p>(i) that person dies, resigns or is dismissed from office; or</p> <p>(ii) until the next person appointed to that office, following a general election for the National Assembly assumes office.</p> <p>(5) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.</p> <p><u>175A Secretary to the Cabinet</u></p> <p><i>(1) There shall be a Secretary to the Cabinet.</i></p> <p><i>(2) The Secretary to the Cabinet shall be appointed by the President on the recommendations of the Prime Minister</i></p> <p><i>(3) The office of the Secretary to the Cabinet shall be a</i></p>	<ul style="list-style-type: none"> • There should be a clear separation of powers, hence Parliament must not interfere with the Executive through the approval of Cabinet Ministers. • Deputy Prime Ministers and Cabinet Ministers shall be sourced from Parliament. • The Prime Minister having been given the responsibility of nominating ministers for appointment, must have the power to recommend their dismissal. • It is important to create the office of the Secretary to the Cabinet in the
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		<p><i>public office.</i></p> <p><i>(4)The Secretary to the Cabinet shall -</i></p> <p><i>(a)have charge of the Cabinet office;</i></p> <p><i>(b)be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;</i></p> <p><i>(c) convey the decisions of the Cabinet to the appropriate persons or authorities; and</i></p> <p><i>(d) have any other functions as directed by the Cabinet.</i></p> <p><i>(5)The Secretary to the Cabinet</i></p> <p><i>(a)may be dismissed or replaced by the President on the recommendations of the Prime Minister, or</i></p> <p><i>(b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on the receipt of the letter of resignation by the President.</i></p> <p><i>(6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.</i></p>		<p>Constitution and clearly define its functions.</p> <p>The office of the Secretary to the Cabinet should be de-linked from the Civil Service.</p>
176.	<p>Decisions, responsibility and accountability of cabinet</p> <p>(1) A decision by the Cabinet shall be in writing.</p> <p>(2) Members of the Cabinet are</p>	<p>Decisions, responsibility and accountability of Cabinet</p> <p>(1)The Cabinet shall meet at least once a month.</p> <p>(2)The quorum at a meeting of the</p>	<p>Decisions, responsibility and accountability of cabinet</p> <p>(1) A decision by the</p>	<ul style="list-style-type: none"> The Cabinet ought to meet regularly, and the question of quorum is important to

	<p>accountable collectively, and individually, to Parliament for-</p> <p>(a) the exercise of their powers and the performance of their functions; and</p> <p>(b) the administration and implementation of legislation assigned to them.</p> <p>(3) Deputy Prime Ministers, Ministers and Deputy Ministers are individually accountable to the Prime Minister for the exercise of the powers and the performance of the functions assigned to each of them respectively,</p> <p>(4) A Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister.</p> <p>(5) Members of the Cabinet shall –</p> <p>(a) act in accordance with the Constitution; and</p> <p>(b) provide Parliament with full and regular reports concerning matters under their control.</p>	<p>Cabinet shall not be less than one half of all the members of the Cabinet.</p> <p>(3) A decision by the Cabinet shall be in writing.</p> <p>(4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the President and the Prime Minister.</p> <p>(5) A decision of the Cabinet which does not comply with clause (4) may be referred to the National Assembly which shall decide on the matter by a resolution supported by the votes of two-thirds of all the members of the National Assembly.</p> <p>(6) Members of the Cabinet are accountable collectively, and individually, to Parliament for -</p> <p>(a) the exercise of their powers and the performance of their functions; and</p> <p>(b) the administration and implementation of legislation assigned to them.</p> <p>(7) Deputy Prime Ministers, Cabinet Ministers and Deputy Ministers are individually accountable to the Prime Minister for the performance of the functions assigned to each of them respectively.</p> <p>(8) A Cabinet Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter</p>	<p>Cabinet shall be in writing.</p> <p>(2) Members of the Cabinet are accountable collectively, and individually, to Parliament for-</p> <p>(a) the exercise of their powers and the performance of their functions; and</p> <p>(b) the administration and implementation of legislation assigned to them.</p> <p>(3) A Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister.</p> <p>(4) Members of the Cabinet shall –</p> <p>(a) act in accordance with the Constitution; and</p>	<p>ensure that cabinet is collectively responsible for the decisions it makes.</p> <ul style="list-style-type: none"> • Once the decisions of the Cabinet are signed by both the President and the Prime Minister, both of them are bound by the said decision. <p>Minority Position: Making provision for Ministers to be individually accountable to the Prime Minister creates subjectivity.</p>
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		<p>assigned to that Minister.</p> <p>(9) Members of the Cabinet shall –</p> <p>(a) act in accordance with this Constitution; and</p> <p>(b) provide Parliament with full and regular reports concerning matters under their control.</p>	<p>(b) Provide Parliament with full and regular reports concerning matters under their control.</p>	
177.	<p>Assignment of functions</p> <p>(1) The Prime Minister shall keep the President fully informed concerning the general conduct of the Government and shall furnish the President with any information that the President may request with respect to any matter relating to the Government.</p> <p>(2) The Prime Minister, by Order of Cabinet, shall assign responsibility for the implementation and administration of any Act of Parliament to-</p> <p>(a) a Deputy Prime Minister; or</p> <p>(b) to a Minister and Deputy Minister, jointly.</p> <p>(3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of</p>	<p>Assignment of functions</p> <p>(1) The Prime Minister shall keep the President fully informed concerning the general conduct of the Government and shall furnish the President with any information that the President may request with respect to any matter relating to the Government.</p> <p>(2) The Prime Minister, by order of Cabinet, shall assign responsibility for the implementation and administration of any Act of Parliament to -</p> <p>(a) a Deputy Prime Minister; or</p> <p>(b) to a Cabinet Minister and a Deputy Minister.</p> <p>(3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of any Act of Parliament from one member of Cabinet to another.</p> <p>(4) The Prime Minister may assign to a Deputy Prime Minister, Cabinet Minister or Deputy</p>		

	<p>any Act of Parliament from one member of Cabinet to another.</p> <p>(4)The Prime Minister may assign to a Cabinet member any power or function of another Cabinet member who is absent from office or temporarily unable to exercise that power or perform that function.</p>	<p>Minister any power or function of another Cabinet member or Deputy Minister who is absent from office or temporarily unable to exercise that power or perform that function; but a Prime Minister shall not assign a power or function of the President or Deputy President.</p> <p>(5)When a matter would arise at a Cabinet meeting -</p> <p>(a)relating to the operation of paragraph (b) of clause (2), or</p> <p>(b)relating to the conduct of the affairs of a Ministry, or Department, or</p> <p>(c)relating to the duties of a Minister under Article 178(A)(1), and the responsible Cabinet Minister is unable to attend the meeting of the Cabinet, the Prime Minister may invite the Deputy Minister to attend.</p>		
178.	<p>Conduct of members of the Cabinet</p> <p>(1) A member of Cabinet shall –</p> <p>(a) avoid any situation involving a risk of conflict between the member’s private interests and official responsibilities;</p>	<p>Conduct of members of the Cabinet</p> <p>(1) A member of Cabinet shall –</p> <p>(a) avoid any situation involving a risk of conflict between the member’s private interests and official responsibilities;</p> <p>(b) not act in a way that is inconsistent with the member’s official</p>		<ul style="list-style-type: none"> • Deputy Ministers should be empowered to deputize Cabinet Ministers, hence have more functions and

	<p>(b) not act in a way that is inconsistent with the member's official responsibilities;</p> <p>(c) not use the member's office, the authority of that office or any information entrusted to the member, to enrich the member or improperly benefit another person.</p> <p>(2) Each member of Cabinet shall comply with the Leadership Code, set out in the Fifth Schedule.</p> <p>(3) The members of the cabinet may not hold any other employment, or any other public office, during their respective terms of office.</p>	<p>responsibilities;</p> <p>(c) not use the member's office, the authority of that office or any information entrusted to the member, to enrich the member or improperly benefit another person.</p> <p>(2) Each member of Cabinet shall comply with the Leadership Code, set out in the Fifth Schedule.</p> <p>(3) A member of the Cabinet or a Deputy Minister may not hold any other employment, or any other public office, during their respective terms of office.</p> <p><i>Functions of Ministers and Deputy Ministers</i></p> <p><i>178A.</i></p> <p><i>(1)As may be provided for by the other articles of this Constitution, the functions of a Minister are,</i></p> <p><i>(a)to advise the President, the Prime Minister and the Cabinet;</i></p> <p><i>(b)to exercise general direction and control over the appropriate ministry, departments and other statutory bodies;</i></p> <p><i>(c)to initiate and prepare government legislation for</i></p>		<p>powers than is the case currently.</p> <ul style="list-style-type: none"> • Express provision must be made to ensure that Cabinet Ministers assign specific duties to the Deputy Ministers.
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		<p><i>introduction in Parliament;</i></p> <p><i>(d)to develop the national budget in conjunction with Parliament;</i></p> <p><i>(e)to implement the national budget and policy;</i></p> <p><i>(f)to appear before Parliament or a committee of Parliament when requested to do so and answer any questions that may be put to the Minister;</i></p> <p><i>(g)to take responsibility for the administration and implementation of legislation assigned to the Minister;</i></p> <p><i>(h)to provide Parliament with full and regular reports concerning matters under the control of the Minister;</i></p> <p><i>(i)to account to the Prime Minister for the performance of the functions assigned to the Minister;</i></p> <p><i>(j)to account individually and collectively for the administration of their ministries and work of the Cabinet</i></p> <p><i>(k)to assign functions to the Deputy Minister;</i></p> <p><i>(l)to carry out any other functions as may be prescribed by Parliament, Act of Parliament or in accordance with this Constitution.</i></p>		
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		<p><i>(2)As may be provided for by the other articles of this Constitution, the functions of a Deputy Minister are,</i></p> <p><i>(a)to perform the functions assigned by the Prime Minister or the Minister</i></p> <p><i>(b)to deputize for the Minister in the performance of the Minister's functions;</i></p> <p><i>(c)to perform the functions of the Minister during the temporary incapacity or absence of the Minister from the Republic of Kenya.</i></p>		
179.	<p>Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Ministers</p> <p>The Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers shall receive such salaries, allowances and benefits as may be determined by the Salaries and Remuneration Commission.</p>	<p>Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Minister.</p> <p>The Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers shall receive such salaries, allowances and benefits as may be determined by the Salaries and Remuneration Commission.</p>		

<u>180.</u>	<p>Absence of Vice-President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers from the Republic</p> <p>(1) The Vice-President, the Prime Minister or, a Deputy Prime Minister, shall not be absent from the Republic except with the leave of the President.</p> <p>(2) A Minister or a Deputy Minister shall not be absent from Kenya except with the leave of the Prime Minister.</p>	<p>Absence of Deputy President, Prime Minister, Deputy Prime Ministers, Cabinet Ministers and Deputy Ministers from the Republic of Kenya.</p> <p>The Deputy President, the Prime Minister, a Deputy Prime Minister, a Cabinet Minister or a Deputy Minister shall not be absent from the Republic except with the leave of the President.</p>		<p>The President being the appointing authority of all these officers, he/she should sanction their absence from the Republic.</p>
	<p>Permanent Secretaries</p> <p>(1) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.</p> <p>(2) There is established the office of Permanent Secretary which is an office in the public service.</p> <p>(3) Each Government Ministry shall be under the supervision of a Permanent Secretary.</p> <p>(4) One Permanent Secretary shall be assigned by the Prime Minister</p>	<p>Principal Secretaries</p> <p>(1) There is established the office of Principal Secretary which is an office in the public service.</p> <p>(2) Each Government Ministry shall be under the supervision of a Principal Secretary.</p> <p>(3) A Principal Secretary shall be nominated by the Prime Minister in consultation with the Public Service Commission for appointment by the President in accordance with articles 102 and 103(4).</p> <p>(4) A Principal Secretary</p> <p>(a) may be dismissed by the President on the</p>		<ul style="list-style-type: none"> • The term Permanent Secretaries should be discarded because their employment is not permanent. • The term Principal Secretary is appropriate as it connotes their high ranking among the civil servants.

	to be the Secretary to the Cabinet.	recommendations of the Prime Minister, or (b) may resign from office in writing addressed to the President through the Prime Minister, and the resignation takes effect on receipt of the letter of resignation by the President.		
	Affirmation of Ministers and Permanent Secretaries Minister or a Permanent Secretary shall not enter upon the duties of the office before taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the office prescribed in the Fourth Schedule.	Oath or Affirmation of Cabinet Ministers, Deputy Ministers and Principal Secretaries A Minister or a Deputy Minister or a Principal Secretary shall not enter upon the duties of the office before taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the office prescribed in the Fourth Schedule.		
183.	Offices of the Republic (1) Except where there is a contrary provision on this Constitution or in any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission. (2) Except where there is a contrary provision in this	Offices in the Public Service (to be sent to the Chapter on the Public Service) 183. (1) Except where there is a contrary provision in this Constitution or in any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission. (2) Except where there is a contrary		

	<p>Constitution or in any other law, the power to appoint persons to hold or to act in the offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall, vest in the Public Service Commission</p>	<p>provision in this Constitution or in any other law, the power to appoint persons to hold or to act in the offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall vest in the Public Service Commission.</p>		
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APPENDIX E

Minutes of the Committee Proceedings

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIRST SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY 26TH MAY, 2003 AT 11.20 A.M.

PRESENT: The following Members were present: -

Hon. Dr. Charles Maranga Bagwasi	-	Rapporteur
Hon. Alice Yano	-	Rapporteur
Hon. Makau Mutua	-	Political Parties
Hon. Reuben Tsuma	-	District Delegate
Hon. Orie Rogo Manduli	-	Political Parties
Hon. Edward Charles Ohare	-	District Delegate
Hon. Sammy Amunga Aswani	-	District Delegate
Hon. Raphael G. Mwai	-	Professional Organizations
Hon. David Adundo Oyao	-	District Delegate
Hon. David Wakahu	-	Political Parties
Hon. Zeruiya Otواني	-	Trade Unions
Hon. Maasai Maroa	-	District Delegate
Hon. Kellan K. Wavomba	-	District Delegate
Hon. Gideon Moi, M.P.	-	Parliament
Hon. Paul Muite, M.P.	-	Parliament
Hon. Joel Chebii,	-	Trade Unions
Hon. Gideon Ndambuki, M.P.	-	Parliament
Hon. Elizabeth Okelo	-	District Delegate
Hon. Stanislaus Kasoka	-	District Delegate
Hon. Mike Oliewo	-	Political Parties
Hon. Dalmas Otieno	-	Political Parties
Hon. Stephen Manoti, M.P.	-	Parliament
Hon. Boniface Mganga, M.P.	-	Parliament
Hon. Mutava Musyimi	-	Religious Organizations
Hon. Moses Wetangula, M.P.	-	Parliament
Hon. Mathew John Emukule	-	District Delegate
Hon. George Omasi Nyamweya	-	Political Parties
Hon. John Arap Koech, M.P.	-	Parliament
Hon. Stephen K. Tarus, M.P.	-	Parliament
Hon. Joseph K. Lagat, M.P.	-	Parliament
Hon. Moses Akaranga, M.P.	-	Parliament
Hon. Mwalimu Digore Kitambi	-	District Delegate
Hon. Mwangi Kiunjuri, M.P.	-	Parliament
Hon. Jane Kiano	-	Women Organizations

Hon. Cecily Mbarire, M.P.	-	Parliament
Hon. Nyiva Mwendwa, M.P.	-	Parliament
Hon. Sally Chepkoech	-	District Delegate
Hon. Jim Muketha Thimangu	-	District Delegate
Hon. Nick Salat, M.P.	-	Parliament
Hon. Sammy Leshore, M.P.	-	Parliament
Hon. Oburu Oginga, M.P.	-	Parliament
Hon. Ogembo Masese	-	Political Parties
Hon. Dubat Ali Amey	-	District Delegate

ABSENT

Hon. Danny Irungu	-	Civil Society
Hon. Hannah Kimani	-	District Delegate
Hon. Jane Kamwaga	-	District Delegate
Hon. Beatrice Kamamia	-	District Delegate
Hon. Michael Sengech	-	District Delegate
Hon. Saul Kipkoech Kiptingos	-	District Delegate
Hon. Wilfred Kiboro	-	Special Interest
Hon. John Gitari Munyi	-	District Delegate
Hon. David Musila, M.P.	-	Parliament
Hon. Kipkalya Kones, M.P.	-	Parliament
Hon. William Ruto, M.P.	-	Parliament
Hon. Sammy Koech, M.P.	-	Parliament
Hon. Peter Muriithi, M.P.	-	Parliament
Hon. William Kabogo, M.P.	-	Parliament
Hon. John Michuki, M.P.	-	Parliament
Hon. Chris Murungaru, M.P.	-	Parliament
Hon. Otieno Kajwang, M.P.	-	Parliament
Hon. Peter Oloo Aringo, M.P.	-	Parliament
Hon. Jimmy Angwenyi, M.P.	-	Parliament
Hon. Maina Kamanda, M.P.	-	Parliament
Hon. Reuben Ndolo, M.P.	-	Parliament
Hon. Fred Gumo, M.P.	-	Parliament
Hon. Peter Ondari	-	Religious Organizations
Hon. Wahu Kaara	-	Religious Organizations
Hon. Maalim Mohammed, M.P.	-	Parliament
Hon. Raphael Muriungi, M.P.	-	Parliament
Hon. Yussuf Haji, M.P.	-	Parliament
Hon. Hellen Yego	-	District Delegate
Hon. Bonny Kibugunchy, M.P.	-	Political Parties
Hon. Gonzi Rai, M.P.	-	Parliament
Hon. Enoch Kibuguchy	-	District Delegate

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Wycliffe Owade	-	Constitution of Kenya Review

Commission

MIN.NO.1/2003

OPENING REMARKS

The acting Chairperson Hon. Charles Maranga called the meeting to order at 11.20 a.m. and invited Hon. Mutava Musyimi to open the proceedings in prayer. Thereafter, the acting Chairperson asked for the Members' views on how best the Convener should be elected and cited provisions in CKRC Regulation No.45, 46 and 49.

Members deliberated the issue at length and resolved through a vote that a delegate from Western Province be nominated for election to the post of the Convener.

MIN.NO.2/2003

ELECTION OF THE CONVENOR

The acting Chairperson Hon Charles Maranga asked Members to propose names of candidates to fill the post of Convener. The Hon. Matthew John Emukule was proposed by the Hon Moses Wetangula and seconded by the Hon. Mwalimu Degore Kitambi. There being no other proposal, the acting Chairperson declared the Hon. Matthew John Emukule elected Convener.

Thereupon, Hon. Matthew Emukule took the Chair and thanked the Members of the Committee for electing him Convener. He further expressed his commitment to steer the Committee to meet its objectives and appealed for support from the honourable Members.

MIN.NO.3/2003

ADJOURNMENT

There being no other business the Convener adjourned the meeting at 12.30 p.m. to a date to be decided upon later.

SIGNED
(CHAIRMAN)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SECOND SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, 19TH AUGUST, 2003 AT 4.00 P.M.

PRESENT: The following Members were present:-

Hon. Matthew Emukule	-	Convener
Hon. Joel Chebii	-	Trade Union
Hon. Samuel Tororei	-	Civil Society
Hon. Raphael Muriungi	-	Eastern Province
Hon. Gideon Ndambuki	-	Eastern Province
Hon. Stanislaus Kasoka	-	Eastern Province
Hon. Makau Musyoka	-	Eastern Province
Hon. Thimangu Muketha	-	Eastern Province
Hon. John Gitari Munyi	-	Eastern Province
Hon. Cecily Mbarire	-	Eastern Province
Hon Nyiva Mwendwa	-	Eastern Province
Hon. Kipkalya Kones	-	Rift Valley
Hon. Joseph Lagat	-	Rift Valley
Hon. Michael Sengech	-	Rift Valley
Hon. Nick Salat	-	Rift Valley
Hon. Sally Chepkoech	-	Rift Valley
Hon. S. Tarus	-	Rift Valley
Hon. Mwangi Kiunjuri	-	Rift Valley
Hon. Sam Koech	-	Rift Valley
Hon Paul Muite	-	Central Province
Hon John Michuki	-	Central Province
Hon Otieno Kajwang	-	Nyanza
Hon Oburu Oginga	-	Nyanza
Hon Maasai Maroa	-	Nyanza
Hon Dalmas Otieno	-	Nyanza
Hon Elizabeth Okello	-	Nyanza
Hon Wahu Kaara	-	Religious organization
Hon Hussein M. Mohammed	-	Religious organization
Hon Dubat Amey	-	Religious organization
Hon Bonny Khalwale	-	Western
Hon Edward Ohare	-	Western
Hon Enock Kibuguchy	-	Western
Hon Sammy A. Amunga	-	Western
Hon Moses Wetangula	-	Western
Hon Orie Rogo Manduli	-	Political Parties
Hon Mike Oliewo	-	Political Parties

Hon Ogembo Masese	-	Political Parties
Hon Reuben Tsuma	-	Coast Province
Hon Mwalimu D. Kitambi	-	Coast Province
Hon Martin Shikuku	-	Political Parties
Hon Moses Akaranga	-	Western Province
Hon David Wakahu	-	Political Parties
Hon Sophia Lepuchirit	-	Rift Valley Province
Hon S. Kiptingos Kipkoech	-	Rift Valley Province

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Wycliffe Owade	-	Constitution of Kenya Review Commission

MIN.NO.4/2003: CONSIDERATION OF THE DRAFT CONSTITUTION CHAPTER 8: THE EXECUTIVE

The Convenor drew the attention of the Members to various documents the members are expected to study before consideration of the draft Constitution begins. The documents issued to the Members were as follows:

The guidelines for Technical Committee;

- ❖ The NCC Regulations;
- ❖ A summary of issues arising from the general debate relevant to the Committee;
- ❖ Report of the Plenary proceedings on the Executive; and
- ❖ An extract of the Hansard report on the Executive.

The Members asked for adequate time to peruse the documents and consequently all sittings were postponed to Monday 25th August 2003.

MIN.NO.5/2003: ELECTION OF DEPUTY CONVENOR

The Members expressed concern over the heavy mandate before the Committee and unanimously elected Hon. Dalmas Otieno to be the Deputy Convenor to assist the Convenor in the administration of the Committee.

MIN.NO.7/2003: DATE OF THE NEXT SITTING

It was agreed that the next sitting be held on Monday 25th August, 2003.

MIN.NO.7/2003: ADJOURNMENT

There being no other business the Convenor adjourned the meeting at five O'clock.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRD SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, 9TH SEPTEMBER, 2003 AT 10 .00 A.M

MORNING SITTING

PRESENT: The following Members were present:-

Hon. Matthew Emukule	-	Convenor
Hon. Dr.Charles Maranga	-	Rapporteur
Hon. Alice Yano	-	Rapporteur
Hon. Dalmas Otieno	-	Political Parties
Hon. Gacuru wa Kareng'e	-	District Delegate
Hon. Sally Chepkoech	-	District Delegate
Hon. Orie Rogo-Manduli	-	Political Parties
Hon. Bonny Khalwale	-	Parliament
Hon. Hellen Yego	-	Civil Society
Hon. Moses Wetangula	-	Parliament
Hon. David Musila	-	Parliament
Hon. Edward Ohare	-	District Delegate
Hon. Gideon Ndambuki	-	Parliament
Hon. Stephen Tarus	-	Parliament
Hon. John Koech	-	Parliament
Hon. Jane Kiano	-	Women Organizations
Hon. Joseph Lagat	-	Parliament
Hon. Michael Oliewo	-	Political Parties
Hon. Masaai Maroa	-	District Delegate
Hon. Mutava Musyimi	-	Religious Organizations
Hon. Nick Salat	-	Parliament
Hon. Otieno Kajwang'	-	Parliament
Hon. Raphael Muriungi	-	Parliament
Hon. Mwalimu Digore	-	District Delegate
Hon. Sammy Amunga	-	District Delegate
Hon. Elizabeth Okelo	-	District Delegate
Hon. Stanislaus Kasyoka	-	District Delegate
Hon. Thimangu Muketha	-	District Delegate
Hon. William Kabogo	-	Parliament
Hon. Wahu Kaara	-	District Delegate
Hon. Ogembo Masese	-	District Delegate
Hon. Beatrice Wairimu	-	District Delegate
Hon. Dubat Ali Amey	-	District Delegate
Hon. George O.Nyamweya	-	Political Parties
Hon. Rihal Singh	-	Professional Organizations
Hon. Mwangi Kiunjuri	-	Parliament
Hon. Kipkoech Kiptingos	-	District Delegate
Hon. Moses Cheboi	-	Parliament

Hon. Hannah Kimani	-	District Delegate
Hon. Martin Shikuku	-	Political Parties
Hon. Ernest Kaittany	-	District Delegate
Hon. Kellan Wavomba	-	District Delegate
43.Hon. David Rakamba	-	District Delegate
44.Hon. Boniface Mganga	-	Parliament
45.Hon. Joel Chebii	-	Trade Unions
46.Hon. George Saitoti	-	Parliament
47.Hon. Nyiva Mwendwa	-	Parliament
48. Hon. David Oyao	-	District Delegate
49.Hon. Oburu Oginga	-	Parliament
50.Hon. Kipkalya Kones	-	Parliament
51.Hon. Enock Kibugunchy	-	Parliament
52.Hon. Paul Muite	-	Parliament

OBSERVERS

Mr. Argwings Owiti	-	Yawezekana
Mr. Wanyama Eusebio	-	NGO Council
Mr. Kinyua Wanyika	-	ESKIS
Ms Susan Mwangi	-	Sauti Ya Katiba

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Hellen Namisi	-	“
Ms Halima Amran	-	Hansard Reporter
Prof. V.C R. Crabbe	-	Legal Draftsman

MIN.NO.7/2003: CONSIDERATION OF THE COMMITTEE PROGRAMME

The two Rapporteurs, Hon. Charles Maranga and Alice Yano led the Members in discussions on the mandate before the Committee.

Thereafter the Committee deliberated at length on the approach to be taken to ensure that all views were accommodated and that Members had adequate time to move their amendments. In the course of deliberations, Hon. Nick Salat moved a Motion seconded by Hon. Paul Muite urging the Committee to reconsider Rule No.22 that limits the time Members should contribute.

The Committee resolved that a Member would be given 30 Minutes to move a Motion, 20 Minutes to second and 10 Minutes for any other Member wishing to contribute and that the matter be raised with Steering Committee for consideration.

The Members further resolved to work as per the following time schedules:

SESSIONS	TIME	EVENT
SESSION I	8.30 - 9.30 a.m.	General Comments

SESSION II	9.30- 10.30 a.m	Main Debate
	10.30 -11.00 a.m.	Tea-Break
SESSION III	11.00 -1.00 p.m.	Main Debate
	1.00 -2.00 p.m	Lunch Break
SESSION IV	2.00 - 4.30 p.m	Main Debate
	4.30 - 5.00 p.m	Tea Break and Departure
SESSION V	5.00 - 6.00 p.m	Convenors and Rapporteurs

MIN.NO.8/2003:

ADJOURNMENT

The Convenor adjourned the Sitting at 12.10 p.m. to 2.00 p.m this afternoon.

AFTERNOON SITTING

The Committee re-assembled at 2.30 p.m.

The following Members were **present:**

Hon. Matthew Emukule	-	Convenor
Hon.Charles Maranga	-	Rapporteur
Hon. Alice Yano	-	Rapporteur
Hon. Dalmas Otieno	-	Political Parties
Hon. Gacuru wa Kareng'e	-	District Delegate
Hon. Sally Chepkoech	-	District Delegate
Hon. Orie Rogo-Manduli	-	Political Parties
Hon. Bonny Khalwale	-	Parliament
Hon. Hellen Yego	-	Civil Society
Hon. Moses Wetangula	-	Parliament
Hon. David Musila	-	Parliament
Hon. Edward Ohare	-	District Delegate
Hon. Gideon Ndambuki	-	Parliament
Hon. Stephen Tarus	-	Parliament
Hon. John Koech	-	Parliament
Hon. Jane Kiano	-	Women Organizations
Hon. Joseph Lagat	-	Parliament
Hon. Michael Oliewo	-	Political Parties
Hon. Masaai Maroa	-	District Delegate
Hon. Mutava Musyimi	-	Religious Organizations
Hon. Nick Salat	-	Parliament
Hon. Otieno Kajwang'	-	Parliament
Hon. Raphael Muriungi	-	Parliament
Hon. Mwalimu Digore	-	District Delegate
Hon. Sammy Amunga	-	District Delegate
Hon. Elizabeth Okelo	-	District Delegate
Hon. Stanislaus Kasyoka	-	District Delegate

Hon. Thimangu Muketha	-	District Delegate
Hon. William Kabogo	-	Parliament
Hon. Wahu Kaara	-	District Delegate
Hon. Ogembo Masese	-	District Delegate
Hon. Beatrice Wairimu	-	District Delegate
Hon. Dubat Ali Amey	-	District Delegate
Hon. George O.Nyamweya	-	Political Parties
Hon. Rihal Singh	-	Professional Organizations
Hon. Mwangi Kiunjuri	-	Parliament
Hon. Kipkoech Kiptingos	-	District Delegate
Hon. Moses Cheboi	-	Parliament
Hon. Hannah Kimani	-	District Delegate
Hon. Martin Shikuku	-	Political Parties
Hon. Ernest Kaittany	-	District Delegate
Hon. Kellan Wavomba	-	District Delegate
43.Hon. David Rakamba	-	District Delegate
44.Hon. Boniface Mganga	-	Parliament
45.Hon. Joel Chebii	-	Trade Unions
46.Hon. George Saitoti	-	Parliament
47.Hon. Nyiva Mwendwa	-	Parliament
48.Hon. David Oyao	-	District Delegate
49.Hon. Oburu Oginga	-	Parliament
50.Hon. Kipkalya Kones	-	Parliament
51.Hon. Enock Kibugunchy	-	Parliament
52.Hon. Paul Muite	-	Parliament
53.Hon. Reuben Ndolo	-	Parliament
54.Hon. Mutula Kilonzo	-	Parliament

OBSERVERS

1. Mr. Ndungu Wainaina	-	NCEC
2. Mr. Muruthi Mureithi	-	FPAK
3. Mr. Joseph Chillumoli	-	FONDA

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Hellen Namisi	-	“
Ms Halima Amran	-	Hansard Reporter
Prof. V.C R. Crabbe	-	Legal Draftsman

MIN.NO.9/2003: GENERAL DEBATE ON THE COMMISSION/CONFERENCE REPORTS

The Members agreed to postpone discussions on the Reports to Wednesday 10th September, 2003 to allow them adequate time to refer to the relevant documents.

MIN.NO.10/2003: DATE OF THE NEXT SITTING

It was agreed that the next Sitting be held on Wednesday 10th September, 2003 at 8.30 a.m.

MIN.NO.11/2003:

ADJOURNMENT

There being no other business, the Convenor adjourned the Sitting at quarter past Four O'clock.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FOURTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY, 10TH SEPTEMBER, 2003 AT 2.45 P.M.

PRESENT: The following Members were present:-

Hon. Matthew Emukule	-	Convenor
Hon. Dr. Charles Maranga	-	Rapporteur
Hon. Dalmas Otieno	-	Political Parties
Hon. Gacuru wa Kareng'e	-	District Delegate
Hon. Sally Chepkoech	-	District Delegate
Hon. Orie Rogo-Manduli	-	Political Parties
Hon. Hellen Yego	-	Civil Society
Hon. Moses Wetangula	-	Parliament
Hon. David Musila	-	Parliament
Hon. Edward Ohare	-	District Delegate
Hon. Gideon Ndambuki	-	Parliament
Hon. Jane Kiano	-	Women Organizations
Hon. Joseph Lagat	-	Parliament
Hon. Michael Oliewo	-	Political Parties
Hon. Masaai Maroa	-	District Delegate
Hon. Otieno Kajwang'	-	Parliament
Hon. Raphael Muriungi	-	Parliament
Hon. Mwalimu Digore	-	District Delegate
Hon. Sammy Amunga	-	District Delegate
Hon. Elizabeth Okelo	-	District Delegate
Hon. Stanislaus Kasoka	-	District Delegate
Hon. Thimangu Muketha	-	District Delegate
Hon. William Kabogo	-	Parliament
Hon. Wahu Kaara	-	District Delegate
Hon. Ogembo Masese	-	Political Parties
Hon. Beatrice W. Kamamia	-	District Delegate
Hon. Dubat Ali Amey	-	District Delegate
Hon. Rihal Singh	-	Professional Organizations
Hon. Hannah Kimani	-	District Delegate
Hon. Martin Shikuku	-	Political Parties
Hon. Ernest Kaityany	-	District Delegate
Hon. Kellan Wavomba	-	District Delegate
33.Hon. David Rakamba	-	District Delegate
34.Hon. Boniface Mganga	-	Parliament
35.Hon. Joel Chebii	-	Trade Unions
36.Hon. David Oyao	-	District Delegate

37.Hon. Oburu Oginga	-	Parliament
38.Hon. Enock Kibugunchy	-	Parliament
39.Hon. Paul Muite	-	Parliament
40.Hon. Reuben Ndolo	-	Parliament
41.Hon. P.G. Muriithi	-	Parliament
42.Hon. Samuel Ruto	-	Parliament
43.Hon. Maina Kamanda	-	Parliament
44.Hon. Reuben R. Tsumah	-	District Delegate
45.Hon. John Gitari Munyi	-	District Delegate
46.Hon. Mutula Kilonzo	-	Parliament
47.Hon. Michael Sengech	-	District Delegate
48.Hon. Stephen Tarus	-	Parliament
49.Hon. Bonny Khalwale	-	Parliament

OBSERVERS

1. Mr. Charles K. Wambugu	-	Ufungamano Institute
2. Rose Muturi	-	Prisons
3. Rev. Fr. Julius Muranga	-	Grace Centre International
4. Mr. Ndung'u Wainaina	-	N.C.E.C.
5. Wanyama Eusebio	-	NGO Council
6. Joseph Mutuma	-	Akithii Community Resource Centre
7. Ochieng M. Khairalla	-	Minority Rights
8. Boni Kazungu	-	CJPC
9. Njoroge Wanguthi	-	R.P.P.
10. Joseph Chillumoh	-	Fonda
11. Kinyua Wanyika	-	ESKIS
12. Gordon Onyango	-	SWAI
13. Litha Musyimi-Ogana	-	African Centre for Empowerment Gender and Advocacy (ACEGA)

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Hellen Namisi	-	“
Ms Halima Amran	-	Hansard Reporter
Prof. V.C R. Crabbe	-	Legal Draftsman
Prof. Phil Knight	-	Legal Draftsman

MIN.NO.12/2003: CONFIRMATION OF MINUTES

The Minutes of the Committee Sittings held on 26th May, 19th August and 9th September, 2003 were confirmed by the Members present and signed by the Convenor.

MIN.NO.13/2003: MATTERS ARISING

Under Minute 7/2003, the Members were concerned that the time agreed upon for the start of meetings coincide with the Steering Committee Meetings. The Committee therefore recommended that the matter be raised with the steering Committee so as to be allowed to start meetings at 9.15 a.m. daily.

Members raised concern over the large membership of the Committee beyond the mandatory number of sixty (60). The Convenor undertook to follow up the issue with the Steering Committee and advised that until a decision is reached those delegates wishing to attend the Sittings were free to do so.

Corrections: The following names be inserted in the Minutes of the first sitting of the Committee as present:

Hon. Kellan Wavomba

Hon. Boniface Mganga

- In the Minutes of the Second Sitting, Hon. Reuben Tsuma's name be inserted.

- Delegate No.296 – name to be corrected to read as Stanislaus Kasoka.

MIN.NO.14./2003: CONSIDERATION OF THE COMMISSION/CONFERENCE REPORTS

Members agreed to have experts appearing before the committee to highlight pertinent issues on the Chapter 8 of the Constitution before the commencement of discussions on the Chapter. Consequently, the Rapporteur Mr. Charles Maranga undertook to pursue the matter and invite Prof. Oyugi to appear before the Committee tomorrow, 11th September, 2003.

It was also agreed that arrangements would be made to have a legal expert appear before the Committee at a later date.

The Secretariat also undertook to provide the Report on the political Parties meeting with the Constitution of Kenya Review Commission for perusal by Members.

Members considered Chapter 11 of the Commission Report and further discussions were deferred to tomorrow 11th September, 2003.

MIN.NO.15/2003: DATE OF THE NEXT SITTING

It was agreed that the next Sitting be held tomorrow, 11th September, 2003 at 9.15 a.m.

MIN.NO.16/2003: ADJOURNMENT

There being no other business, the Convenor adjourned the Sitting at Thirty minutes past Four O'clock.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIFTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY 11TH SEPTEMBER, 2003 AT 9.15 A.M.

MORNING SITTING

PRESENT: The following Members were present:-

Hon. Matthew Emukule	-	Convenor
Hon.Dr. Charles Maranga	-	Rapporteur
Hon. Ernest Kaitany	-	District Delegate
Hon. Sally Chepkoech	-	District Delegate
Hon. Stanislaus Kasoka	-	District Delegate
Hon. Sammy Amunga	-	District Delegate
Hon. Rihal Singh	-	Professional Organizations
Hon. Michael Sengech	-	District Delegate
Hon. Dubat Ali Amey	-	District Delegate
Hon. Thimangu Muketha	-	District Delegate
Hon. Martin Shikuku	-	Political Parties
Hon. David Oyao	-	District Delegate
Hon. Mike Oliewo	-	Political Parties
Hon. Joseph Lagat	-	Parliament
Hon. Ogembo Masese	-	Political Parties
Hon. Elizabeth Okelo	-	District Delegate
Hon. Edward Ohare	-	District Delegate
Hon. David Rakamba	-	District Delegate
Hon. Reuben R. Tsumah	-	District Delegate
Hon. Masaai Maroa	-	District Delegate
Hon Hellen Yego	-	Civil Society
Hon. Hannah Kimani	-	District Delegate.
Hon. Beatrice W. Kamamia	-	District Delegate
Hon. Kellan Wavomba	-	District Delegate
Hon. Otieno Kajwang'	-	Parliament
Hon. David Musila	-	Parliament
Hon. Jane Kiano	-	Women Organizations
Hon. Joel Chebii	-	Trade Unions
Hon. Moses Wetangula	-	Parliament
Hon. William Kabogo	-	Parliament
Hon. Raphael Muriungi	-	Parliament
Hon. Mwalimu Digore	-	District Delegate
.Hon. Reuben Ndolo	-	Parliament
.Hon. Oburu Oginga	-	Parliament
Hon.Mwangi Kiunjuri	-	Parliament
Hon. David Kigen	-	District Representative
Hon. Kipkalya Kones	-	Parliament

Hon. John Gitari Munyi	-	District Delegate
Hon. Sammy P. Leshore	-	Parliament
Hon. Bonny Khalwale	-	Parliament
Hon. Stephen Tarus	-	Parliament
Hon. Albert M. Onyango	-	District Delegate
Hon. Joseph.D. Attyang	-	District Delegate
Hon. Gor Sungu	-	Parliament
Hon. George Mwaura Mburu	-	Political Parties
Hon. Peter Munya	-	Parliament
Hon. Fredrick R. Nderitu	-	District Delegate
Hon. John D. Pesa	-	District Delegate
Hon. Ann Njogu	-	Professional Organizations
Hon. Gacuru wa Karengi	-	District Delegate
Hon. Enock Kibunguchy	-	Parliament
Hon. Nyiva Mwendwa	-	Parliament
Hon. Boniface Mganga	-	Parliament
Hon. P.G. Muriithi	-	Parliament
Hon. Hussein M. Mohamed	-	Parliament
Hon. Nick Salat	-	Parliament
Hon. Paul Muite	-	Parliament
Hon. Orie Rogo-Manduli	-	Political Parties
Hon. Julius Mungania	-	District Delegate
Hon. Gideon Moi	-	Parliament

OBSERVERS

1. Ms Aisha Mumbua	-	Deaf Women Organization
2. Rose Muturi	-	Prisons
3. Joseph Chillumoh	-	Fonda

IN ATTENDANCE

Ms. P. Mirungu	-	National Assembly
Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Hellen Namisi	-	“
Ms Halima Amran	-	Hansard Reporter
Prof. V.C R. Crabbe	-	Legal Draftsman
Prof. Phil Knight	-	Legal Draftsman

MIN.NO.17./2003: COMMUNICATION FROM THE CHAIR

The Convenor informed the Members that two Motions had been received for discussion by the Committee from Hon. Kipkalya Kones and Otieno Kajwang. The Motions are as follows:

- (i) Given that, since 1964 Kenya adopted the presidential system of Government, where executive authority is vested in the President and rejected the Parliamentary system where executive authority is vested in the prime Minister, this Committee resolves that the Presidential system of Government be retained in

the New Constitution with the powers of the presidency being tamed through appropriate mechanisms but that there be the office of Prime Minister created in the New Constitution and that the Prime Minister shall be appointed by the President and who can be removed from office by the President or by the National Assembly; shall be the Leader of Government Business in Parliament and shall carry out such other functions as may be assigned to him/her by the President; and that the “CKRC” Technical Committee shall effect all necessary amendments in the Draft Bill consequential to the adoption of this MOTION.

(Hon. Kipkalya Kones – Delegate NO. 216)

(ii) That, at independence, Kenya adopted a Parliamentary system of Government where the executive authority was exercised by the Governor-General on the advice of the Prime Minister; Aware, that since 1963 the Independence constitution has been amended thirty-eight times changing its character completely, consequently creating a largely Presidential system of Government; Considering, that during the collection of views of the people of Kenya, citizens expressed their displeasure with concentration of power in the hands of a strong Presidency; Whereas, the Draft Constitution has proposed a dual executive where the executive authority is exercised by the Presidency and the Prime Minister creating two centers of power; Now, this Committee resolves that we adopt a purely Parliamentary system of Government in which the President shall be the Head of State and the Prime Minister will be the Head of Government and the President will be elected by a joint sitting of the Members of Parliament and Local Authorities.

(Hon. Otieno Kajwang’- Delegate No.037)

The Members agreed that the Motions would be slotted in the agenda next week.

MIN.NO.18./2003: GENERAL DEBATE ON COMMISSION/CONFERENCE PAPERS. (Chap.11.4 of the Report of the CKRC Volume I)

Members revisited the issue of excess number of Committee Members beyond the mandatory number of 60. However the Convenor undertook to sort out the issue with the Steering Committee.

The Members then considered the Commission Report and the following issues were highlighted as pertinent issues that ought to be considered in the new Constitution:-

(i) Participatory leadership

De-centralization of Power

Devolution of the Powers of the Presidency

Strengthening of institutions to check excesses in the Government/ Presidency by evolving powers to these institutions, for example the legislature and the judiciary.

MIN.NO.19./2003: ADJOURNMENT

The chairman adjourned the sitting to reconvene at 2.15 p.m. this afternoon.

AFTERNOON SITTING

The Committee re-assembled at 2.30 p.m.

Discussions on the Commission/Conference Reports resumed. The following issues were highlighted by the Members:

- ❖ Vice President be elected during Presidential elections
- ❖ President should be subject to impeachment
- ❖ If the President has been elected directly by the people, then executive power should be his/hers including power to nominate and fire the Prime Minister.
- ❖ Elections during the month of August would not be possible for *wananchi* from Western Province as important cultural rites are done at that time.
- ❖ Succession has not been addressed effectively in the Draft Bill.
- ❖ Caution is needed to avoid creating a constitutional dictatorship

MIN.NO.20/2003: DATE OF THE NEXT SITTING

It was agreed that the next Sitting be held tomorrow, Friday 12th September, 2003 at 9.15 a.m.

MIN.NO.21/2003: ADJOURNMENT

There being no other business, the Convenor adjourned the Sitting at Thirty minutes past Four O'clock.

SIGNED

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SIXTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY 12TH SEPTEMBER, 2003 AT 9.55 A.M.

MORNING SITTING

PRESENT: The following Members were present:-

Hon. Matthew Emukule	-	Convener
Hon. Dr. Charles Maranga	-	Rapporteur
Hon. Gideon Ndambuki	-	Parliament
Hon. Mwalimu Digore	-	District Delegate
Hon. Martin Shikuku	-	Political Parties
Hon. Edward Ohare	-	District Delegate
Hon. Michael Sengech	-	District Delegate
Hon. Stanislaus Kasoka	-	District Delegate
Hon. Ernest Kaittany	-	District Delegate
Hon. Mike Oliewo	-	Political Parties
Hon. Joel K. Chebii	-	Trade Unions
Hon. Maasai Maroa	-	District Delegate
Hon. Hannah Kimani	-	District Delegate
Hon. Thimangu Muketha	-	District Delegate
Hon. Kellan Wavomba	-	District Delegate
Hon. Dubat A. Amey	-	District Delegate
Hon. Gacuru wa Kareng	-	District Delegate
Hon. Sally Chepkoech	-	District Delegate
Hon. Baldip Rihal Singh	-	Professional Organizations
Hon. Reuben Tsumah	-	District Delegate
Hon. Beatrice Kamamia	-	District Delegate
Hon. David Rakamba	-	District Delegate
Hon. David Musila	-	Parliament
Hon. David Oyao	-	District Delegate
Hon. Joseph Lagat	-	District Delegate
Hon. Ogembo Masese	-	Political Parties
Hon. P.G. Muriithi	-	Parliament
Hon. Gideon Moi	-	Parliament
29.Hon. John Gitari Munyi	-	District Delegate
30.Hon Hellen Yego	-	Civil Society
31.Hon. Mutula Kilonzo	-	Parliament
31.Hon Sammy Aswani Amunga	-	District Delegate
32 Hon. Elizabeth Okelo	-	District Delegate
33.Hon. Raphael Muriungi	-	Parliament

34.Hon. Sammy P. Leshore	-	Parliament
35.Hon. Wahu Kaara	-	Religious Organizations
36.Hon. Lydia Kimani	-	District Delegate
37.Hon. Dalmas Otieno	-	Parliament
38. Hon. Otieno Kajwang'	-	Parliament
38.Hon. Reuben Ndolo	-	Parliament
39.Hon. Gor Sungu	-	Parliament
40.Hon. Bonny Kibuguchy	-	Parliament

OBSERVERS

1. Mr. Ndungu Wainaina	-	NCEC
2. Mr. Wanyama Eusebio	-	NGO Council
3. Mr. Joseph Chillumoh	-	FONDA
4. Ms. Fatuma Ahmed	-	WATTA
5. Aish M. Omar	-	Councilor
6. Ms Rose Muturi	-	Prisons

IN ATTENDANCE

Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Hellen Namisi	-	"
Ms Halima Amran	-	Hansard Recorder
Prof. V.C R. Crabbe	-	Legal Drafting Consultant

MIN.NO.22./2003: EXPERT'S PRESENTATION

Prof. Walter Oyugi of the University of Nairobi (Social Scientist) addressed the Committee and elaborated on three dominant executive systems, giving illustrations of countries in which the various systems had been adopted. He further outlined the main characteristics of each system.

The following were the pertinent issues highlighted:

- ❖ A Constitution adopted by a country should ideally reflect the peculiarities and realities of the country.
- ❖ There are no examples of countries where the executive system has changed from Presidential to Parliamentary.
- ❖ However, there are more countries that have moved from the Parliamentary system to the Presidential system.
- ❖ Most African counties have adopted an adulterated version of the Parliamentary system.
- ❖ Most countries that have attempted to adopt the Presidential
- ❖ System, similar to that of the United States of America, have failed to create the necessary checks and balances.

MIN.NO.23./2003: ADJOURNMENT

The Chairman adjourned the sitting at 11.30 a.m. to reconvene at **2.15 p.m.** this afternoon.

AFTERNOON SITTING

The Committee re-assembled at 2.40 p.m.

MIN.NO.24./2003: CONCLUSION OF THE GENERAL DEBATE AND ADOPTION OF THE MAIN REPORT

There was a general debate as to whether or not the Committee should adopt the main Report and thereby conclude the General Debate. A motion to this effect was moved by an honourable delegate and passed unanimously.

MIN.NO.25./2003: CONFIRMATION OF MINUTES OF THURSDAY 11TH SEPTEMBER, 2003

It was pointed out that before proceeding with the deliberations of the Committee, the Committee should confirm the Minutes of the Sitting of Wednesday 10th September, 2003 as well as those of Thursday 11th September, 2003.

The Chair explained to the Committee that prior to the distribution and confirmation of the Minutes, they must be read by the Chair. It was clarified that the last Minutes of Thursday 11th September, 2003 contained several clerical errors and therefore could not be confirmed as yet.

The Committee was urged to avoid delays in its proceedings due to mere technicalities such as confirmation of Minutes.

MIN.NO.26/2003: GENERAL DEBATE ON THE REPORT OF THE RAPPORTEUR-GENERAL (Pages 37-38)

After reading of the relevant section of the Report relating to the Executive, the matter was opened up for general debate.

Several honorable delegates noted that general debate on each and every document and report to be adopted by the Committee would result in repetition and would cost the Committee a lot of time.

It was suggested that a continuous report from other Committees should be distributed to the Committee to enable it deal with cross-cutting issues. The Rapporteur informed the Committee that the matter had been considered by the Steering Committee and was being worked upon.

Some delegates were of the opinion that the Rapporteur-General's Report is not accurate and does not succinctly reflect the mode on the floor by the delegates who contributed since it does not record the reasons why certain honorable delegates supported certain viewpoints. It does not record the reason why the delegates supported certain viewpoints.

The Plenary Session at the beginning of the Conference should have taken place after the Committee Stage.

The concept of the executive system proposed in the Draft Bill should be well and accurately understood as a hybrid system and not pluralism.

The Constitution should not be modeled along the Constitutions of other countries which do not share similar realities to those of our own country.

It was noted and pointed out that the Rapporteur-General's Report is more incisive than had earlier been realized.

MIN.NO.27./2003: COMMUNICATION FROM THE CHAIR

The Chair invited the honorable delegates to read the verbatim report of the Conference as well as the Draft Bill in readiness for the debate on Monday 15th September, 2003.

MIN.NO.28./2003: ADJOURNMENT

There being no other business, the Convenor adjournment the Sitting at Twenty five minutes past Four O'clock.

MIN.NO.29./2003: DATE OF NEXT MEETING

It was agreed that the next sitting will be held on **Monday, 15th September 2003** at **9.15 a.m.**

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SEVENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY 15TH SEPTEMBER, 2003 AT 12.25 P.M.

MORNING SITTING

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|----------------------------|
| 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Comm. Charles Maranga | - | Rapporteur |
| 3. Comm. Alice Yano | - | Rapporteur |
| 4. Hon. Edward Ohare | - | Vihiga District |
| 5. Hon Hellen Yego | - | Civil Society |
| 6. Hon. Earnest Kaitany | - | Keiyo District |
| 7. Hon. Beatrice Kamamia | - | Thika District |
| 8. Hon. William Kabogo | - | Juja |
| 9. Hon. Enoch Kibunguchy | - | Lugari |
| 10. Hon. Joel K. Chebii | - | COTU |
| 11. Hon. Maasai Maroa | - | Kuria District |
| 12. Hon. George O. Nyamweya | - | Democratic Party |
| 13. Hon. J. M. Shikuku | - | Ford Asili |
| 14. Hon. Thimangu J. Muketha | - | Nyambene District |
| 15. Hon. Kellan Wavomba | - | Bungoma District |
| 16. Hon. Stanislaus W. Kasoka | - | Machakos District |
| 17. Hon. Sally Chepkoech | - | Koibatek District |
| 18. Hon Sammy Aswani Amunga | - | Butere-Mumias |
| 19. Hon. David Oyao | - | Migori District |
| 20. Hon. Michael Sengech | - | Marakwet District |
| 21. Hon. Ogembo Masese | - | KNC |
| 22. Hon. P.K. Muite | - | Kabete |
| 23. Hon. Wahu Kaara | - | Religious Organizations |
| 24. Hon. Joseph Lagat | - | Eldoret East |
| 25. Hon. Orie Rogo-Manduli | - | Ford People |
| 26. Hon. Mike Oliewo | - | PICK |
| 27. Hon. Mutula Kilonzo | - | Nominated M.P. |
| 28. Hon. William Ruto | - | Eldoret North |
| 29. Hon. Baldip Rihal Singh | - | Professional Organizations |
| 30. Hon. Boniface Mganga | - | Voi |
| 31. Hon. Gideon Moi | - | Baringo Central |
| 32. Hon. Oburu Oginga | - | Bondo |
| 33. Hon. Elizabeth N. Okelo | - | Migori District |

34. Hon. Gacuru wa Kareng'e	-	Maragua District
35. Hon. Bonny Khalwale	-	Ikolomani
36. Hon. Mwangi Kiunjuri	-	Laikipia East
37. Hon. Raphael Muriungi	-	Igembe
38. Hon. Reuben Tsumah	-	Kilifi District
39. Hon. David Rakamba	-	Gucha District
40. Hon. Hannah Kimani	-	Kiambu District
41. Hon. Dalmas Otieno	-	KANU
42. Hon. Otieno-Kajwang'	-	Mbita
43. Hon. Nick Salat	-	Bomet
44. Hon. John Gitari Munyi	-	Embu District

OBSERVERS

1. Aisha M. Omar	-	M.D.W.G.
2. Mr. Wanyama Eusebio	-	NGO Council
3. Mr. George W. Mirie	-	WCEC
4. A. Kwamboka	-	Activist
5. Alice Kiambi	-	NGO

IN ATTENDANCE

Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Helene Namisi	-	"
Ms Halima Amran	-	Hansard Recorder
Mr. Phil Knight	-	Legal Drafting Consultant

MIN.NO.30/2003:

COMMENCEMENT AND PRAYERS

The meeting commenced at 12.25 p.m. with a word of prayer from Hon. Kaara. The Committee then observed a minute of silence in memory of the late Hon. Odhiambo Mbai.

MIN.NO.31/2003:

CONFIRMATION OF MINUTES

The Minutes of the Committee sittings held on Wednesday 10th September 2003, Thursday 11th September, 2003 and Friday 12th September, 2003 were confirmed by the members present and signed by the Convenor.

- (i) Under Minute 13/2003 on the issue of the membership of the Committee, the Chair informed the Committee that he would receive a definite response tomorrow.
- (ii) It was noted that the first item on the Agenda is always prayer yet the Minutes do not reflect the same. The Secretariat undertook to look into the issue.
- (iii) Under Minute 14/2003 – on the issue of a legal expert to be invited to address the Committee, it was agreed that the legal expert's presence is not required at the moment but that such expert shall be invited when the need arises.
- (iv) It was observed that the proposal to invite the former President as an expert to address the Committee had not been captured in the Minutes. The Chair clarified

- that not all that is said during deliberations is captured in the Minutes but it is, nevertheless, all captured in the verbatim report.
- (v) It was observed that an honorable delegate's undertaking to substantiate a statement she had made earlier had also not been captured in the Minutes. The Chair noted that a record of the same was contained in the verbatim report by the Constitution of Kenya Review Commission. It was further noted that there had been no formal resolution to substantiate the statement *per se*, but, nonetheless, time could be allocated to the honorable delegate this afternoon for purposes of substantiation but not debate.

Corrections:

- Commissioner Alice Yano who had been absent with apologies, should be included in the attendance list.
- Delegate No.595 to be addressed as Hon. J.M. Shikuku.
- Hon. Wahu Kaara is a delegate representing Religious organizations and not a District Delegate.
- Delegate No.506 –name to be corrected to read as Hon. Enoch Kibunguchy.

The following honorable delegates had been present during the Sixth Sitting of the Committee but their names had been omitted:

- Hon. Orie Rogo-Manduli
- Hon. Bonny Khalwale
- Hon. William Ruto
- Hon. Mwangi Kiunjuri
- Hon. Boniface Mganga
- Hon. Oburu Oginga

MIN.NO.32/003: **MATTERS ARISING**

The issue of membership of the Committee was revisited. It was agreed that as soon as a permanent list of members is available, the Minutes would be modified to indicate those members who were present, as well as those absent.

MIN.NO.33/2003: **ADJOURNMENT**

The Chairman adjourned the sitting at 12.50 p.m. to reconvene at 2.00 p.m. this afternoon.

AFTERNOON SITTING

The committee re-assembled at 2.45 p.m.

MIN.NO.34/2003: **COMMUNICATION FROM THE CHAIR**

- (i) Having failed to realize the requisite quorum, it was proposed that the Committee adjourns to enable the honorable delegates to pay their respects and convey their condolences to the family of the late Hon. Crispin Odhiambo Mbai.
- (ii) The Chair appealed to all members to make every effort to keep to the timetable set. It was noted that punctuality was problematic and that this was interfering with discharge of the Committee's duties – the review and amendment of the Draft Bill.

MIN.NO.35/2003: **DATE OF THE NEXT SITTING**

It was noted that there will be Plenary tomorrow, Tuesday 16th September 2003 and it is not known how long the Plenary will take. However, a formal announcement shall be made to at the Plenary.

The Committee is to reconvene as soon as the session at Plenary ends.

MIN.NO.36/2003: **ADJOURNMENT**

There being no other business, the Chair adjourned the sitting at 2.55 p.m. It was agreed that the next sitting will be held on **Tuesday 16th September, 2003.**

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE EIGHTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY 17TH SEPTEMBER, 2003 AT 9.15 A.M.

MORNING SITTING

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------------|---|----------------------------|
| 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Comm. Charles Maranga | - | Rapporteur |
| 3. Comm. Alice Yano | - | Rapporteur |
| 4. Hon. Thimangu J. Muketha | - | District Delegate |
| 5. Hon. Maasai Maroa | - | District Delegate |
| 6. Hon. Dubat Ali Amey | - | District Delegate |
| 7. Hon. Beatrice Kamamia | - | District Delegate |
| 8. Hon. Earnest Kaityany | - | District Delegate |
| 9. Hon Hellen Yego | - | Civil Society |
| 10. Hon. Reuben Tsumah | - | District Delegate |
| 11. Hon. Edward Ohare | - | District Delegate |
| 12. Hon. Baldip S. Rihal | - | Professional Organizations |
| 13. Hon. David Marcos Rakamba | - | District Delegate |
| 14. Hon. Mutula Kilonzo | - | Parliament |
| 15. Hon. Joseph Martin Shikuku, EBS- | - | Political Parties |
| 16. Hon. Gacuru wa Kareng | - | District Delegate |
| 17. Hon. Elizabeth N. Okelo | - | District Delegate |
| 18. Hon. Ogembo Masese | - | KNC |
| 19. Hon Sammy Aswani Amunga | - | District Delegate |
| 20. Hon. Hannah Kimani | - | District Delegate |
| 21. Hon. Sally Chepkoech | - | District Delegate |
| 22. Hon. Dalmas Otieno | - | KANU |
| 23. Hon. David Oyao | - | District Delegate |
| 24. Hon. George O. Nyamweya | - | Political Parties |
| 25. Hon. Orie Rogo-Manduli | - | Political Parties |
| 26. Hon. Mwalimu K. Digore | - | District Delegate |
| 27. Hon. William Ruto | - | Parliament |
| 28. Hon. P.K. Muite | - | Parliament |
| 29. Hon. John Koech | - | Parliament |
| 30. Hon. John Gitari Munyi | - | District Delegate |
| 31. Hon. Nick Salat | - | Parliament |
| 32. Hon. Wahu Kaara | - | Religious Organizations |

33. Hon. Hussein Mohamed	-	Parliament
34. Hon. Joel K. Chebii	-	COTU
35. Hon. Joseph Lagat	-	Parliament
36. Hon. Boniface Mganga	-	Parliament
37. Hon. Bonny Khalwale	-	Parliament
38. Hon. Moses Wetangula	-	Parliament
39. Hon. William Kabogo	-	Parliament
40. Hon. Kellan Wavomba	-	District Delegate
41. Hon. Gideon Moi	-	Parliament
42. Hon. A. Kwamboka	-	Activist
43. Hon. Mike Oliewo	-	PICK
44. Hon. Nyiva Mwendwa	-	Parliament
45. Hon. Gideon Ndambuki	-	Parliament
46. 46. Hon. S.P. Leshore	-	Parliament
47. 47. Hon. Michael Sengech	-	District Delegate
48. 48. Hon. Otieno-Kajwang'	-	Parliament
49. 49. Hon. Oburu Oginga	-	Parliament
50. 50. Hon. Stanislaus W. Kasoka	-	District Delegate

OBSERVERS

Aisha M. Omar	-	M.D.W.G.
Mr. Wanyama Eusebio	-	NGO Council
Mr. George W. Mirie	-	WCEC
Fatuma H. Ahmed	-	WATTA
Mr. Ndung'u Wainaina	-	N.C.E.C

IN ATTENDANCE

Mr. Yash Pal Ghai	-	Chairman (CKRC)
Prof. Okoth Ogendo	-	Rapporteur-General (CKRC)
Mr. J.N. Bundi	-	National Assembly
Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Helene Namisi	-	“
Ms Halima Amran	-	Hansard Recorder
Mr. Phil Knight	-	Legal Drafting Consultant

MIN.NO.372003:

COMMENCEMENT AND PRAYERS

The meeting started at 9.45 and was opened with prayer by Hon. Hannah Kimani.

MIN.NO.38/2003:

CONFIRMATION OF MINUTES

Minutes of the 7th Sitting held on 15th September, 2003 were confirmed by delegates present and signed by the Chairman.

MIN.NO.39/2003:

MATTERS ARISING

1. Attendance list

The meeting agreed that delegates will be recorded according to the organizations they represent and not specific districts or parties.

2. Ex Min.No.31/2003

(i) Under paragraph V page 4:

Hon. Shikuku should henceforth be recorded in full as follows: Hon. Joseph Martin Shikuku, EBS.

(ii) Under Paragraph I page 3:

A full list of the members of the working group will be provided after the various coordinators have agreed with the Rapporteur-General on the final list.

(iii) Under paragraph V page 3

The Hon. Orie Rogo Manduli could not substantiate her allegations because there was no sitting in the afternoon of 15th September, 2003. She was however given an opportunity today, and tabled a verbatim report on the submission of NAC to the Constitution of Kenya Review Commission last year.

MIN.NO.40/2003: CHAPTER 8 – EXECUTIVE

The following procedures to discuss the Chapter on the Executive were proposed:

- (i) Debate the pending motions by Hon. Otieno Kajwang' and Hon. Kipkalya Kones before discussing article after article.
- (ii) Discussion of Article after Article.

The Committee resolved to debate generally article after article. On concluding debate, the Convenor would put the question on each article. Before putting the question, delegates may propose amendments.

General Debate on the Articles.

Article 148:Principles of Executive Authority.

Delegates were of the view that power should be appropriately defined to ensure there was no conflict.

Article 149:Structure of the National Executive

The order of the authority among the various offices should be clearly stated.

Article 150: The President

While delegates were agreeable that it was necessary to distinguish party affairs from government. It would be difficult to have a party less President. In case one wanted to vie for a Second term, it would not be possible because one has to belong to a political party to contest.

MIN.NO.41/2003: ADJOURNMENT

The Chairman adjourned the meeting at 1.00 p.m until 2.30 p.m today afternoon.

AFTERNOON SITTING

The Committee re-convened at 2.50 p.m. and continued general debate on articles of the Draft Bill

Articles: 151 – 153

The following issues were raised:-

- (i) A hybrid system would not be suitable, therefore delegates should chose the Presidential or the Parliamentary system.
- (ii) If delegates preferred a Parliamentary system, the President should not be elected directly but by an electoral college comprising the two Houses: the Upper House and the House of Representatives.
- (iii) The Presidential system should be retained and the excessive power be controlled by Parliament determining its own calendar and vetting presidential appointments.

- (iv) The Prime Minister should be elected by Members of Parliament to manage Executive affairs.
- (v) The President to appoint Ministers and chair Cabinet meetings.
- (vi) A ceremonial President does not require two deputy Prime Ministers.
- (vii) President not to declare emergency without the support of 70% members of the National Assembly. To declare war, the President should have the support of the two Houses.
- (viii) Ministers not to be less than 15 and not more than 20.
- (ix) Whoever is allocated Executive power should be elected directly by the people.

MIN.NO.42/2003: ANY OTHER BUSINESS

The delegates resolved to authorize the Constitution of Kenya Review Commission to deduct Kshs.1000/= from their allowances to help defray expenses for the burial of the late Dr. Crispin Mbai, who served as Chair of the Committee on Devolution until he was killed on 14th September, 2003.

MIN.NO.43/2003: ADJOURNMENT

The Convenor adjourned the Sitting at 5.00 p.m until Thursday 18th September, 2003 at 9.00 a.m.

SIGNED

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE NINTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY 18TH SEPTEMBER, 2003 AT 9.30 A.M.

MORNING SITTING

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------|---|-----------------------------------|
| 1. 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Comm. Charles Maranga | - | Rapporteur |
| 3. Comm. Alice Yano | - | Rapporteur |
| 4. Hon. David Marcos Rakamba | - | District Delegate |
| 5. Hon. Ogembo Masese | - | Political Parties |
| 6. Hon. Gideon Ndambuki | - | Parliament |
| 7. Hon. Beatrice Kamamia | - | District Delegate |
| 8. Hon. Maasai Maroa | - | District Delegate |
| 9. Hon. Earnest Kaittany | - | District Delegate |
| 10. Hon Sammy Aswani Amunga | - | District Delegate |
| 11. Hon. Sally Chepkoech | - | District Delegate |
| 12. Hon. Kellan Wavomba | - | District Delegate |
| 13. Hon. Stanislaus W. Kasoka | - | District Delegate |
| 14. Hon. Michael Sengech | - | District Delegate |
| 15. Hon. David Oyao | - | District Delegate |
| 16. Hon. Edward Ohare | - | District Delegate |
| 17. Hon. Dubat Ali Amey | - | District Delegate |
| 18. Hon Hellen Yego | - | Non-Governmental
Organizations |
| 19. Hon. Baldip S. Rihal | - | Professional Organizations |
| 20. Hon. Joseph Martin Shikuku | - | Political Parties |
| 21. Hon. Wahu Kaara | - | Religious Organizations |
| 22. Hon. Thimangu J. Muketha | - | District Delegate |
| 23. Hon. Reuben Tsumah | - | District Delegate |
| 24. Hon. Orie Rogo-Manduli | - | Political Parties |
| 25. Hon. Mutula Kilonzo | - | Parliament |
| 26. Hon. Mwalimu K. Digore | - | District Delegate |
| 27. Hon. Bonny Khalwale | - | Parliament |
| 28. Hon. Gideon Moi | - | Parliament |
| 29. Hon. P.K. Muite | - | Parliament |
| 30. Hon. Nyiva Mwendwa | - | Parliament |
| 31. Hon. William Kabogo | - | Parliament |
| 32. Hon. Joel K. Chebii | - | Trade Union |
| 33. Hon. Kipkalya Kones | - | Parliament |
| 34. Hon. Mike Oliewo | - | Political Parties |

35. Hon. Moses Wetangula	-	Parliament
36. Hon. Gonzi Rai	-	Parliament
37. Hon. John Koech	-	Parliament
38. Hon. Oburu Oginga	-	Parliament
39. Hon. Otieno-Kajwang'	-	Parliament
40. Hon. S.P. Leshore	-	Parliament
41. Hon. Nick Salat	-	Parliament
42. Hon. Gacuru wa Kareng'e	-	District Delegate
43. Hon. Fred Gumo	-	Parliament
44. Hon. Charity K. Ngilu	-	Parliament
45. Hon. Hussein M. Mohamed	-	Parliament
46. Hon. Raila A. Odinga	-	Parliament

IN ATTENDANCE - **NATIONAL CONSTITUTIONAL CONFERENCE**

Mr. J.N. Bundi	-	National Assembly
Mr. Wycliffe Owade	-	Constitution of Kenya Review Commission
Ms Helene Namisi	-	"
Ms Halima Amran	-	Hansard Recorder
Mr. Phil Knight	-	Legal Drafting Consultant

IN ATTENDANCE - **OTHER COMMITTEES**

Hon. Leslie Betawa Mwachiro
Hon. Winston Ogola Odhiambo
Hon. Abdilahi Haji Mohamed
Hon. Alice Kirambi
Hon. Joseph Chillumoh
Hon. Litha Musyimi-Ogana

OBSERVERS

Mr. Zacharia Momanyi	-	KRRP
Mr. George W. Mirie	-	WCEC
Ms Aisha M. Omar	-	M.D.W.G.

MIN.NO.44/2003: COMMENCEMENT AND PRAYER

The meeting started at 9.30 a.m. with a word of prayer led by Hon. Elizabeth Okelo. The Chairman presented the full list of delegates for the working group. The following delegates who have regularly been attending claimed they were left out and appealed to be considered to remain in the Committee.

1. Hon. Joel Chebii
2. Hon. Alice Chepkoech
3. Hon. David Rakamba
4. Hon. Earnest Kaitany

MIN.NO.45/2003: CONFIRMATION OF PREVIOUS MINUTES

The Minutes of the Eighth Meeting held on 17th September, 2003 were confirmed by delegates present and signed by the Convenor subject to the following corrections.

Corrections

1. Attendance
 - (a) Hon. Hellen Yego to be recorded as belonging to the Non-Governmental Organizations.
 - (b) Hon. Ogembo Masese;
Hon. Dalmas Otieno;
Hon. Mike Oliewo; to be listed as belonging to political parties.
 - (c) Hon. A. Kwamboka to be listed as an observer.
2. Ex-Minute 39/2003
The title 'EBS' to be expunged.
3. Paragraph i & ii, to delete "after" and insert "by" in place thereof.
4. Page 5
 - (ii) The word Senate to appear in brackets after the word Upper House,
 - (vi) to read as follows: A Prime Minister does not require two Deputy Prime Ministers
 - (vii) to delete 70% and insert 75% in place thereof.

MIN.NO.46/2003: GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL

Articles 151 - 153

Debate interrupted on 17th September 2003 resumed.

The following issues were raised:

- A delegate proposed that if all ethnic groups elect their President, then all Presidents elect their own President. This type of administration he urged would reduce further the presidential powers.

Article 154: Curtailment of Presidential powers.

- The word temporary to be defined and duties of the acting President to be explicitly explained.

Article 155: Right to vote and timing of presidential elections.

- Presidential, parliamentary and local authority elections should be held simultaneously to economize on costs and to avoid those who have won influence elections of others.
- Election date should be fixed, to avoid Head of Government using it as a secret weapon.

Annual General Elections - in the month of January and February was more attractive to most delegates. August would disrupt traditional ceremonies in western Kenya. It is also an important month in education cycle as it is a period to prepare pupils for primary and secondary exams.

- The month of August falls in the middle of the budget debate in Parliament. This would complicate funding national activities.
- It is easier to change an election date than a financial year. Annual General Elections should therefore be reconciled with the Parliamentary calendar.
- A new system of election should be considered to avoid misuse of power by the President due to the votes amassed in direct elections.

MIN.NO.47/2003: ADJOURNMENT

The Convenor adjourned the Sitting at 1.00 p.m. The Committee to meet at 2.00 p.m.

AFTERNOON SITTING

The Committee re-convened at 2.35 p.m. and resumed debate on Articles of the Draft Bill.

Article 156: Qualification for election of the President.

The following issues were discussed.

- The issue of people born by Kenyans while on duty outside Kenya was discussed. Also discussed was the issue of eligibility to run for presidency by people with dual citizenship.
- Fixing minimum and maximum age would be discriminative because capacity and capability defend personalities, maturity and senility was of great concern to majority of the delegates.
- Integrity and character to be put in legal language to guide the Judiciary. Parameters not easy to define.
- Lack of university degree not to prevent knowledgeable, intelligent and experienced politicians from vying for presidency. A university degree while essential must be accompanied by the above attributes.
- President not to be involved in political party activities and not to have a constituency as no time would be available.
- Care should be taken not to criminalize freedom fighters and hero's in the struggle of freedom when considering previous offences.

Article 157 – 164

Was discussed.

MIN.NO.48/2003:

COMMUNICATION FROM THE CHAIR

The Chairman drew the attention of the Committee to guests from the Republic of Uganda who attended the afternoon session as observers. They are in the convoy to attend a workshop on Women Rights Peace and Resolution at Limuru. They are Ms Achayo Rose Lydia; Sandra Sekyembe Nakamya; Kumbirwa Angella and Teopista Mbabazi. The Chairman wished them a pleasant stay in Kenya.

MIN.NO.49/2003:

MOTION OF ADJOURNMENT UNDER RULE 32(1) (a) AND (e)

Motion made and question proposed;

THAT, the Business of the Committee be suspended from 9.00 a.m. to 12.00 noon on Friday 19th September, 2003 to allow delegates attend requiem mass for the late Cardinal Maurice Otunga at Uhuru Park, Nairobi.

(Hon. Moses Wetangula)

Debate arising;

Question put and **agreed to.**

MIN.NO.50/2003:

ADJOURNMENT

The Chairman adjourned the meeting at 4.45 p.m. until **Friday 19th September, 2003 at 2.30 p.m.**

SIGNED

.....
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TENTH SITTING OF THE TECHNICAL COMMITTEE ‘D’ ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY 19TH SEPTEMBER, 2003 AT 3.40 P.M.

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------|---|----------------------------|
| 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Hon. Boniface Mganga | - | Parliament |
| 3. Hon. Bonny Khalwale | - | Parliament |
| 4. Hon. Dalmas Otieno | - | Political Parties |
| 5. Hon. Edward Ohare | - | District Delegate |
| 6. Hon. Elizabeth Okelo | - | District Delegate |
| 7. Hon. Fred Gumo | - | Parliament |
| 8. Hon. Hellen Yego | - | Non-Governmental |
| 9. Hon. Jimmy Angwenyi | - | Parliament |
| 10. Hon. John Gitari Munyi | - | District Delegate |
| 11. Hon. Kellan Wavomba | - | District Delegate |
| 12. Hon. Maasai Maroa | - | District Delegate |
| 13. Hon. Mike Oliewo | - | Political Parties |
| 14. Hon. Moses Wetangula | - | Parliament |
| 15. Hon. Mwalimu K. Digore | - | District Delegate |
| 16. Hon. Nick Salat | - | Parliament |
| 17. Hon. Orie Rogo-Manduli | - | Political Parties |
| 18. Hon. Otieno-Kajwang' | - | Parliament |
| 19. Hon. P.K. Muite | - | Parliament |
| 20. Hon. Raphael Muriungi | - | Parliament |
| 21. Hon. Reuben Tsumah | - | District Delegate |
| 22. Hon. Sammy Aswani Amunga | - | District Delegate |
| 23. Hon. Stanislaus W. Kasoka | - | District Delegate |
| 24. Hon. Thimangu J. Muketha | - | District Delegate |
| 25. Hon. Wahu Kaara | - | Religious Organizations |
| 26. Hon. Willam arap Ruto | - | Parliament |
| 27. Hon. Gacuru wa Karenge | - | District Delegate |
| 28. Hon. Beatrice Kamamia | - | District Delegate |
| 29. Hon. Dubat Ali Amey | - | District Delegate |
| 30. Hon. David Oyao | - | District Delegate |
| 31. Hon. Joseph Martin Shikuku | - | Political Parties |
| 32. Hon. Baldip S. Rihal | - | Professional Organizations |
| 33. Hon. Hannah N. Kimani | - | District Delegate |
| 34. Hon. Joel. K. Chebii | - | Trade Unions |

ABSENT:

- | | | |
|--------------------|---|------------|
| 1. Hon. Gideon Moi | - | Parliament |
|--------------------|---|------------|

2.	Hon. S.P. Leshore	-	Parliament
3.	Hon. Stephen Tarus	-	Parliament
4.	Hon. David Musila	-	Parliament
5.	Hon. Enoch Kibunguchy	-	Parliament
6.	Hon. Gideon Ndambuki	-	Parliament
7.	Hon. Gonzi Rai	-	Parliament
8.	Hon. Hussein M. Mohamed	-	Parliament
9.	Hon. John Michuki	-	Parliament
10.	Hon. John Koech	-	Parliament
11.	Hon. Joseph Lagat	-	Parliament
12.	Hon. Kipkalya Kones	-	Parliament
13.	Hon. Lucas Maitha	-	Parliament
14.	Hon. Maina Kamanda	-	Parliament
15.	Hon. Mutava Musyimi	-	Religious Organizations
16.	Hon. Nyiva Mwendwa	-	Parliament
17.	Hon. Oburu Oginga	-	Parliament
18.	Hon. P.K. Muriithi	-	Parliament
19.	Hon. Reuben Ndolo	-	Parliament
20.	Hon. George Saitoti	-	Parliament
21.	Hon. Sehmi Rupinda Singh	-	Religious Organizations
22.	Hon. William Kabogo	-	Parliament
23.	Hon. George Nyamweya	-	Political Parties
24.	Hon. Ogembo Masese	-	Political Parties
25.	Hon. Michael Sengech	-	District Delegate
26.	Hon. John Muchai Kiniti	-	District Delegate
27.	Hon. Peter Oloo Aringo	-	Parliament

CONSTITUTION OF KENYA REVIEW COMMISSION

Comm. Charles Maranga	-	Rapporteur
Mr. Wycliffe Owade	-	Program Officer
Ms Helene Namisi	-	Program Officer
Ms Halima Amran	-	Verbatim Recorder
Mr. Phil Knight	-	Legal Draftsperson

DELEGATES IN ATTENDANCE

Hon. Sally Chepkoech	-	District Delegate
Hon. David Rakamba	-	District Delegate
Hon. Earnest Kaitany	-	District Delegate
Hon. Mutula Kilonzo	-	Parliament
Hon. James Foster	-	Professional Organizations
Hon. Gor Sungu	-	Parliament

OBSERVERS

Zacharia Momanyi	-	KRRP
Joseph Chillumoh	-	FONDA
Aisha M. Omar	-	MDWG
Rose Moturi	-	Prisons
Fatuma H. Ahmed	-	WATTA

MIN.NO. 51/2003:**COMMENCEMENT AND PRAYER**

The meeting commenced at 3.40 p.m. with a word of prayer led by an honorable delegate.

MIN.NO.52/2003:**CONFIRMATION OF PREVIOUS MINUTES**

The Minutes of the Ninth meeting held on Thursday, 18th September, 2003 were confirmed by the honorable delegates present and signed by the Convenor subject to the following corrections:

Corrections

Hon. Raphael Muriungi was present at the meeting but did not sign the register.

(ii) Minute 49/2003 to be corrected. The Requiem Mass was held at Nyayo Stadium and not Uhuru Park.

MIN.NO.53/2003:**MATTERS ARISING**

1. It was noted that most of the honorable delegates who were frequently absent from Committee meetings were Members of Parliament.
2. It was suggested by Hon. Orie Rogo-Manduli that due to the Committee's inability to sit this morning, the Committee should meet until 6.p.m.
3. A Personal statement by Hon. Paul K. Muite was read out and circulated to the honorable delegates.
4. It was noted by Hon. Stanslous Kasoka that the Chair had not mentioned the motion that he had tabled.

MIN.NO.54/2003:**GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL****Articles 157-169**

Article 162 - Removal of President on grounds of incapacity.

- The term 'incapacity' should be clearly defined and how this incapacity is to be determined.
- It should be clearly stipulated the period of time during which the Vice-President is to act as President while the President is incapacitated.

Article 161- Protection of the President in respect of legal proceedings during office.

- The Draft Bill should provide for substituted service on the President, upon retirement, through the media since it is difficult to effect service upon a President in person.
- **Article 166** – Vacancy in the office of the Vice-President
- The requirement for a 2/3 majority vote is too high and should be reduced to a simple majority.

Article 168 – Death before resuming office

- Thirty days is too short a time within which to hold elections.

Article 169-Salaries and allowances of President and Vice President.

- It should be included that the Salaries and Remuneration Commission will be required to submit its reports to Parliament for approval before any withdrawal of funds from the Consolidated Fund.

- It is not indicated exactly after what period of time in office will the President and Vice President be entitled to pension, gratuity and retirement benefits.
- Former Presidents and Vice-Presidents should not be entitled to enormous amounts in pension and gratuity while the populace languishes in poverty.
- The Parliamentary Service Commission should determine the salaries and allowances for the President and Vice-President.
- The President and Vice-President should be of different religious affiliations.
- The Vice-President should chair the Upper House (Senate)

MIN.NO.55/2003: COMMUNICATION FROM THE CHAIR

Noting that most honorable delegates had left, the Chair adjourned the meeting. Debate on the same Articles shall resume at the next sitting. The Chair read out a list of Speakers who shall begin the debate.

MIN.NO.56/2003: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at 5.10 p.m. to resume on **Monday 22nd September, 2003 at 9.15 a.m.**

SIGNED

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE ELEVENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY 22ND SEPTEMBER, 2003 AT 9.55 A.M.

MORNING SESSION

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------|---|-----------------------------------|
| 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Hon. Gideon Moi | - | Parliament |
| 3. Hon. S.P. Leshore | - | Parliament |
| 4. Hon. Boniface Mganga | - | Parliament |
| 5. Hon. David Musila | - | Parliament |
| 6. Hon. Edward Ohare | - | District |
| 7. Hon. Elizabeth Okelo | - | District |
| 8. Hon. Fred Gumo | - | Parliament |
| 9. Hon. Gideon Ndambuki | - | Parliament |
| 10. Hon. Hellen Yego | - | Non-Governmental
Organizations |
| 11. Hon. Hussein M. Mohamed | - | Parliament |
| 12. Hon. John Koech | - | Parliament |
| 13. Hon. Joseph Lagat | - | Parliament |
| 14. Hon. Kellan Wavomba | - | District |
| 15. Hon. Maasai Maroa | - | District |
| 16. Hon. Mwalimu K. Digore | - | District |
| 17. Hon. Orie Rogo-Manduli | - | Political Parties |
| 18. Hon. Raphael Muriungi | - | Parliament |
| 19. Hon. Reuben Tsumah | - | District |
| 20. Hon. Sammy Aswani Amunga | - | District |
| 21. Hon. Stanislaus W. Kasoka | - | District |
| 22. Hon. Thimangu J. Muketha | - | District |
| 23. Hon. Wahu Kaara | - | Religious Organizations |
| 24. Hon. Willam arap Ruto | - | Parliament |
| 25. Hon. Gacuru wa Kareng'e | - | District |
| 26. Hon. Beatrice Kamamia | - | District |
| 27. Hon. Dubat Ali Amey | - | District |
| 28. Hon. David Oyao | - | District |
| 29. Hon. George Nyamweya | - | Political Parties |
| 30. Hon. Joseph Martin Shikuku | - | Political Parties |
| 31. Hon. Baldip S. Rihal | - | Professional Organizations |
| 32. Hon. Michael Sengech | - | District |
| 33. Hon. Joel. K. Chebii | - | Trade Unions |

34. Hon. Hannah N. Kimani	- District
35.Hon. Dalmas Otieno	- Political Parties
36.Hon. John Michuki	- Parliament
37.Hon. John Gitari Munyi	- District
38.Hon. Mike Oliewo	- Political Parties
39.Hon. Moses Wetangula	- Parliament
40.Hon. Otieno-Kajwang'	- Parliament
41.Hon. Nyiva Mwendwa	- Parliament
42.Hon. William Kabogo	- Parliament
43.Hon. Nick Salat	- Parliament
44. Hon. Ogembo Masese	- Political Parties
45.Comm. Charles Maranga	- <i>Ex-officio</i>
46.Comm. Alice Yano	- <i>Ex-officio</i>

ABSENT:

1. Hon. Bonny Khalwale	- Parliament
2. Hon. Jimmy Angwenyi	- Parliament
3. Hon. P.K. Muite	- Parliament
4. Hon. Stephen Tarus	- Parliament
5. Hon. Enoch Kibunguchy	- Parliament
6. Hon. Gonzi Rai	- Parliament
7. Hon. Kipkalya Kones	- Parliament
8. Hon. Lucas Maitha	- Parliament
9. Hon. Maina Kamanda	- Parliament
10. Hon. Mutava Musyimi Rev.	- Religious Organizations
11. Hon. Oburu Oginga	- Parliament
12. Hon. P.K. Muriithi	- Parliament
13. Hon. Reuben Ndolo	- Parliament
14. Hon. George Saitoti	- Parliament
15. Hon. Sehmi Rupinda Singh	- Religious Organizations
16. Hon. John Muchai Kiniti	- District
17. Hon. Peter Oloo Aringo	- Parliament

CONSTITUTION OF KENYA REVIEW COMMISSION

Mr. Wycliffe Owade	- Program Officer
Ms Helene Namisi	- Program Officer
Ms Halima Amran	- Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. Sally Chepkoech	- District
Hon. Earnest Kaitany	- District
Hon. Mwangi Kiunjuri	- Parliament
Hon. Mutula Kilonzo	- Parliament
Hon. David M. Rakamba	- District
Hon. A.M. Nderitu	- Parliament

OBSERVERS

E.P. Wanyama	- NGO Council
Ndung'u Wainaina	- NCEC

George N. Mirie	-	NCEC
Fatuma H. Ahmed	-	
Aisha Omar	-	MDWG
Justus Kivindyo	-	The Cradle
Aitha Musyimi-Ogana	-	AC-DGA
Alice Kirambi	-	C.P.D.A.

MIN.NO. 57/2003: **COMMENCEMENT AND PRAYER**

The meeting commenced at 9.55 a.m. with a word of prayer led by Hon. Kellan Wavomba (Delegate No.390)

MIN.NO. 58/2003: **COMMUNICATION FROM THE CHAIR**

The Chair read out a personal statement on behalf of the Rapporteur, Comm. Charles Maranga, and himself with respect to an article printed in the Saturday Nation dated 20th September, 2003, regarding the events of Friday 19th September, 2003 when the Committee adjourned to allow the honorable delegates to attend the Requiem Mass for the Late Maurice Michael Cardinal Otunga.

It was proposed by the Chair that the personal statement would be merely noted by the honorable delegates and not debated.

MIN.NO. 59/2003: **CONFIRMATION OF PREVIOUS MINUTES**

The Minutes of the Tenth Meeting held on Friday, 19th September, 2003 were confirmed by the honorable delegates. Confirmation was proposed by Hon. Orie Rogo-Manduli (Delegate 594) and seconded by Hon. Gideon Ndambuki (Delegate No.138). The Minutes were signed by the Convenor subject to the following corrections.

Corrections

- (i) MIN 51/2003 – the name of the honorable delegate Elizabeth N. Okelo, who led the prayer, should be included.
- (ii) The following honorable delegates were present on Friday, 19th September, 2003
 - Hon. John Koech
 - Hon. George Nyamweya
 - Hon. Ogembo Masese – Absent with apologies.

MIN.NO. 60/2003: **MATTERS ARISING**

- (i) The issue of the membership of the Committee with respect to the four delegates in attendance, shall be resolved by the Rapporteur-General.
- (ii) The motion tabled by Hon. Stanislaus Kasoka shall be circulated to the delegates.

MIN.NO. 61/2003: **GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL**

Article 158: Questions as to validity of presidential elections.

Parliament should pass an Act to determine how election disputes are to be resolved and that such disputes shall be resolved within 45 days after elections so that the President does not face election petitions after assuming office.

Article 159: Assumption of Office of President

- The Draft is not specific on exactly how the power is to be handed over to the incoming President.
- An Act of Parliament should be enacted to specify a time frame within which the handing over is to take place, as well as the manner in which it is to take place.
- The Draft Bill should clearly stipulate exactly how and when the assumption of office is to take place.

Article 160: Term of Office of President

- There should be a clearer definition of the ‘term’ of office of the President to avoid abuse of this provision.

Article 163: Impeachment and Removal of President

It was proposed that the Vice-President should be the Speaker of the National Council.

It is not clear exactly who can bring the charges against the President.

It is pointless to give a President immunity, which can be circumvented by private proceedings.

Article 164: Vacancy in the Office of President.

In the event of a vacancy in the Office of the President, the Vice-President should be confirmed as the President.

Any time that the President serves in office, regardless of how short the time, should be deemed as a term in office.

Article 165: Office of the Vice-President.

- Article 165(5)(a) should be deleted in order to enable a Vice-President to remain in office, even after the office of the President becomes vacant for reasons such as death.
- A Vice-President should similarly serve for a maximum of two terms only.
- It was proposed that after serving for two terms, the Vice-President should be able to vie for presidency, or, after two 5-year terms in retirement, return to serve as a Vice-President.

- Qualification of the Vice-President should be similar to those of presidential candidates.
- The Vice-President should be referred to as the Deputy President and should be able to take on all presidential functions in case of incapacitation of the President.

Article 166: Vacancy in the Office of the Vice-President

- It should be clearly stipulated the period of time within which the office of the Vice-President can remain vacant before it is filled.
- The Article does not provide for appointment of an acting Vice-President on occasions when the Vice-President is incapacitated or out of the country.
- Article 166(3) should have a default clause to cater for situations where the President’s choice of a Vice-President is not approved.
- It was suggested that the people should elect another Vice-President in case of vacancy in this office and that the President should not nominate such Vice-President.

Article 167: Functions of the Vice-President

- There were contradictory proposals as to whether or not a Vice-President should have ministerial functions.

- The Vice-President's functions and duties should be clearly outlined in the Draft Bill.
- It should be clearly stipulated the Vice-President, while acting President, can perform the full functions of the President.
- The Article should be reviewed to make provisions for the Vice-President to be President of the Upper House (Senate).
- The Vice-President should be allowed to hold office in a political party.

Article 168: Death before assuming office.

- If both persons elected as President and Vice-President die before assuming office, then fresh elections should be called within 90 days.

Article 169: Salaries and Allowances of President and Vice-President

- The Salaries and Remuneration Commission should not award luxurious salaries and allowances to the President and Vice-President.
- The gratuity awarded to a former President and Vice-President should be proportional to the length of time of service. The two should however enjoy security for the rest of their lives.
- The Salaries and Remuneration Commission should submit their proposal to Parliament but Parliament should have no authority to alter the proposals.
- An Act of Parliament should prescribe salaries and pension.

Article 171: Appointment of Prime Minister

- The provisions of Article 171(6) will lead to unnecessary elections.

Article 174: Dismissal of Prime Minister.

- The vote required should be increased from 50% to 2/3 in order to avoid witch-hunting.

The meeting adjourned at 1.00 p.m. to reconvene at 2.00 p.m.

AFTERNOON SESSION

The meeting reconvened at 2.30 p.m.

MIN.NO. 62/2003:

GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL

Article 170: Prime Minister

- The President should preside over the Cabinet, as it is the President who has appointing power.

Article 171: Appointment of Prime Minister

- The President should not have the power to dissolve Parliament as stipulated under Article 171(6)
- The requisite vote for appointment of a Prime Minister should be increased from 50% to 65%.
- The President should not propose his nominee for Prime Minister to the Speaker, but should present his proposal to Parliament.
- The Prime Minister should be appointed immediately upon the end of the term of a previous Prime Minister in order to avoid creating a lacuna.

Article 172: Term of Office

The term of service for Prime Minister should also be limited to two terms.

Article 174: Dismissal of Prime Minister

- The requisite vote to dismiss a Prime Minister should be increased from 50% to 65%.
- The President should not have power to dismiss a Prime Minister.

MIN.NO.63/2003: MOTIONS FOR DEBATE

The Committee revisited the issue of debate on the three motions that had been tabled before it.

Hon. William Kabogo (Delegate No. 027) moved a motion under Rule 32 (1)(a) and (e) **That** this Committee discontinues general debate Article by Article and goes straight to the motions before the Committee.

Motion was seconded by Hon William Ruto (Delegate No. 179)

The Chair pointed out that under Rule 29, the honorable delegate could not, without the leave of the Chair, move a motion raising questions already decided.

MIN.NO. 64/2003: COMMUNICATION FROM THE CHAIR

Noting that most honorable delegates had left for tea and that there were only 19 delegates remaining, the Chair briefly adjourned the meeting for 10 minutes.

MIN.NO. 65/2003: DATE OF THE NEXT MEETING

The next meeting will be held on **Tuesday, 23rd September 2003 at 9.15 a.m.**

MIN. NO 66/2003: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at 5.15 p.m.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWELFTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY 23RD SEPTEMBER, 2003 AT 9.55A.M.

MORNING SESSION

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------|---|--------------------------------|
| 1. Hon. Matthew A. Emukule | - | Convenor |
| 2. Hon. Gideon Moi | - | Parliament |
| 3. Hon. S.P. Leshore | - | Parliament |
| 4. Hon. Boniface Mganga | - | Parliament |
| 5. Hon. Bonny Khalwale | - | Parliament |
| 6. Hon. Dalmas Otieno | - | Political Parties |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. Edward Ohare | - | District |
| 9. Hon. Elizabeth Okelo | - | District |
| 10. Hon. Fred Gumo | - | Parliament |
| 11. Hon. Gideon Ndambuki | - | Parliament |
| 12. Hon. Hellen Yego | - | Non-Governmental Organizations |
| 13. Hon. Hussein M. Mohamed | - | Parliament |
| 14. Hon. John Koech | - | Parliament |
| 15. Hon. Kellan Wavomba | - | District |
| 16. Hon. Kipkalya Kones | - | District |
| 17. Hon. Maasai Maroa | - | District |
| 18. Hon. Mike Oliewo | - | Political Parties |
| 19. Hon. Mwalimu K. Digore | - | District |
| 20. Hon. Nick Salat | - | Parliament |
| 21. Hon. Orie Rogo-Manduli | - | Political Parties |
| 22. Hon. Otieno-Kajwang' | - | Parliament |
| 23. Hon. Raphael Muriungi | - | Parliament |
| 24. Hon. Reuben Tsumah | - | District |
| 25. Hon. Sammy Aswani Amunga | - | District |
| 26. Hon. Stanislaus W. Kasoka | - | District |
| 27. Hon. Thimangu J. Muketha | - | District |
| 28. Hon. William Kabogo | - | Parliament |
| 29. Hon. Wahu Kaara | - | Religious Organizations |
| 30. Hon. Willam arap Ruto | - | Parliament |
| 31. Hon. Beatrice Kamamia | - | District |
| 32. Hon. Dubat Ali Amey | - | District |
| 33. Hon. David Oyao | - | District |
| 34. Hon. Ogembo Masese | - | Political Parties |
| 35. Hon. Joseph Martin Shikuku | - | Political Parties |

36. Hon. Baldip S. Rihal	-	Professional Organizations
37. Hon. Hannah N. Kimani	-	District
38. Hon. Joel. K. Chebii	-	Trade Unions
39. Hon. Gacuru wa Kareng'e	-	District
40. Hon. Jimmy Angwenyi	-	Parliament
41. Hon. Stephen Tarus	-	Parliament
42. Hon. George Nyamweya	-	Political Parties
43. Hon. Oburu Oginga	-	Parliament
44. Hon. Joseph Lagat	-	Parliament
45. Hon. Moses Wetangula	-	Parliament
46. Hon. Nyiva Mwendwa	-	Parliament
47. Hon. Gonzi Rai	-	Parliament
48. Comm. Charles Maranga	-	<i>Ex-officio</i>
49. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. P.K. Muite	-	Parliament
2. Hon. Enoch Kibunguchy	-	Parliament
3. Hon. Lucas Maitha	-	Parliament
4. Hon. Maina Kamanda	-	Parliament
5. Hon. Mutava Musyimi Rev.	-	Religious Organizations
6. Hon. P.K. Muriithi	-	Parliament
7. Hon. Reuben Ndolo	-	Parliament
8. Hon. George Saitoti	-	Parliament
9. Hon. John Muchai Kiniti	-	District
10. Hon. Peter Oloo Aringo	-	Parliament
11. Hon. Michael Sengech	-	District
12. Hon. John Michuki	-	Parliament
13. Hon. John Gitari Munyi	-	District

CONSTITUTION OF KENYA REVIEW COMMISSION

Mr. Wycliffe Owade		Program Officer
Ms Helene Namisi	-	Program Officer
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. Earnest Kaitany	-	District
Hon. Sally Chepkoech	-	District
Hon. David M. Rakamba	-	District
Hon. Njoki Ndung'u	-	Parliament
Hon. Mwangi Kiunjuri	-	Parliament

OBSERVERS

Rose Moturi	-	Prisons
E.P. Wanyama		NGO Council
Aisha Omar	-	MDWG
Fatuma H. Ahmed	-	
Zachary Momanyi	-	KRRP
George N. Mirie	-	NCEC

Alice Karambi	-	CPDA
Joseph Chillumoh	-	FONDA
Justus M. Kivindyo	-	The Cradle

MIN.NO. 67/2003: **COMMENCEMENT AND PRAYER**

The meeting commenced at 9.55 a.m. with a word of prayer led by Hon. Wahu Kaara (Delegate No.521)

MIN.NO. 68/2003: **CONFIRMATION OF PREVIOUS MINUTES**

The Minutes of the Eleventh Meeting held on Monday 22nd September, 2003 were confirmed by the honorable delegates. Confirmation was proposed by Hon. William Ruto (Delegate No.179) and seconded by Hon. Kellan Wavomba (Delegate No.390). The Minutes were signed by the Convenor subject to the following corrections.

Corrections

- Hon. Oburu Oginga was absent with apologies.
- Zacharia Momanyi – K.R.R.P. was present.

MIN.NO. 69/2003: **MATTERS ARISING**

- (i) The issue of the membership of the Committee with respect to the delegates in attendance is being resolved by the Rapporteur-General.
- (ii) Hon. Sammy Amunga (Delegate No. 382) requested the Chair to invite the Rapporteur-General to attend the Committee meetings so that the matter of membership can be resolved.
- (iii) It was noted that Hon. Sehmi Rupinda Singh and Hon. Peter Oloo Aringo are members of other Committees and should be removed from the list of Members.
- (iv) It was noted that Hon. Rev. Mutava Musyimi had intimated his desire to resign as a delegate but such resignation had not been received.
- (v) It was noted that certain members of the Committee attend rallies and make statements that dishonour the work of the Committee. It was pointed out by the Rapporteur that under Rule 4, participation by these delegates cannot affect the validity of the proceedings.
- (vi) The time of reconvening in the afternoon should be indicated as another Minute.

MIN.NO. 70/2003: **GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL**

Article 170: Prime Minister

- The powers of the President and Prime Minister should be specified and thus there will be no possibility of conflict between the two offices.
- The President, and not the Prime Minister, should preside over the Cabinet. Development and formulation of policies should be discussed by the Cabinet in the presence of the President.
- The Prime Minister should be the leader of Cabinet but should not be vested with executive authority.
- The President should appoint the Cabinet, in consultation with the Prime Minister.

Article 171: Appointment of the Prime Minister

- There should be qualifications for a Prime Minister clearly stipulated in the Draft Bill and these qualifications should be similar to those of a presidential candidate.
- It is not stipulated directly that the Prime Minister is executive but by virtue of the powers vested upon him, it is evident that the Prime Minister is an executive one.
- The Prime Minister should seek the mandate of the people and should not be appointed by the President.
- This Article negates the doctrine of separation of powers in the sense that it is desired that the President and Prime Minister should not be part of the Legislature, yet Art.171 stipulates that the Prime Minister shall be appointed from within Parliament.

Article 172: Term of Office

- The Draft Bill should stipulate clearly the maximum period of time within which the office of the Prime Minister can remain vacant before it is filled.
- **Article 172(1)** should be amended to read.
‘...by swearing or affirming faithfulness to the people, the President and the Republic of Kenya....’

Article 174: Dismissal of the Prime Minister.

- The President should not have the power to dismiss the Prime Minister.

MIN.NO. 71/2003: MOTIONS FOR DEBATE

It was noted by Hon. Bonny Khalwale (Delegate No.052) that another member of the Committee, Hon. Peter Oloo Aringo (Delegate No.212) had moved a motion in the Technical Committee on the Preamble that proposed the adoption of a Parliamentary system. He therefore sought to move a motion under Rule 32(a) and (e) that the Committee adjourns in order to discuss the issue of the motion moved by Hon. Peter Oloo Aringo.

The Chair pointed out that under Rule 29, the honorable delegate could not, without the leave of the Chair, move a motion raising questions already decided.

Comm. Maranga drew the attention to Rule 45(a), noting that this Committee is independent and not bound by the decisions of other Technical Committees.

MIN.NO. 72/2003: GENERAL CONDUCT OF DELEGATES

It was noted by Hon. Mwangi Kiunjuri (Delegate No.068) that the Rule on decorum were being applied selectively.

The Chair pointed out that Comm. Maranga had read out Rules 39 and 40 which provided for the general conduct of delegates. He urged the honorable delegates to be tolerant to the views of other delegates that may be contrary to their own views. The honorable delegates should respect the views of other delegates, listen and, if necessary, disagree in a dignified manner.

MIN.NO. 73/2003: ADJOURNMENT

The meeting adjourned at 1.00 p.m to reconvene at 2.00 p.m.

AFTERNOON SITTING

MIN.NO. 74/2003: **RECONVENING OF COMMITTEE**

The Committee reconvened at 2.45 p.m.

MIN.NO. 75/2003: **GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL**

Article 175 – Cabinet

- The phrase ‘remaining members’ under Article 175(1) is ambiguous and does not make sense.
- Under Article 175(2), the requisite vote for a vote of no confidence in a member of the Cabinet should be increased from 50% to 65%.
- Under Article 175(2), the phrase ‘....by a vote supported by a vote of more than’ is repetitive.
- Under Article 175(3), Ministers should be appointed from Parliament so that they may be accountable and answerable to the people.
- A Minister should resign by delivering a written statement to the authority that appointed him.

Article 176 – Decisions, Responsibility and accountability of Cabinet.

- The provisions of Article 176(2) and (3) are contradicting with respect to the individual and collective accountability.
- Ministers and their deputies should be accountable to Parliament and not to the Prime Minister. The Prime Minister, on the other hand, should be accountable to the President.

Article 177 – Assignment of functions

- In as much as Prime Minister is required to keep the President fully informed, similarly the President should keep the Prime Minister fully informed.
- The Prime Minister should not have the power to transfer responsibility from one Minister to another. Such transfer of responsibility should be approved by Parliament.
- The Prime Minister should not assign the function or power of one Minister to another Minister in the event of his absence. The Deputy Minister should be empowered to carry out the functions of the Minister in his absence.

Article 180 – Absence of Vice-President, Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers from the Republic.

- The Article should include a provision that prohibits Ministers from absenting themselves from Parliament and the action to be taken against such Ministers.
- Out of courtesy, these officials should inform the President when leaving the country.

MIN.NO. 76/2003: **COMMUNICATION FROM THE CHAIR**

The Chair pointed out to the Committee that a decision needs to be made on the type of executive system to be adopted. There are three motions, properly tabled before the Committee pursuant to Rule 24, presented by:

- Hon. Otieno Kajwang' (Delegate No.037)
- Hon. Kipkalya Kones (Delegate No.216)
- Hon. Stanislaus Kasoka (Delegate No.296)

Several proposals were presented on the way forward for the Committee.

It was agreed by the Committee that tomorrow's business would begin with general debate on the remaining Articles, allowing one hour for the remaining delegates on the list of speakers to contribute. Thereafter, the debate on the three motions will begin and the motions will be debated simultaneously. The Committee will adjourn at 1.00 p.m. to allow the honourable delegates to attend to funeral service for the Late Dr. Crispin Mbai. Debate shall continue on Thursday and voting will take place thereafter.

MIN.NO. 77/2003: ADJOURNMENT

There being no other business, the Committee adjourned at 5.25 p.m. to reconvene on **Wednesday, 24th September, 2003 at 9.00 a.m.**

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY 24TH SEPTEMBER, 2003 AT 10.05 A.M.

MORNING SESSION

PRESENT: The following honorable delegates were present:-

- | | |
|--------------------------------|------------------------------|
| 1. Hon. Matthew A. Emukule | Convenor |
| 2. Hon. Gacuru wa Karengi | - District |
| 3. Hon. Kellan Wavomba | - District |
| 4. Hon. Beatrice Kamamia | - District |
| 5. Hon. Boniface Mganga | - Parliament |
| 6. Hon. Bonny Khalwale | - Parliament |
| 7. Hon. Dalmas Otieno | - Political Parties |
| 8. Hon. David Musila | - Parliament |
| 9. Hon. David Oyao | - District |
| 10. Hon. Edward Ohare | - District |
| 11. Hon. Elizabeth OkeloZA | - District |
| 12. Hon. George Nyamweya | - Political Parties |
| 13. Hon. Hannah Kimani | - District |
| 14. Hon. Hellen Yego | - NGOs |
| 15. Hon. Hussein Maalim M. | - Parliament |
| 16. Hon. Jimmy Angwenyi | - Parliament |
| 17. Hon. Joel Chebii | - Trade Unions |
| 18. Hon. John Koech | - Parliament |
| 19. Hon. John Gitari Munyi | - District |
| 20. Hon. Mwangi Kiunjuri | - Parliament |
| 21. Hon. Joseph Martin Shikuku | - Political Parties |
| 22. Hon. Michael Sengech | - District |
| 23. Hon. Mike Oliewo | - Political Parties |
| 24. Hon. Moses Wetangula | - Parliament |
| 25. Hon. Mwalimu Digore | - District |
| 26. Hon. Nyiva Mwendwa | - Parliament |
| 27. Hon. Oburu Oginga | - Parliament |
| 28. Hon. Orie Rogo-Manduli | - Political Parties |
| 29. Hon. Ogembo Masese | - Political Parties |
| 30. Hon. Otieno Kajwang' | - Parliament |
| 31. Hon. Paul Muite | - Parliament |
| 32. Hon. Dubat Ali Amey | - District |
| 33. Hon. Raphael Muriungi | - Parliament |
| 34. Hon. Reuben Tsumah | - District |
| 35. Hon. Rihal Singh | - Professional Organizations |
| 36. Hon. Sammy Aswani Amunga | - District |

37. Hon. Sally Chepkoech	-	District
38. Hon. Earnest Kaitany	-	District
39. Hon. Stanislaus W.Kasoka	-	District
40. Hon. Thimangu Muketha	-	District
41. Hon. William Kabogo	-	Parliament
42. Hon. Wahu Kaara	-	District
43. Hon. Maasai Maroa	-	District
44. Comm. Charles Maranga	-	<i>Ex-officio</i>
45. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. Enoch Kibunguchy	-	Parliament
3. Hon. Fred Gumo	-	Parliament
4. Hon. Gideon Moi	-	Parliament
5. Hon. Gonzi Rai	-	Parliament
6. Hon. John Michuki	-	Parliament
7. Hon. Joseph Lagat	-	Parliament
8. Hon. Kipkalya Kones	-	Parliament
9. Hon. P.S. Leshore	-	Parliament
10. Hon. Lucas Maitha	-	District
11. Hon. Maina Kamanda	-	Parliament
12. Hon. Mutava Musyimi Rev.	-	Religious Organizations
13. Hon. Nick Salat	-	Parliament
14. Hon. P.K. Muriithi	-	Parliament
15. Hon. Reuben Ndolo	-	Parliament
16. Hon. William Ruto	-	Parliament
17. Hon. Gideon Ndambuki	-	Parliament

CONSTITUTION OF KENYA REVIEW COMMISSION

Mr. Wycliffe Owade	-	Program Officer
Ms Helene Namisi	-	Program Officer
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. David Rakamba	-	District
Hon. Stephen Tarus	-	Parliament
Hon. Mutula Kilonzo	-	Parliament
Hon. Njoki Ndung'u	-	Parliament

OBSERVERS

Ms Nyabayi Kazungu	-	CJLPC
Alice Karambi	-	CPDA
Wanyama Eusebio	-	NGO Council
Ascar Kwamboka	-	Activist
Halima Ismail	-	ANISA
Fatuma H. Ahmed	-	
Zachary Momanyi	-	KRRP
Rebecca Kitana	-	MYW

MIN.NO. 78/2003: **COMMENCEMENT AND PRAYER**

The meeting commenced at 10.05 a.m with a word of prayer led by Hon. Beatrice Kamamia (Delegate NO.315)

MIN.NO. 79/2003: **CONFIRMATION OF PREVIOUS MINUTES**

The Minutes of the Twelfth Meeting held on Tuesday 23rd September, 2003 were confirmed by the honorable delegates. Confirmation was proposed by Hon. Joel Chebii (Delegate No.441) and seconded by Hon. Joseph Martin Shikuku (Delegate No..595). The Minutes were signed by the Convenor subject to the following corrections.

Corrections

These honorable delegates were present:

- Hon. John Gitari Munyi
- Hon. Paul Muite
- Hon. Michael Sengech
- Hon. Maina Kamanda

MIN.NO. 80/2003: **MATTERS ARISING**

- (i) It was noted that Hon. David Rakamba, Hon. Sally Chepkoech and Hon. Earnest Kaittany have been attending regularly and the issue of their membership still remains unsolved.
- (ii) Membership of the Committee is determined by the Rapporteur-General through an oral MOU presented by the provincial co-coordinators and the Committee is not mandated to decide the same.
- (iii) The Chair had communicated with the Rapporteur-General on the issue of the membership of the delegates in attendance and the same is to be resolved.
- (iv) Min. No.70/2003. It should be stated that those are the issues that were raised.
- (v) The Commission will harmonize cross-cutting issues such as the business of this Committee and the motion moved in the Technical Committee on the Preamble.
- (vi) Min. No.69/2003 (iv) to be expunged and an apology sent to Hon. Rev. Mutava Musyimi.

MIN.NO. 81/2003: **PRESENTATION OF POLITICAL PARTIES**

Hon. Daniel Rasugu (Delegate No.579) presented to the Committee a paper titled ‘Separation of Powers and the Executive Arm of the Government’ on behalf of the following political parties:

- U.P.P.
- Ford Asili
- K.N.P.D.
- U.M.M.P.
- National Labor Party
- P.S.U.
- Kenya Socialist Party
- F.P.K.
- C.C.U.
- U.A.P.
- S.P.K.

- K.N.C.
- U.D.P.I.

He highlighted pertinent issues relating to the following:-

- (i) Historical perspective of the Kenyan executive system.
- (ii) Separation of powers
- (iii) The views of Kenyans
- (iv) Proposals in the Draft Bill
- (v) Parliamentary –vs- Presidential system

MIN.NO. 82/2003: PRESENTATION BY HONORABLE DELEGATES

Hon. James Foster (Delegate No.488) made a short presentation to the Committee, highlighting the concern of the Association of Certified Public Accountants with the doctrine of good corporate governance. He suggested that the Committee adopt an executive structure similar to the administrative structure of the Association.

MIN.NO. 83/2003: GENERAL DEBATE ON ARTICLES OF THE DRAFT BILL

The following were the emerging issues

Article 175 – Cabinet

The composition of the Cabinet should be representative of the peoples of Kenya, representing all regions.

Article 177 – Assignment of Functions.

- The manner and the period of time after which the Prime Minister is to inform the President of the general conduct of the Government should be clearly stipulated.
- The Article contradicts the provisions of Article 154 and should be deleted.

Article 180 – Absence of Vice-President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers form the Republic.

- It should be stipulated how this particular Article is to be enforced.

Article 181- Permanent Secretaries.

The appointment of Permanent Secretaries should take into account the different regions and there should be national representation.

The Prime Minister should not appoint the Permanent Secretaries.

MIN. NO. 84/2003: COMMUNICATION FROM THE CHAIR

The Chair read out the final list of members of the Committee.

MIN.NO. 85/2003: MOTIONS FOR DEBATE

- (i) The Chair read out the three motions tabled. The motions will be formally moved tomorrow at 9.00 a.m. The Chair pointed out that he will try to limit debate to the members of the Committee.
- (ii) The issue of time allocated to each Speaker was revisited. The Chair pointed out that the Committee had previously resolved that each motion would be limited to three hours of debate, thus totaling nine hours of debate for the three motions.
- (iii) An issue was raised concerning the method of voting. It was agreed that voting will be done by division.

MIN.NO. 86/2003: ADJOURNMENT

There being no other matter, the Chair adjourned the meeting at 1.30 p.m. to reconvene on **Thursday 25th September at 9.00 a.m.**

SIGNED

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FOURTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO. 4 ON THURSDAY 25TH SEPTEMBER 2003 AT 10.25 A.M.

MORNING SESSION

PRESENT: The following honorable delegates were present:

- | | | |
|--------------------------------|---|-------------------|
| 1. Hon. Mathews Anyara Emukule | - | Convenor |
| 2. Hon. Gacuru wa Karege | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Wairimu | - | District |
| 5. Hon. Boniface Mganga | - | Parliament |
| 6. Hon. Bonny Khalwale | - | Parliament |
| 7. Hon. Dalmas Otieno | - | Political Parties |
| 8. Hon. David Musila | - | Parliament |
| 9. Hon. David Oyao | - | District |
| 10. Hon. Edward C. Ohare | - | District |
| 11. Hon. Elizabeth Okelo | - | District |
| 12. Hon. Enoch Kibunguchy | - | Parliament |
| 13. Hon. George Nyamweya | - | Political Parties |
| 14. Hon. Gideon Moi | - | Parliament |
| 15. Hon. Gideon Ndambuki | - | Parliament |
| 16. Hon. Gonzi Rai | - | Parliament |
| 17. Hon. Hannah Kimani | - | District |
| 18. Hon. Hellen Yego | - | NGOs |
| 19. Hon. John Michuki | - | Parliament |
| 20. Hon. Jimmy Angwenyi | - | Parliament |
| 21. Hon. Joel Chebii | - | Trade Unions |
| 22. Hon. John arap Koech | - | Parliament |
| 23. Hon. John Gitari Munyi | - | District |
| 24. Hon. Mwangi Kiunjuri | - | Parliament |
| 25. Hon. Joseph Lagat | - | Parliament |
| 26. Hon. Joseph Martin Shikuku | - | Political Parties |
| 27. Hon. Kipkalya Kones | - | Parliament |
| 28. Hon. Lucas Maitha | - | Parliament |

29. Hon. Michael Sengech	-	District
30. Hon. Mike Oliewo	-	Political Parties
31. Hon. Moses Wetangula	-	Parliament
32. Hon. Mwalimu Digore	-	District
33. Hon. Oburu Oginga	-	Parliament
34. Hon. Ogembo Masese	-	Political Parties
35. Hon. Orie Rogo-Manduli	-	Political Parties
36. Hon. P. G. Muriithi	-	Parliament
37. Hon. Paul Muite	-	Parliament
38. Hon. Dubat Ali Amey	-	District
39. Hon. Raphael Muriungi	-	Parliament
40. Hon. Reuben Tsumah	-	District
41. Hon. Baldip Rihal Singh	-	Professional Organisations
42. Hon. Sammy Amunga	-	District
43. Hon. Sally Chepkoech	-	District
44. Hon. Stanislaus W. Kasoka	-	District
45. Hon. Thimangu Muketha	-	District
46. Hon. William Kabogo	-	Parliament
47. Hon. Wahu Kaara	-	Religious Organisations
48. Hon. William Ruto	-	Parliament
49. Hon. Earnest Kaittany	-	District
50. Hon. Maasai Maroa	-	District
51. Comm. Alice Yano	-	<i>Ex-officio</i>
52. Comm. Charles Maranga	-	<i>Ex-officio</i>

ABSENT WITH APOLOGIES

Hon. Nyiva Mwendwa	-	Parliament
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ABSENT

1. Hon. Saitoti George	-	
2. Hon. Fred Gumo	-	Parliament
3. Hon. Hussein Maalim M.	-	Parliament
4. Hon. Leshore Prisa Sammy	-	Parliament
5. Hon. Mutava Musyimi Rev.	-	Parliament
6. Hon. Nick Salat	-	Parliament
7. Hon. Otieno-Kajwang'	-	Parliament
8. Hon. Reuben Ndolo	-	Parliament
9. Hon. Maina Kamanda	-	Parliament

CONSTITUTION OF KENYA REVIEW COMMISSION

Wycliffe Owade	-	Program Officer
Helene Namisi	-	Program Officer
Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

1. Hon. Mutula Kilonzo	-	Parliament
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OBSERVERS

1. Ndung'u Wainaina	-	NCEC
2. Epo Wanyama	-	NGO Council
3. Ms. Nyabonyi Kazungu	-	C.J.P.C.

4. Joseph Chillumoh	-	Fonda
5. Zachariah Momanyi	-	K.R.R.P
6. George Mirie	-	NCEC / 4CS
7. Fatuma Ahmed	-	WATTA

MIN. NO.87/2003: COMMENCEMENT AND PRAYER

The meeting commenced at 10.25 a.m with a word of prayer led by Hon. Wahu Kaara (Delegate No. 521).

The Chair began by reading out the names of the members of the Committee. He pointed out that the delegates in attendance have a right to participate in the debate but will be required to leave the tent at the time of voting.

MIN. NO 88/2003: CONFIRMATION OF PREVIOUS MINUTES

The Minutes of the Thirteenth Meeting held on Wednesday, 24th September 2003 were confirmed by the honorable delegates. Confirmation was proposed by Hon Mike Oliewo (Delegate No.613) and seconded by Hon. Raphael Muriungi (Delegate No. 122). The Minutes were signed by the Convenor subject to the following corrections:

Corrections:

- (i) Hon Wahu Kaara is from Religious Organisations and not a District Delegate.
- (ii) It was noted that several delegates had been marked absent since they had not signed the Register.

MIN. NO 89/2003: MOTIONS

I. Hon. Kipkalya Kones (Delegate No. 216)

GIVEN THAT since 1964 Kenya adopted the Presidential system of Government, where Executive Authority is vested in the President and rejected the Parliamentary system where Executive Authority is vested in the Prime Minister, this Committee resolves that the Presidential system of Government be retained in the New Constitution with the powers of the Presidency being tamed through appropriate mechanisms but that there be the office of Prime Minister created in the New Constitution and that the Prime Minister shall be appointed by the President and who can be removed from office by the President or by the National Assembly; shall be the leader of Government business in Parliament and shall carry out such other functions as may be assigned to him/her by the President; and that the 'CKRC' Technical Committee shall effect all necessary amendments in the Draft Bill consequential to the adoption of the MOTION.

Seconded Hon. George Nyamweya (Delegate No. 615)

Motion made and question proposed.

II. Hon. Otieno Kajwang' (Delegate No. 037)

THAT, at Independence, Kenya adopted a Parliamentary system of Government where the Executive Authority was exercised by the Governor-General on the advice of the Prime Minister.

AWARE, that since 1963 the Independence Constitution has been amended thirty-eight times changing its character completely consequently creating a largely Presidential system of Government.

CONSIDERING, that during the collection of views of the people of Kenya, citizens expressed their displeasure with concentration of power in the hands of a strong Presidency.

WHEREAS, the Draft Constitution has proposed a dual executive where the Executive Authority is exercised by the Presidency and the Prime Minister creating two centers of power.

NOW, this Committee resolves that we adopt a purely Parliamentary system of government in which the President shall be the Head of State and the Prime Minister will be elected by a joint sitting of the Members of the National Assembly and National Council.

Seconded by Hon. William Ruto (Delegate No. 179)

Motion made and question proposed.

II. Hon. Stanislaus Wambua Kasoka (Delegate No. 296)

GIVEN THAT:- The people of Kenya when giving views to the Constitution of Kenya Review Commission asked for the powers of the President to be reduced called for creation of office of Prime Minister. **NOW** this Committee resolves to adopt a middle ground of a mixed Parliamentary and a Presidential system in which the executive authority is vested in the President elected directly by the people of Kenya and is assisted by a Vice-President, Prime Minister and the Cabinet whose functions shall be in the Constitution clearly defined to facilitate harmonious exercise of the executive authority.

Seconded by Hon. Dubat Ali Amey (Delegate No. 252)

Motion made and question proposed.

Debate arose.

MIN. NO. 90/2003: ADJOURNMENT

The meeting was adjourned at 12.40 p.m to reconvene at 2.00 p.m.

AFTERNOON SESSION

MIN. NO. 91/2003: RECONVENING OF THE COMMITTEE

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

MIN.NO. 92/2003: MOTIONS

The Committee resumed debate on the three motions moved in the Morning.

(i) Amendment motion by Hon. Kipkalya Kones under Regulation 30 moved by Hon. Jimmy Angwenyi

Given that since 1964 Kenya adopted the Presidential system of Government, where Executive Authority is vested in the President and rejected the Parliamentary system where executive Authority is vested in the Prime Minister, this Committee resolves that the Presidential system of Government be retained provided that the President and the running mate shall be directly elected with over 50% of the votes cast and shall not be a Member of Parliament, with powers of the presidency being checked by institutional mechanisms created in the Constitution and that there shall be the office of the Prime Minister created in the Constitution who shall be appointed by the President with the approval of Parliament and be removed by the President only upon a motion of no confidence by Parliament, and who shall exercise such functions as specified in this Constitution and that the NCC Technical Committee shall effect all the necessary amendments in the Draft Bill consequential to the adoption of this motion.

Seconded by Hon. Mwangi Kiunjuri (Delegate No. 068)

Amended motion made and question proposed.

Debate arose.

Question put and **negatived.**

(ii) Amendment to Motion by Hon. Stanislaus Kasoka moved by Hon. Joseph Martin Shikuku (Delegate No. 595)

To be amended as follows:

By deleting the words ‘... and is assisted by a...’

The amended motion to read as follows:

GIVEN THAT: the people of Kenya when giving views to Constitution of Kenya Review Commission asked for the powers of the President to be reduced and called for the creation of the office of a Prime Minister.

NOW this Committee resolves to adopt a middle ground of a mixed Parliamentary and a Presidential system in which the executive authority vested in the President, Vice President directly elected by the people of Kenya, Prime Minister and the Cabinet whose functions shall be in the Constitution clearly defined to facilitate harmonious exercise of the executive authority.

Seconded by Hon. Nick Salat (Delegate No.182)

Amended Motion made and question proposed.

Debate arose.

Question put and Amended motion **carried.**

MIN. NO 93/2003: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at 5.55 p.m. The next meeting will be held on **Friday, 26th September, 2003 at 9.00 a.m.**

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIFTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO. 4 ON FRIDAY 26TH SEPTEMBER 2003 AT 10.10 a.m.

PRESENT: The following honorable delegates were present:

- | | | |
|----------------------------|---|-------------------|
| 1. Hon Mathews. A. Emukule | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Wairimu | - | District |
| 5. Hon. Boniface Mganga | - | Parliament |
| 6. Hon. Bonny Khalwale | - | Parliament |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. George Nyamweya | - | Political Parties |
| 12. Hon. Gideon Moi | - | Parliament |
| 13. Hon. Gideon Ndambuki | - | Parliament |
| 14. Hon. Gonzi Rai | - | Parliament |
| 15. Hon. Hannah Kimani | - | District |
| 16. Hon. Hellen Yego | - | NGOs |
| 17. Hon. Hussein Maalim M. | - | Parliament |
| 18. Hon. Jimmy Angwenyi | - | Parliament |
| 19. Hon. Joel Chebii | - | Trade Unions |
| 20. Hon. John arap Koech | - | Parliament |
| 21. Hon. Joseph Lagat | - | Parliament |
| 22. Hon. Michael Sengech | - | District |
| 23. Hon. Mike Oliewo | - | Political Parties |
| 24. Hon. Moses Wetangula | - | Parliament |
| 25. Hon. Mwalimu Digore | - | District |
| 26. Hon. Nick Salat | - | Parliament |
| 27. Hon. Oburu Oginga | - | Parliament |
| 28. Hon. Ogembo Masese | - | Political Parties |
| 29. Hon. Orie Rogo-Manduli | - | Political Parties |
| 30. Hon. Otieno-Kajwang' | - | Parliament |
| 31. Hon. P.G. Muriithi | - | Parliament |
| 32. Hon. Raphael Muriungi | - | Parliament |
| 33. Hon. Reuben Tsumah | - | District |

34. Hon. Rihal Singh	-	Professional Organisations
35. Hon. Sammy Amunga	-	District
36. Hon. Sally Chepkoech	-	District
37. Hon. Stanislaus W. Kasoka	-	District
38. Hon. Thimangu Muketha	-	District
39. Hon. Wahu Kaara	-	Religious Organisations
40. Hon. William arap Ruto	-	Parliament
41. Hon. Earnest Kaitany	-	District
42. Hon. Maasai Maroa	-	District
43. Comm. Charles Maranga	-	<i>Ex-officio</i>
44. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGIES

Hon. Nyiva Mwendwa	-	Parliament
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ABSENT

1. Hon. Saitoti George	-	Parliament
2. Hon. Dalmas Otieno	-	Political Parties
3. Hon. Enoch Kibunguchy	-	Parliament
4. Hon. Fred Gumo	-	Parliament
5. Hon. John Michuki	-	Parliament
6. Hon. John Gitari Munyi	-	District
7. Hon. Mwangi Kiunjuri	-	Parliament
8. Hon. Joseph Martin Shikuku	-	Political Parties
9. Hon. Kipkalya Kones	-	Parliament
10. Hon. Leshore Prisa Sammy	-	Parliament
11. Hon. Lucas Maitha	-	Parliament
12. Hon. Maina Kamanda	-	Parliament
13. Hon. Mutava Musyimi Rev.	-	Religious Organisations
14. Hon. Paul Muite	-	Parliament
15. Hon. Dubat Ali Amey	-	District
16. Hon. Reuben Ndolo	-	Parliament
17. Hon. William Kabogo	-	Parliament

CONSTITUTION OF KENYA REVIEW COMMISSION

Wycliffe Owade	-	Program Officer
Helene Namisi	-	Program Officer
Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

1. Hon. Stephen Tarus	-	Parliament
2. Hon. David Rakamba	-	District
3. Hon. Mutula Kilonzo	-	Parliament
4. Hon. Peter Munya	-	Parliament

OBSERVERS

Mr. Ahmednasir Abdullahi	-	Law Society of Kenya
Mr. Epo Wanyama	-	NGO Council
Mr. Zacharia Momanyi	-	K. R. R. P

MIN. NO. 94/2003: COMMENCEMENT AND PRAYERS

The meeting commenced at 10.10 a.m with a word of prayer led by the Hon. Joel K. Chebii (Delegate No. 441).

The Chair read out the names of those honorable delegates who were present during the meeting on Thursday, 25th September 2003 but failed to sign the Register and thus were marked as absent.

MIN. NO. 95/2003: CONFIRMATION OF PREVIOUS MINUTES

The Minutes of the Fourteenth meeting held on Thursday, 25th September 2003 were confirmed by the honorable delegates. Confirmation was proposed by Hon. Wahu Kaara (Delegate No. 521) and seconded by Hon. William Kabogo (Delegate No. 027). The Minutes were signed by the Convenor subject to the following corrections:

Corrections:

- (i) Hon. Mutava Musyimi Rev is from Religious Organisations and not Parliament.
- (ii). It was noted that there were several delegates in attendance yet the Minutes indicate only one Delegate in attendance.
- (iii). Comm. Maranga clarified that only one delegate in attendance had signed the Register.
- (iv). The issue of the Membership of Hon. Stephen Tarus was raised. It was noted that he was a member of the Committee previously but was not a member at present, as per the list of members dated 24th September 2003.
- (v). The Chair informed the honorable delegates that he does not have the competence to decide on the issue and can only refer the matter to the relevant Provincial Co-ordinator.
- (vi). The Chair and the Rapporteurs undertook to resolve the issue of membership with the Rapporteur-General.

MIN. NO. 96/2003: MATTERS ARISING

There were no matters arising.

MIN.NO. 97/2003: MOTIONS

- (i). There were several proposals that the Motions by Hon. Kipkalya Kones and Hon. Otieno-Kajwang' should be withdrawn so that the Committee debates the Amended Motion as amended by Hon. Joseph Martin Shikuku.
- (ii). It was noted that under Regulation 28, only the mover of the motion could withdraw the motion.
 - (iii). It was generally agreed that the Committee would adjourn until November when it shall continue with the debate on the three motions.

(iv). The Chair stated that there has developed a consensus within this Committee for a Mixed system of government. This Committee would craft the functions of the various offices when it reconvenes in November.

MIN.NO. 98/2003

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chair adjourned the meeting at 11.10 p.m. The next Committee meeting shall be on **Monday, 17th November, 2003 at 9.00 a.m**

SIGNED:
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SIXTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY JANUARY 13, 2004 AT 11.45 HRS

MORNING SESSION

PRESENT: The following honorable delegates were present:-

- | | | |
|--------------------------------|---|---------------------|
| 1. Hon. Dalmas Otieno | - | Ag. Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mganga | - | Parliament |
| 6. Hon. Bonny Khalwale | - | Parliament |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. Enock Kibuguchy | - | District |
| 12. Hon. George Nyamweya | - | Political Parties |
| 13. Hon. Gideon Moi | - | Parliament |
| 14. Hon. Gideon Ndambuki | - | Parliament |
| 15. Hon. Gonzi Rai | - | Parliament |
| 16. Hon. Hannah Kimani | - | District |
| 17. Hon. Hellen Yego | - | NGOs |
| 18. Hon. Hussein Maalim M. | - | Parliament |
| 19. Hon. Jimmy Angwenyi | - | Parliament |
| 20. Hon. Joel Chebii | - | Trade Unions |
| 21. Hon. John Koech | - | Parliament |
| 22. Hon. Mwangi Kiunjuri | - | Parliament |
| 23. Hon. Joseph Martin Shikuku | - | Political Parties |
| 24. Hon. Kipkalya Kones | - | Parliament |
| 25. Hon. Sammy Leshore | - | Parliament |
| 26. Hon. Lucas Maitha | - | Parliament |
| 27. Hon. Michael Sengech | - | District |
| 28. Hon. Mike Oliewo | - | Political Parties |
| 29. Hon. Moses Wetang'ula | - | Parliament |
| 30. Hon. Mwalimu Digore | - | District |
| 31. Hon. Nick K. Salat | - | Parliament |
| 32. Hon. Nyiva Mwendwa | - | Parliament |
| 33. Hon. Oburu Oginga | - | Parliament |

34. Hon. Orie Rogo-Manduli	-	Political Parties
35. Hon. Ogembo Masese	-	Political Parties
36. Hon. Otieno Kajwang'	-	Parliament
37. Hon. P.K. Muriithi	-	Parliament
38. Hon. Dubat Ali Amey	-	District
39. Hon. Raphael Muriungi	-	Parliament
40. Hon. Reuben Tsumah	-	District
41. Hon. Rihal Singh	-	Professional Organizations
42. Hon. Sammy Aswani Amunga	-	District
43. Hon. Sally Chepkoech	-	District
44. Hon. Stanislaus W. Kasoka	-	District
45. Hon. Thimangu Muketha	-	District
46. Hon. Wahu Kaara	-	District
47. Hon. William arap Ruto	-	Parliament
48. Hon. Earnest Kaittany	-	District
49. Hon. Maasai Maroa	-	District
50. Hon. Reuben Ndolo	-	Parliament
51. Comm. Charles Maranga	-	<i>Ex-officio</i>
52. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. Fred Gumo	-	Parliament
3. Hon. John Michuki	-	Parliament
4. Hon. Joseph Lagat	-	Parliament
5. Hon. Maina Kamanda	-	Parliament
6. Hon. Mutava Musyimi	Rev. -	Religious Organizations
7. Hon. Paul Muite	-	Parliament
8. Hon. John Gitari Munyi	-	District
9. Hon. William Kabogo	-	Parliament

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer – CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. David Rakamba	-	District Delegate
Hon. Stephen Tarus	-	Parliament
Hon. Ajaa Olubayi	-	District

OBSERVERS

George N. Mirie	-	NECK
Halima Ismail	-	ANISA
Rebecca Kitana	-	MYW
Aisha Omar	-	UDWG
Eusebio Wanyama	-	NGO Council
Zachary Momanyi	-	KRRP

MIN.NO. 001/2004:

COMMENCEMENT AND PRAYER

The meeting commenced at 11.45 a.m with a word of prayer led by Hon. Elizabeth Okello (Delegate NO.414)

MIN.NO. 002/2004: **APPOINTMENT OF TEMPORARY CONVENOR**

- (vii) The Rapporteur, Commissioner Maranga, informed the Committee of the reason for the absence of the Convenor, Hon Mathew A Emukule. Consequently, he drew the attention of the Committee on the provisions of Regulations 44 and 45 of the Constitution of Kenya (National Constitutional Conference) (Procedure) Regulations, 2003.
- (viii) The Rapporteur, Comm. Maranga further reminded the Committee of the earlier resolution by which they had appointed Hon. Dalmas A. Otieno, Del. No.614 as the Temporary Convenor.
- (ix) The Committee unanimously resolved to have Hon. D.A Otieno, Del. No.614 continue as Temporary Convenor, pending the appointment of a Convenor pursuant to provisions of the procedure.
- (x) Thereupon, the Hon. D.A. Otieno, Del. No.614 took the Chair.

MIN.NO. 003/2004: **RECORD OF GRATITUDE TO HON. M. A. EMUKULE, FORMER CONVENOR**

The Committee resolved to record their gratitude to the service the Hon. Mathew A. Emukule had rendered to the Committee as Convenor. Thereupon, they wished him well in his new appointment as Judge of the High Court of Kenya.

MIN.NO. 004/2004: **CONFIRMATION OF MINUTES**

1. The Minutes of the Fifteenth meeting held on September 26, 2003, were on a proposal by Hon. Kellan Wavomba Del. No.390 and secondment by Hon. Orie Rogo Manduli, Del. No.594, confirmed and signed by the Temporary Convenor Hon. Dalmas Otieno.
2. The following corrections were made:
53. Present: The following had been inadvertently recorded as absent.
 - (i) Hon. Mwangi Kiunjuri, M.P. , Del. No. 068
 - (ii) Hon. Kipalya K. Kones, M.P., Del. No.216
 - (iii) Hon. Joseph M. Shikuku, Del. No.595
 - (iv) Hon. Dubat Ali Amey, Del. 252.

MIN.NO. 005/2004: **MATTERS ARISING**

Reference to Min. No.97/2003

The Temporary Convenor drew the attention of the Committee to their resolution under Min.No.97/2003 of the Fifteenth Meeting of September 26, 2003 by which they had resolved to adopt a hybrid system of government. Consequently, the two other motions not in consonant with the resolution were;

- (v) withdrawn by Hon Kajwang' – the mover; and
- (vi) dropped in the absence of Hon. Kones – the mover.

MIN.NO. 006/2004: **MODALITY OF OPERATION**

The Temporary Convenor invited the Committee to discuss on the mode of operation to be applied in view of the substantial work already covered. After some deliberations, it

was resolved that, the Committee would deal with the Articles of the draft Bill individually.

**MIN.NO. 007/2004: CONSIDERATION OF THE DRAFT
CONSTITUTION OF KENYA BILL THE
EXECUTIVE**

Part 1 – Principles and Structure of the National Executive

ARTICLE NO.148 - PRINCIPLES OF EXECUTIVE AUTHORITY

1. The Temporary Convenor proposed the question of the adoption of the Article thus:-

“That, Article No.148 be part of the draft Bill.”

2. Deliberations ensued, in which a number of suggestions were made but no formal amendment was proposed. However, there were strong views that, the Article needed redrafting to incorporate clarity between the words “serve” and the “rule” in paragraph (b).

Adoption of Article 148

The Committee resolved to adopt Article 148 **pending** its recasting/redrafting.

MIN.NO. 008/2004: ADJOURNMENT

The Temporary Convenor adjourned the meeting at fifty minutes past Twelve O’clock until two O’clock today Tuesday January 13, 2004.

AFTERNOON SESSION

1. The Session was called to order by the Temporary Convenor Hon. Dalmas Otieno Delegate Number 614 at fifteen minutes past Two O’clock.

**MIN.NO. 009/2004: CONSIDERATION OF THE DRAFT
CONSTITUTION OF KENYA BILL**

Part II – The President and Vice-President

ARTICLE 149 – STRUCTURE OF THE NATIONAL EXECUTIVE

1. The Temporary Convenor proposed the question of the adoption of the Article thus:
“That, Article 149 be part of the draft Bill”.
2. Deliberations ensued in which a number of suggestions for amendments were made, and only one amendment was formally moved by the Hon. J.M. Shikuku, Del.No.595
 3. The Temporary Convenor proposed the question of the amendment thus;
 4. **delete the word “Vice” in the second line and substitute in place thereof the word “Deputy”;**
 5. **Insert the words “Prime Minister, Deputy Prime Ministers” after the word “Vice President” in the second line; and further the word “Ministers” after the word “Cabinet” in the third line.**
6. The Temporary Convenor put the question of the amendment which was adopted on voice vote.
7. However, some delegates raised objection to the result of the vote and requested for a division.
8. Consequently, the Temporary Convenor directed a division by show of hands, in which the Tellers were:
Comm. Alice Yano
Comm. Charles Maranga
**Result: AYES 33
NOES 4**

ABSTENTIONS 1

9. Article 149 was adopted with amendments.

ARTICLE NO.150 - AUTHORITY OF PRESIDENT

1. The Temporary Convenor proposed the Question for the adoption of the Article, thus:
 “That Article 150 be part of the Draft Bill.”
2. Deliberations ensued in which a number of suggestion for amendments were made; however, one formal amendment was moved in order to provide for the Office of President
3. The amendment was moved by the Hon. Jimmy Angwenyi, M.P. Delegate No.007 and seconded by the Hon. Gacuru wa Karege, Delegate Number 314. The terms of the amendment were:-
 - (i) the following new paragraph (1) be inserted:-
 “There shall be a President of the Republic of Kenya.”
 - (ii) The existing paragraphs be accordingly renumbered.
4. The Temporary Convenor proposed the Question of the amendments.
5. There upon deliberation ensued.
6. The Temporary Convenor put the Question of the amendment, which as adopted on a voice vote.
7. A consequential drafting amendment was made to paragraph (c) of Article 150 (1) by adding the letter “s” to the word “law.”
8. Article 150 was amended and adopted **with** amendment.

MIN.NO.010/2004

RESOLUTION ON THE STATE FUNCTIONS OF THE PRESIDENT- ARTICLE 151

ARTICLE 151 - STATE FUNCTIONS OF THE PRESIDENT

1. During deliberation on adoption of Article 150 – Authority of President, the Committee expressed concern on the fact that, if the President were not to chair the Cabinet, there was a likelihood of emergence of two centres of power, pitting the President against the Prime Minister. Consequently, by consensus the resolution herebelow was adopted.
2. The resolution was moved by Hon. Rihal Singh, Delegate Number 487 and seconded by Hon. Jimmy N. Angwenyi, M.P., Delegate Number 007.
3. The terms of the resolution were:-
 - (i) That, the President shall:
 - i. be the Chairperson of the Cabinet
 - ii. .In the absence of the President, the Deputy President shall be the Chairperson of the Cabinet.
 - (ii) In the absence of both the President and the Deputy President, the Prime Minister shall be the Chairperson of the Cabinet.”
4. The existing paragraphs be accordingly renumbered.
5. The Temporary Convenor proposed the Question of the resolution.
6. Deliberation ensued.
7. The Temporary Convenor put the question of the resolution, which was adopted on voice vote.

MIN.NO.011/2004

ADJOURNMENT

The Temporary Convenor adjourned the meeting on twenty-five minutes
Past Five O'clock O' clock until fifteen minutes past Nine O'clock
Tomorrow, Wednesday January 14, 2004.

SIGNED
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SEVENTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY, JANUARY 14, 2004 AT 09.35 HRS

PRESENT: The following honorable delegates were present:-

1. Hon. Joseph Martin Shikuku	-	Convenor
2. Hon. Gacuru wa Kareng	-	District
3. Hon. Kellan Wavomba	-	District
4. Hon. Beatrice Kamamia	-	District
5. Hon. Boniface Mganga	-	Parliament
6. Hon. Dalmas Otieno	-	Parliament
7. Hon. David Musila	-	Parliament
8. Hon. David Oyao	-	District
9. Hon. Edward Ohare	-	District
10. Hon. Elizabeth Okelo	-	District
11. Hon. Enock Kibuguchy	-	District
12. Hon. Fred Gumo	-	Parliament
13. Hon. George Nyamweya	-	Political Parties
14. Hon. Gideon Ndambuki	-	Parliament
15. Hon. Hannah Kimani	-	District
16. Hon. Hellen Yego	-	NGOs
17. Hon. Hussein Maalim M.	-	Parliament
18. Hon. John Michuki	-	Parliament
19. Hon. Jimmy Angwenyi	-	Parliament
20. Hon. Joel Chebii	-	Trade Unions
21. Hon. John Koech	-	Parliament
22. Hon. John Gitari Munyi	-	District
23. Hon. Mwangi Kiunjuri	-	Parliament
24. Hon. Joseph Lagat	-	Parliament
25. Hon. Kipkalya Kones	-	Parliament
26. Hon. Sammy Leshore	-	Parliament
27. Hon. Lucas Maitha	-	Parliament
28. Hon. Ajaa Olubayi	-	District
29. Hon. Mike Oliewo	-	Political Parties
30. Hon. Mwalimu Digore	-	District
31. Hon. Nick K. Salat	-	Parliament
32. Hon. Nyiva Mwendwa	-	Parliament
33. Hon. Orie Rogo-Manduli	-	Political Parties
34. Hon. Ogembo Masese	-	Political Parties
35. Hon. Otieno Kajwang'	-	Parliament
36. Hon. Dubat Ali Amey	-	District
37. Hon. Raphael Muriungi	-	Parliament
38. Hon. Reuben Ndolo	-	Parliament

39. Hon. Reuben Tsumah	-	District
40. Hon. Rihal Singh	-	Professional Organizations
41. Hon. Sammy Aswani Amunga	-	District
42. Hon. Sally Chepkoech	-	District
43. Hon. Stanislaus W.Kasoka	-	District
44. Hon. Thimangu Muketha	-	District
45. Hon. William Kabogo		Parliament
46. Hon. Wahu Kaara	-	Religious Organizations
47. Hon. William arap Ruto	-	Parliament
48. Hon. Earnest Kaitany	-	District
49. Hon. Maasai Maroa	-	District
50. Comm. Charles Maranga	-	<i>Ex-officio</i>
51. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. Michael Sengech	-	District
3. Hon. Moses Wetang'ula	-	Parliament
4. Hon. Maina Kamanda	-	Parliament
5. Hon. Rev. Mutava Musyimi	-	Religious Organizations
6. Hon. Paul Muite	-	Parliament
7. Hon. Oburu Oginga	-	Parliament
8. Hon. Bonny Khalwale	-	Parliament
9. Hon. Gideon Moi	-	Parliament
10. Hon. Gonzi Rai	-	Parliament
11. Hon. P.K. Muriithi	-	Parliament

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. David Rakamba	-	District Delegate
Hon. Stephen Tarus	-	Parliament

OBSERVERS

George N. Mirie	-	NECK
Halima Ismail	-	ANISA
Silvance O. Abeka	-	Egerton University
Zacharia Momanyi	-	KRRP
Aisha Omar	-	UDWG
Eusebio Wanyama	-	NGO Council

MORNING SESSION

MIN.NO. 012/2004:

COMMENCEMENT AND PRAYER

The meeting commenced at 9.35 a.m with a word of prayer by Hon. Kellan Wavomba (Delegate No.390).

MIN.NO. 013/2004:

APPOINTMENT OF CONVENOR

- (xi) The Rapporteur, Commissioner Maranga, informed the Committee that pursuant to procedure, the Hon. J.M. Shikuku, Del. No.595 had been appointed the Convenor.
- (xii) Thereupon, the Hon. J.M. Shikuku, Del. No.595 took the Chair.
- (xiii) The Convenor, Hon. J.M. Shikuku expressed gratitude to the delegates from Western Province for supporting his appointment. Further, he pledged to serve with dedication and uphold the procedure.
- (xiv) The Deputy Convenor welcomed the appointment of the Hon. Shikuku.

MIN.NO. 014/2004: CONFIRMATION OF MINUTES

- (xv) The Minutes of the Sixteenth Meeting held on January 13, 2004, were on a proposal by the Hon. Jimmy N. Angwenyi, Del. No.007 and secondment of the Hon. Wahu Kaara, Del. No.521, confirmed with the corrections herebelow:-

(vii) Accuracy of Minutes

The delegates resolved that future Minutes should record all major issues including objections formally raised to any issue by a delegate. Consequently, under Min.No.009/2004 of January 13, 2004, the following were recorded:

- (a) the objections to adoption of Article 149 by Hon. Orie Rogo-Manduli , Del. No.594.
- (b) the objection to adoption of Article 149 by the Hon. Mwangi Kiunjuri, Del. No.068.

(viii) Corrections

- (a) Page 2 – Hon. Wahu Kaara is a delegate under Religious Organizations.
- (b) Min.002/2004 – the Hon. Dalmas A. Otieno, be referred to as Deputy Convenor and his name spelt appropriately.
- (c) Min.007/2004 – on the decision of Article 148 be recorded to read –

Adoption of Article 148

The Committee resolved to adopt with **amendment** Article 148, **pending** its recasting/redrafting.

- (d) Min.No.010/2004 – the seconder of the resolution by Hon. Rihal, Del.487 was the Hon. David Musila, Del. No.125.
- (e) Min.No.011/2004 – one of the words “O’clock” in the second line be deleted.

MIN.NO. 015/2004: CONSIDERATION OF THE DRAFT CONSTITUTION OF KENYA BILL

- 1. The proceedings interrupted on Tuesday, January 13, 2004 resumed.

ARTICLE 151 – STATE FUNCTIONS OF PRESIDENT

- 2. The Convenor proposed the question for the adoption of Article 151.
- 3. Deliberations ensued, during which the delegates expressed their views which in summary hinged on:
 - (i) Resolution on the chairing of the Cabinet adopted on Tuesday, January 13, 2004.
 - i. that, the provisions of the resolution were deficient in not providing for the chairing of the Cabinet in the absence of the President, Deputy President and the Prime Minister;
 - ii. that the deficiency in the resolution be dealt with by:
 - the first Deputy Prime Minister chairing;
 - the Cabinet appointing one of the two Deputy Prime

- Ministers to chair.
 - The Cabinet appointing one from among themselves to chair.
- (ix) The Convenor in summing up the views of the Committee and with their concurrence stated that, it would automatically fall on one of the Deputy Prime Ministers to chair the Cabinet in the absence of the President, Deputy President and the Prime Minister.
4. The Convenor proposed the question of the adoption of Article 151(a),(b),(c) and (d).
5. Deliberations ensued, during which, the delegates expressed their views which were evenly split into:-
- (i) that, paragraphs (a) (b) and (c) be agreed to, with the amendment of the figure 14 in paragraph (b) to read 141;
 - (i) that, paragraph (d) be deleted; however, this was not unanimous as some delegates were of the view that its retention would clearly indicate who would be expected to effect the dissolution of Parliament; while those supporting its deletion contended that, its retention would amount to executive interference with operations of the Parliament, which would have its own calendar.
6. The Convenor put the question for the adoption of Article 151(1) (a) (b) (c) and (d) which was agreed on a voice vote with the amendment in paragraph(b).
7. The Convenor proposed the question for the adoption of Article 151(2) (a), (b), (c), and (d).
8. Deliberations ensued, during which, the delegates expressed their views on each paragraph.
- (i) Paragraph (a) (i) the views of the delegates were:-
 - (a) that, the status of the person to be the Prime Minister needed further specification.
 - (b) that once the additional specification was agreed upon, its implication would affect some of the Articles to be dealt with later.
 - (c) Consequently, the following resolution to guide the draftspersons in recasting/redrafting paragraph (a) was moved by the Hon. Nyamweya, Del. No.615.

Status of the Prime Minister

“That, a Prime Minister shall be the parliamentary leader of a party or coalition of parties that enjoys a majority support in Parliament.”

The Deputy Convenor proposed and put the question, which was agreed to on a voice vote.

- (d) Paragraph (a)(ii) – was not contested.
- (e) Paragraph (a) (iii) together with Paragraph (b) – these two concern, respectively, the number of Cabinet Ministers and Deputy Ministers; and were extensively deliberated upon;
 - the views expressed by the delegates, in the main urged for a leaner Cabinet and corresponding Deputy Ministers, in line with the views expressed by the public;

- as a way of expediting consensus, the Hon. Maasai Maroa, Del. No.422 formally moved the following amendment which was supported by the Hon. Sammy A. Aswani Del. No.382 –

“That, the minimum number of Cabinet Ministers shall be 15, while the maximum number shall be 20; while the minimum number of Deputy Ministers shall be 15 and the maximum number shall be 20.”

- The Deputy Convenor, proposed and put the question of the amendment, which was **agreed to** on a Division by show of hands; the result of the **Division** were:-

	<u>AYES</u>	<u>NOES</u>
Cabinet Ministers	- 22	9
Deputy Ministers	- 31	3

MIN.NO.016/2004 ADJOURNMENT

The Convenor adjourned the Meeting at twenty minutes past One O'clock until thirty minutes past Two O'clock today, Wednesday, January 14, 2004.

AFTERNOON SESSION

MIN.NO. 017/2004: RESUMPTION OF PROCEEDINGS

The Meeting was called to order by the Convenor at twenty-five minutes past Three O'clock.

MIN.NO. 018/2004: CONSIDERATION OF THE DRAFT
CONSTITUTION OF KENYA BILL

ARTICLE 151 – STATE FUNCTIONS OF PRESIDENT

1. The Convenor proposed the question of the adoption of Article 151(2).
2. Arising from the deliberations in the Morning Session, two motions were formally moved for resolutions whose adoption would have impact on related Articles in the draft Bill.
 - (i) The first motion was moved by Hon. Kasoka, Del. No.296 and seconded by Hon. Dubat, Del.No.252.
The terms of the resolution are:-
“That, the number of Ministries and the particulars of their functions should be specified in the Constitution.”
 - (a) The Convenor proposed the question for the adoption of the resolution.
 - (b) Deliberations ensued in which the delegates expressed both their support and opposition to the resolution.
 - (c) The Convenor put the question for the adoption of the resolution which was negatived on a voice vote.
 - (ii) The second motion was moved by Hon. Rihal. Del.No.487 and seconded by Hon. Maasai Maroa, Del. No.422. The terms of the resolution are:
“That, the President may initiate the dismissal of the Prime Minister subject to its support by sixty-five percent of Members of Parliament.”
 - (a) The Convenor proposed the question for the adoption of the resolution.
 - (b) Deliberations ensued in which the delegates in a nutshell were of the view that, such a provision would easily arouse in-fighting within the National Executive. However, other delegates were of the view that, such

provision would provide an alternative means for dealing with an errant and yet shrewd Prime Minister who parliamentarians may not dare take on.

- (c) The Convenor put the question for the adoption of the resolution which was **negatived** on a Division by show of hands. The results of the Division were:

AYES 19

NOES 12

MIN.NO.019/2004

ADJOURNMENT

The Convenor adjourned the Meeting at fifty minutes past Four O'clock until Nine O'clock tomorrow, Thursday, January 15, 2004.

SIGNED
CONVENOR

DATE
.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE EIGHTEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY, JANUARY 15, 2004 AT 09.50 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|-------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mganga | - | Parliament |
| 6. Hon. David Musila | - | Parliament |
| 7. Hon. David Oyao | - | District |
| 8. Hon. Edward Ohare | - | District |
| 9. Hon. Elizabeth Okelo | - | District |
| 10. Hon. Enock Kibung'uchi | - | Parliament |
| 11. Hon. Fred Gumo | - | Parliament |
| 12. Hon. George Nyamweya | - | Political Parties |
| 13. Hon. Gideon Moi | - | Parliament |
| 14. Hon. Gideon Ndambuki | - | Parliament |
| 15. Hon. Gonzi Rai | - | Parliament |
| 16. Hon. Hellen Yego | - | NGOs |
| 17. Hon. Hussein M. Mohammed | - | Parliament |
| 18. Hon. Jimmy Angwenyi | - | Parliament |
| 19. Hon. Joel Chebii | - | Trade Unions |
| 20. Hon. John Koech | - | Parliament |
| 21. Hon. John Gitari Munyi | - | District |
| 22. Hon. Mwangi Kiunjuri | - | Parliament |
| 23. Hon. Joseph Lagat | - | Parliament |
| 24. Hon. Lucas Maitha | - | Parliament |
| 25. Hon. Ajaa Olubayi | - | District |
| 26. Hon. Mike Oliebo | - | Political Parties |
| 27. Hon. Mwalimu Digore | - | District |
| 28. Hon. Nick K. Salat | - | Parliament |
| 29. Hon. Nyiva Mwendwa | - | Parliament |
| 30. Hon. Orie Rogo-Manduli | - | Political Parties |
| 31. Hon. Ogembo Masese | - | Political Parties |
| 32. Hon. Otieno Kajwang' | - | Parliament |
| 33. Hon. Dubat Ali Amey | - | District |
| 34. Hon. Raphael Muriungi | - | Parliament |
| 35. Hon. Reuben Ndolo | - | Parliament |
| 36. Hon. Reuben Tsumah | - | District |

37. Hon. Rihal Singh	-	Professional Organizations
38. Hon. Sammy Aswani Amunga	-	District
39. Hon. Sally Chepkoech	-	District
40. Hon. Stanislaus W.Kasoka	-	District
41. Hon. Thimangu Muketha	-	District
42. Hon. William Kabogo		Parliament
43. Hon. Wahu Kaara	-	Religious Organizations
44. Hon. William arap Ruto	-	Parliament
45. Hon. Earnest Kaitany	-	District
46. Hon. Maasai Maroa	-	District
47. Comm. Charles Maranga	-	<i>Ex-officio</i>
48. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Michael Sengech	-	District
4. Hon. Moses Wetang'ula	-	Parliament
5. Hon. Maina Kamanda	-	Parliament
6. Hon. Rev.Mutava Musyimi	-	Religious Organizations
7. Hon. Paul Muite	-	Parliament
8. Hon. Oburu Oginga	-	Parliament
9. Hon. Bonny Khalwale	-	Parliament
10. Hon. Kipkalya Kones	-	Parliament
11. Hon. Sammy Leshore	-	Parliament
12. Hon. P.K. Muriithi	-	Parliament
13. Hon. Dalmas Otieno	-	Political Parties
14. Hon. Hannah Kimani	-	District

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. David Rakamba	-	District Delegate
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OBSERVERS

Eusebio Wanyama	-	NGO Council
Fatuma Ahmed	-	WATTA Community
Rebecca Kitawa	-	MYW
Halima Ismail	-	ANISA
A. Kwamboka	-	Activist
George N. Mirie	-	NECK
Mrs Nyabonyi Kazungu	-	CJPC
Zachariah Momanyi	-	KRRP
Aisha Omar	-	UDWG

MORNING SESSION

MIN.NO. 020/2004:

COMMENCEMENT AND PRAYER

The meeting commenced at 9.50 a.m with a word of prayer by Hon. Hellen Yego, Del. No.468.

MIN.NO. 021/2004:

CONFIRMATION OF MINUTES

The Minutes of the Seventeenth Meeting held on January 14, 2004, were on a proposal by the Hon. Joel Chebii, Del. 441 and secondment of the Hon. Stanislaus Kasoka, Del. No.296, confirmed with the corrections herebelow:-

Corrections

- (a) Page 1 – the word Dstrict to read District.
 - 1. Hon. Dalmas Otieno is a delegate under Political Organizations
 - Hon. Enock Kibunguchy is a delegate under Parliament.
- (b) Page 6 – The item 6 be recorded to read as follows:
 - (i) **The Convenor put the question for the adoption of Article 151(1)(a) (b) and (c) which on a voice vote were adopted.**
 - (ii) **The Convenor put the question for the adoption of Article 151(d) which on a voice vote was negatived.**
- (c) Page 8 - the word “ensured” in the first line of item (ii) (b) should read “ensued.”
- (d) Page 9 – item (c), the results of the Division be amended to read: AYES
12

NOES 19

MIN.NO. 022/2004:

MATTERS ARISING

Min.No.017/2004 - It was noted that, the Committee reconvened later than thirty minutes past Two O'clock, due to the sudden down pour of rain.

MIN.NO. 023/2004:

COMMUNICATION FROM THE CONVENOR

The Convenor expressed gratitude to the Committee for the quick manner in which they have so far dealt with their task. Further, the Convenor informed the Committee of the following procedural guidelines.

- (i) The Clerk will brief the Convenor at the end of each day on the tasks (Articles) covered and dealt with.
- (ii) Movers of motions would submit them in writing to the Clerk who would in turn submit them to the Convenor.
- (iii) Movers would indicate their Seconders.
- (iv) The Convenor would propose all motions after secondment.
- (v) Rapporteur will take down the names of delegates wishing to speak on any matter.
- (vi) Repetition of views already expressed will not be allowed.
- (vii) Delegates strongly opposed to a proposal could move an amendment.
- (viii) All delegates speaking will be heard in silence.

MIN.NO. 024/2004:

CONSIDERATION OF THE DRAFT CONSTITUTION OF KENYA BILL

- 3. The proceedings interrupted on Wednesday, January 14, 2004 resumed.

ARTICLE 151 – STATE FUNCTIONS OF PRESIDENT

- 4. The Convenor proposed the question for the adoption of Article 151 (2) (c).

- (i) The Hon. Digole, Del. No.231 moved the following amendment:-

- “That, the words “as provided for in Article 205” be added at the end Article 151(2) (c)”**
- (ii) Deliberations ensued, which developed into a consensus.
 - (iii) **The Convenor put the question for adoption; and Article 151(2) (c) was amended as proposed in (i) above.**
- 5. The Convenor proposed the question for the adoption of Article 151 (3).**
- (i) Article 151 (3) (a)
 - (a) Deliberations ensued, in which there were varying views.
 - (b) Hon., Dalmas Otieno moved the following amendment:-
That, the semi-colon be deleted and the words “and shall cause the reports thereof to be laid before Parliament within twenty-one days,” be added.
 - (c) The amendment was seconded by Hon. David Musila, Del. No. 125
 - (d) Deliberations ensued which developed into a consensus.
 - (e) **The Convenor put the question for adoption; and Article 151 (3) (a) was, amended as in (b) above was agreed to on a voice vote.**
 - (ii) Article 151 (3) (b)
 - (iii) Deliberations ensued, in which the delegates expressed varying views.
 - (iv) Hon. Yego Del. No.468. moved the following amendment-
“That, the full stop be deleted and the words “in accordance with Article 102” be added.
 - (a) The amendment was seconded by Hon.
 - (b) Deliberations ensued which developed into a consensus.
 - (c) The Convenor put the question for adoption and Article 151 (3) (b) was amended as in (b) above; was **agreed to** on a voice vote.
 - (v) Article 151 (2) (ii) and (iii)
 - (a) Hon. Nyamweya Del. No. 615 moved the following amendment –
“That, in both sub-paragraphs (ii) and (iii) the words “after consultation with the President” be added after the words “Prime Minister.”
 - (b) The Convenor proposed the question of the amendment.
 - (c) Deliberations ensued in which, some of the delegates were of the view that, “consultation” was difficult to legislate and saw no possibilities for each office holder refusing to perform their constitutional roles and functions. Other delegates were of the view that, it would reduce friction between the President and the Prime Minister if the former had prior information of the persons she were to appoint.
 - (d) The closure of the deliberations was moved by Hon. Oliewo Del. No.613.
 - (e) The Convenor put the question of the closure of the deliberations, which was **agreed to.**
 - (f) **Thereupon, the Convenor put the question of the amendment as stated in (a) above; and was not agreed to on a voice vote.**
 - (g) Article 151 (2) (ii) and (iii) were therefore not amended as proposed by Hon. Nyamweya Del. No.615.
 - (vi) Minority report

Hon. Nyamweya, Del. No.615 informed the Committee of his intention to present a Minority report on Article 151(2) (ii) and (iii) to the Plenary of the National Constitutional Conference.

(vii) Article 151 (4)

- (a) The Convenor proposed the question of the adoption of Article 151 (4).
- (b) Deliberations ensued in which proposals to amend the Article in various forms were made. However, the Committee dealt with the following amendment by Hon. William Ruto, Del. No.179, whose terms are:
“That, in Sub-Article (4) the word “consultation” be deleted and substituted with the word “approval”; and further that, the words “National Defence Council” be deleted.
- (c) The Convenor proposed the question of the amendment in the terms in (b) above.
- (d) Deliberations ensued, which developed into a consensus.
- (e) The Convenor put the question of the amendment which was agreed to on a voice vote.

MIN.NO. 025/2004: ADJOURNMENT

The Convenor adjourned the Meeting at One O’clock until Two O’clock to-day, Thursday, January 15, 2004.

AFTERNOON SESSION

MIN.NO. 026/2004: RESUMPTION OF PROCEEDINGS

The Meeting was called to order by the Convenor at thirty minutes past Two O’clock.

MIN.NO. 027/2004: ADJOURNMENT OF THE MEETING

- 54. Hon. Digore, Del. No.231 moved the adjournment of the Meeting in view of the widespread complaints of the delegates being unwell.
- 55. Hon. Angwenyi, Del. No. 007 seconded.
- 56. The Convenor proposed the question for the adjournment of the Meeting.
- 57. Deliberations ensued in which in a nutshell, the delegates expressed reluctance to adjourn the Meeting.
- 58. The Convenor put the question of adjournment of the Meeting, which was not agreed to on a voice vote.**
- 59. The proceedings interrupted resumed.

MIN.NO. 028/2004: DELIBERATION OF DRAFT CONSTITUTION OF KENYA BILL

ARTICLE NO.152 – LEGISLATIVE FUNCTION OF PRESIDENT

- 1. The Convenor proposed the question for the adoption of Article 152.
- 2. Deliberations ensued, in which consensus was reached and resolved as follows:
 - (i) Article No.152 (1) (a)
 - (a) in view of the resolution made earlier under Article 151 which made the President the chairperson of the Cabinet, these provisions would not be necessary;
 - (b) in view of (a) above, the President would be able to channel whatever proposal he might have, though the Cabinet.
 - (c) This paragraph would have to be redrafted and recast.**
 - (ii) Article No.152 (1) (b)
This paragraph was by consensus deleted.

- (iii) Article No.152 (2)
 - (a) paragraph (a) was by consensus deleted.
 - (b) Paragraph (b) was by consensus adopted.
 - (c) Paragraph (c) was by consensus adopted.
- (iv) Article No.152 (3)
 - (a) The Convenor proposed the question for the adoption of Article No.152 (3)
Deliberations ensued.
 - (b) Hon. David Musila Del. No.125 moved an amendment in the following terms –
“That, the words “of the relevant Committee of” be deleted.
 - (c) The Convenor proposed the question of the amendment.
 - (d) Deliberation ensued which developed into consensus.
 - (e) **The Convenor put he question of the amendment, which was adopted on voice vote.**
- (v) Article 152 (4)
 - (a) The Convenor proposed the question of adoption of Article 152 (4).
 - (b) Deliberation ensued which developed into a consensus that –
 - Paragraph (a) – was by consensus adopted.
 - Paragraph (b) –
- Hon. Olubayi Del. No.395 moved an amendment in the following terms –

“That, the word “particular” and the full stop be deleted, and the words “Ministers concerned”, be added.
 - The Convenor proposed the question of the amendment, which by consensus was forthwith put.
 - **The Committee agreed to amend the paragraph by adding the words “a Minister or Ministers concerned.”**

Adoption of Article 152

The Convenor put the question for the adoption which was **agreed to** on a voice vote. The amendments are specified under specific paragraphs.

ARTICLE 153 – DECISIONS OF PRESIDENT

1. The Convenor proposed the question of the adoption of Article 153.
2. Deliberations ensued and a consensus was reached to amend the Article as proposed herebelow –
 - (i) Hon. Olubayi Del. No.395 moved an amendment in the following terms:
“That, the word “seal” be inserted after the words “shall bear the”
 - (i) **The Convenor, going by the obvious consensus, put the question of the amendment; which was agreed to on a voice vote.**

- (ii) **Further, by consensus, the words “any law” should be recorded and recast.**

ARTICLE 154 – CURTAILMENT OF PRESIDENTIAL POWERS

1. The Convenor proposed the question for the adoption of Article 154.
2. Deliberations ensued which developed into a consensus.
3. **The Convenor put the question for adoption which was agreed to on voice vote.**

ARTICLE 155 – RIGHT TO VOTE AND TIMING OF PRESIDENTIAL ELECTIONS

1. The Convenor proposed the question for the adoption of Article 155.
2. Deliberations ensued which developed into a consensus.
3. **The Convenor put the question for the adoption which was agreed to on a voice vote with the consequential deletion of letter “a” appearing before the words “An election of the President”, and insertion therein of figure “2”**

ARTICLE 156 – QUALIFICATIONS FOR ELECTION AS PRESIDENT

1. The Convenor proposed the question for the adoption of Article 156.
2. Deliberations ensued which developed into a consensus to deal with the paragraphs individually.
Article 156 (1)
3. paragraph (a) was by consensus adopted.

QUORUM OF THE COMMITTEE

49. Hon. Digole Del. No.231 drew the attention of the Convenor to the fact that, there was no quorum in Committee.
50. The Convenor directed that an account of the delegates present be undertaken.
51. The Rapporteur undertook the count and informed the Convenor that the Committee did not have a quorum.
52. The Convenor having confirmed that there was no quorum in the Committee, adjourned the Meeting.

MIN.NO. 029/2004: ADJOURNMENT

The Convenor adjourned the Meeting at Four O’clock until tomorrow, Friday, January 16, 2004 at fifteen minutes past Nine O’clock.

SIGNED
CONVENOR

DATE

.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE NINETEENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY, JANUARY 16, 2004 AT 09.40 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|-------------------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mghanga | - | Parliament |
| 6. Hon. David Musila | - | Parliament |
| 7. Hon. David Oyao | - | District |
| 8. Hon. Edward Ohare | - | District |
| 9. Hon. Elizabeth Okelo | - | District |
| 10. Hon. Enock Kibung'uchi | - | Parliament |
| 11. Hon. Fred Gumo | - | Parliament |
| 12. Hon. Gideon Moi | - | Parliament |
| 13. Hon. Gideon Ndambuki | - | Parliament |
| 14. Hon. Hannah Kimani | - | District |
| 15. Hon. Hellen Yego | - | NGOs |
| 16. Hon. Jimmy Angwenyi | - | Parliament |
| 17. Hon. Joel Chebii | - | Trade Unions |
| 18. Hon. John Gitari Munyi | - | District |
| 19. Hon. Joseph Lagat | - | Parliament |
| 20. Hon. Ajaa Olubayi | - | District |
| 21. Hon. Mike Oliewo | - | Political Parties |
| 22. Hon. Moses Wetang'ula | - | Parliament |
| 23. Hon. Mwalimu Digore | - | District |
| 24. Hon. Nick K. Salat | - | Parliament |
| 25. Hon. Nyiva Mwendwa | - | Parliament |
| 26. Hon. Orie Rogo-Manduli | - | Political Parties |
| 27. Hon. Ogembo Masese | - | Political Parties |
| 28. Hon. Otieno Kajwang' | - | Parliament |
| 29. Hon. Dubat Ali Amey | - | District |
| 30. Hon. Reuben Ndolo | - | Parliament |
| 31. Hon. Reuben Tsumah | - | District |
| 32. Hon. Rihal Singh | - | Professional
Organizations |
| 33. Hon. Sammy Aswani Amunga | - | District |
| 34. Hon. Sally Chepkoech | - | District |
| 35. Hon. Stanislaus W. Kasoka | - | District |
| 53. Hon. Thimangu Muketha | - | District |

54. Hon. William arap Ruto	-	Parliament
55. Hon. Earnest Kaitany	-	District
56. Hon. Maasai Maroa	-	District
57. Comm. Charles Maranga	-	<i>Ex-officio</i>
58. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Michael Sengech	-	District
4. Hon. Maina Kamanda	-	Parliament
5. Hon. Rev. Mutava Musyimi	-	Religious Organizations
6. Hon. Paul Muite	-	Parliament
7. Hon. Oburu Oginga	-	Parliament
8. Hon. Bonny Khalwale	-	Parliament
9. Hon. Kipkalya Kones	-	Parliament
10. Hon. Sammy Leshore	-	Parliament
11. Hon. P.G. Muriithi	-	Parliament
12. Hon. Dalmas Otieno	-	Political Parties
13. Hon. Hussein M. Mohammed	-	Parliament
14. Hon. George Nyamweya	-	Political Parties
15. Hon. Gonzi Rai	-	Parliament
16. Hon. John Koech	-	Parliament
17. Hon. Mwangi Kiunjuri	-	Parliament
18. Hon. Lucas Maitha	-	Parliament
19. Hon. Raphael Muriungi	-	Parliament
20. Hon. William Kabogo	-	Parliament
21. Hon. Wahu Kaara	-	Religious Organizations

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

DELEGATES IN ATTENDANCE

Hon. David Rakamba	-	District Delegate
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OBSERVERS

Eusebio Wanyama	-	NGO Council
Fatuma Ahmed	-	WATTA Community
Rebecca Kitana	-	MYW
Halima Ismail	-	ANISA
Zachariah Momanyi	-	KRRP
Aisha Omar	-	UDWG

MORNING SESSION

MIN.NO. 030/2004: COMMENCEMENT AND PRAYER

The Meeting commenced at 9.40 a.m with a word of prayer by Hon. Dubat Del. No.252.

MIN.NO. 031/2004: CONFIRMATION OF MINUTES

The Minutes of the Eighteenth Meeting held on January 15, 2004 were not confirmed as their production was delayed due to technical problems.

MIN.NO. 032/2004: CONSIDERATION OF THE DRAFT CONSTITUTION OF KENYA BILL

59. The proceeding interrupted on Thursday, January 15, 2004 resumed.

ARTICLE NO.156 – QUALIFICATIONS FOR ELECTION OF PRESIDENT

6. Amendment to the Title

By general consensus, it was resolved to amend title of this Article to read
“Qualifications and Disqualifications for Election of President”

7. The consideration of Article No.156(1) resumed.

(i) Article 156 (1) (b)

(a) Deliberation ensued in which delegates expressed varied views as follows:-

- That, the lower age limit be retained while the upper age limit be removed to enable the country benefit from the experience mustered through life;
- That, the lower age limit and the upper age limit be removed as the former limit was discriminatory;
- That both limits were not in keeping with the provisions of the Bill of Rights.

Amendment Proposed

(a) Hon. William Ruto Del. No.027 moved an amendment in the following terms.

“That, all the words in paragraph (b) be deleted and the words “a registered voter” be inserted in place thereof.”

(b) The Chairperson proposed the question of the amendment.

(c) The delegates expressed consensus that the paragraph had been sufficiently deliberated and the question should be put.

(d) The Convenor put the question of the amendment in the terms proposed in (a) above, which was agreed to on a voice vote.

(ii) Article No.156 (1)(c)

(a) The Convenor proposed the question of adoption.

(b) Deliberation ensued which developed into a consensus on the amendment moved by Hon. Olubayi, Del No. 395 in the following terms:-

“That all the words in paragraph (c) be deleted and insert in place thereof the words:-

“satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament”

(c) **The Convenor put the question of adoption; and on a voice vote, the amendment was adopted as in (b) above.**

(ii) Article No.156 (1) (d)

(a) The Convenor proposed the question of adoption.

(b) Deliberation ensued which developed into a consensus on the amendment moved by Hon. Kajwang' Del. No. 037 in the following terms:-

That all the words in paragraph (d) be deleted and insert in place thereof, the words –

“has attained at least form standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified.”

(c) **The Convenor put the question of adoption; and on a voice vote the amendment was agreed to as in (b) above**

(iii) Article No.156 (i) (e)

(a) The Convenor proposed the question of adoption.

(b) Deliberations ensued which developed into a consensus.

(c) The Convenor put the question of adoption; which, on a voice vote was refereed to.

(iv) Article No.156 (1) (f)

(a) The Convenor proposed the question of adoption.

(b) Deliberations ensued which developed into a consensus.

(c) The Convenor put the question of adoption which on a voice vote was agreed to.

(v) Article No. 156 (2)

(a) The Convenor proposed the question for the adoption of Article No.156 (2).

(b) Deliberations ensued which developed into a consensus and it was resolved as follows.

• **All paragraphs, i.e. (a), (b), (c), (d), (e) (f) and (g) were adopted without amendment.**

• That, the Sub-Article be amended by adding the following new paragraphs, which should take precedence on the existing paragraphs. These are:

(a) is of unsound mind;

(b) is an undischarged bankrupt;

(c) is serving a sentence of imprisonment for the commission of a crime; and

(d) has been removed from a public office on grounds of gross misconduct.

ARTICLE NO.157 - PROCEDURE AT PRESIDENTIAL ELECTION

(i) The Convenor proposed the question for the adoption of Article No.157.

(ii) Deliberations ensued which developed into a consensus and it was resolved as follows:-

(vi) Article No.157.

All sub-Articles, i.e. (1), (2), (3), (4),(5), (6) and (7) were adopted without amendment.

MIN.NO. 033/2004: ADJOURNMENT

The Convenor adjourned the Meeting at thirty-five minutes past Twelve O'clock until Nine O'clock on Monday, January 19, 2004.

SIGNED
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTIETH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY, JANUARY 19, 2004 AT 09.45 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|----------------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Karinge | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mghanga | - | Parliament |
| 6. Hon. Dalmas Otieno | - | Political Parties |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. Fred Gumo | - | Parliament |
| 12. Hon. George Nyamweya | - | Political Parties |
| 13. Hon. Gideon Moi | - | Parliament |
| 14. Hon. Gideon Ndambuki | - | Parliament |
| 15. Hon. Hannah Kimani | - | District |
| 16. Hon. Joel Chebii | - | Trade Unions |
| 17. Hon. John Gitari Munyi | - | District |
| 18. Hon. Joseph Lagat | - | Parliament |
| 19. Hon. Lucas Maitha | - | Parliament |
| 20. Hon. Ajaa Olubayi | - | District |
| 21. Hon. Michael Sengech | - | District |
| 22. Hon. Mike Oliewo | - | Political Parties |
| 23. Hon. Moses Wetang'ula | - | Parliament |
| 24. Hon. Mwalimu Digore | - | District |
| 25. Hon. Nyiva Mwendwa | - | Parliament |
| 26. Hon. Oburu Oginga | - | Parliament |
| 27. Hon. Orie Rogo-Manduli | - | Political Parties |
| 28. Hon. Ogembo Masese | - | Political Parties |
| 29. Hon. Otieno Kajwang' | - | Parliament |
| 30. Hon. Dubat Ali Amey | - | District |
| 31. Hon. Raphael Muriungi | - | Parliament |
| 32. Hon. Reuben Ndolo | - | Parliament |
| 33. Hon. Reuben Tsumah | - | District |
| 34. Hon. Rihal Singh | - | Professional Organizations |
| 35. Hon. Sammy Aswani Amunga | - | District |
| 36. Hon. Sally Chepkoech | - | District |
| 37. Hon. Stanislaus W. Kasoka | - | District |

38. Hon. William arap Ruto	-	Parliament
39. Hon. Ernest Kaitany	-	District
40. Hon. Maasai Maroa	-	District
41. Comm. Charles Maranga	-	<i>Ex-officio</i>
42. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGY

Hon. Wahu Kaara	-	Religious Organizations
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ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Nick K. Salat	-	Parliament
4. Hon. Maina Kamanda	-	Parliament
5. Hon. Rev. Mutava Musyimi	-	Religious Organizations
6. Hon. Paul Muite	-	Parliament
7. Hon. Bonny Khalwale	-	Parliament
8. Hon. Kipkalya Kones	-	Parliament
9. Hon. Sammy Leshore	-	Parliament
10. Hon. P.G. Muriithi	-	Parliament
11. Hon. Enock Kibunguchy	-	Parliament
12. Hon. Hussein M. Mohammed	-	Parliament
13. Hon. Hellen Yego	-	NGOS
14. Hon. Jimmy Angwenyi	-	Parliament
15. Hon. Thimangu Muketha	-	District
16. Hon. Gonzi Rai	-	Parliament
17. Hon. John Koech	-	Parliament
18. Hon. Mwangi Kiunjuri	-	Parliament
19. Hon. William Kabogo	-	Parliament

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

OBSERVERS

Eusebio Wanyama	-	NGO Council
Fatuma Ahmed	-	WATTA Community
Rebecca Kitana	-	MYW
Halima Ismail	-	ANISA
Zachariah Momanyi	-	KRRP
Yusuf S. Sheikh	-	SUPKEM
Nyabonyi Kasungu	-	CJPC
Gordon Muga	-	OBS.No.066

MORNING SESSION

MIN.NO. 034/2004:

The Meeting commenced at 9.45 a.m with a word of prayer by Hon. Rihai Del. No. 487.

MIN.NO. 035/2004:

COMMENCEMENT AND PRAYER

CONFIRMATION OF MINUTES

43. Minutes of the Seventeenth Meeting of January 15, 2004, were not confirmed.
44. Minutes of the Eighteenth Meeting of January 16, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Olubayi, Del. No. 395 and seconded by Hon. Digore, Del. No.231.

Corrections

- (i) Page 2- The name of Hon. Ernest Kaitany was corrected.
- (ii) Page 5-
- (a) Item No.(ii)(b), the word “*four*” be inserted after the word “*form*”; and that the words after the word “English” be reworded to read as follows;
“*and the persons who can only express themselves in sign language shall be similarly qualified*”
- (b) Item No. (iii) (c) the word “*refereed*” be deleted and insert in place thereof the word “*agreed*”

MIN.NO. 036/2004:

DELIBERATION ON DRAFT CONSTITUTION OF KENYA BILL

1. The proceeding interrupted on Friday, January 16, 2004, resumed.
2. **ARTICLE 158: QUESTIONS AS TO VALIDITY OF THE PRESIDENTIAL ELECTION.**
- (i) The Convenor proposed the question for the adoption of Article 158 – Questions as to Validity of Presidential election.
- (ii) Deliberations ensued in which delegates expressed varied views which in summary hinged on:
- (a) That, questions of validity of election of President should start at the High Court, as this would ensure that, doubts raised on such election are sufficiently delved into to avoid further aspersions on the decision of only one court.
- (b) That, the questions of validity of election of President should only start at the Supreme Court, as this would enable expeditious handling of such an important issue, whose delay would cause anxiety among the citizenry.
- (c) That, whether there is a challenge to the validity of the election of President or not, the declaration of result of election of President shall be followed by twenty-one days before the incoming (i.e. the presidential candidate declared as being successful) President is sworn in.
- (iii) Resolution on time limit before swearing in of a new President
The Convenor put the question for a resolution that, after declaration of result of election of President, the incoming or the presidential candidate declared as successful, shall be sworn in after twenty-one days from the date of declaration; which on a voice vote, the question was **agreed to**.
- (iv) The Convenor put the question of the adoption of Article 158 and on a Division by show of hands, the Article was **agreed to**. The result of the Divisions was:
- | | |
|------|----|
| AYES | 22 |
| NOES | 9 |
- (v) **Minority Report on Article 158**

Hon. Nyamweya Del. No.615 informed the Committee that he intended to move a minority report on Article 158 in terms of item (ii) (a) above, at the Plenary.

3. ARTICLE 159: ASSUMPTION OF OFFICE OF PRESIDENT

- (i) The Convenor proposed the question of the adoption of Article 159 – Assumption of Office of President.
- (ii) Deliberations ensued and consensus developed to adopt amendments proposed by Hon. Olubayi Del. No.395 and Hon. Rihal Del. No.487 **in the following terms** *“the Article be redrafted and recast to reflect the views of the Committee that, a successful presidential candidate shall be sworn in twenty-one days after the date the Electoral Commission pronounce the result of a presidential election”*.
- (iii) The Convenor put the question for the adoption of the resolution in (ii) above and was **agreed to** on voice vote.
- (iv) Article 159 – agreed to **with** amendments.

4. ARTICLE NO.160: TERM OF OFFICE OF PRESIDENT

- (i) The Convenor proposed the question for the adoption of Article 160 – Term of Office of President.
- (ii) Deliberations ensued which developed into a consensus to merge the proposals for amendment by Hon. Kajwang’ Del. No.037 and Hon. Ruto Del. No.179 in the following terms – *“that a new paragraph (3) as follows:- Any President who has served any part of a term shall be deemed to have served a full term.”*
- (iii) The Convenor put the question for the adoption of the amendment as in (ii) above; which on a voice vote was **agreed to**.
- (iv) Article 160 – agreed to **with** amendments.
- (v) **Minority Report**

Hon. Nyamweya Del. No.615 informed the Committee of that he intended to move a minority report in the Plenary.

5. ARTICLE 161: PROTECTION OF PRESIDENT IN RESPECT OF LEGAL PROCEEDINGS DURING OFFICE

- (i) The Convenor proposed the question for the adoption of Article 161- Protection of President in respect of legal proceedings during office.
- (ii) Deliberations ensued .

MIN.NO. 037/2004: ADJOURNMENT

The Convenor adjourned the Meeting at One O’clock until today, Monday January 19, 2004 at Two O’clock.

AFTERNOON SESSION

MIN.NO. 038/2004: RESUMPTION OF PROCEEDINGS

- 6. The Meeting was called to order by the Convenor at thirty minutes past Two O’clock.
- 7. **ARTICLE 161: PROTECTION OF PRESIDENT IN RESPECT OF LEGAL PROCEEDINGS DURING OFFICE**
 - (i) Deliberations ensued and consensus developed in which the Committee dealt with the proposals for amendments by the Hon. Olubayi Del. No.395 and Hon. William Ruto Del. No.179 which were condensed in the following terms:-

That, all the words, appearing after the words “private nature” in the sixth line to end of paragraph (b) of Article 161 (2) be deleted.

- (ii) The Convenor put the question for the adoption of the amendment in the terms in (ii) above, which was **agreed to** on a voice vote.
- (iii) Article 161 agreed to **with** amendments.

8. ARTICLE 162 – REMOVAL OF PRESIDENT ON GROUNDS OF INCAPACITY

- (i) The Convenor proposed the question for the adoption of Article 162 – Removal of President on ground o incapacity.
- (ii) Deliberations ensued which developed into a consensus to deal with proposals for amendments which were condensed in the following terms:-

Sub-Article 162(1)

- (a) “That, delete the words “*and they so*” in the fourth line, and insert in places thereof the words “*the Speaker shall*”
- (b) That, in the fifth line, delete the words “*the Chief Justice*”, and insert in places thereof the word “*who*”
- (c) That, in the sixth line, insert the words “*nominated by the National Medical Practioners and Dentists Board*” after the words “*five persons*”

Sub-Article 162(2)

“That, delete the full-stop and add the words “*”within fourteen days of appointment, with a copy send directly to the Speaker of the National Assembly.*”

Sub-Article 162(3)

- (a) That, all the words between the words “*Clause (1)*” in the second line and the words “*the Speaker*” in the fourth line be deleted.
- (b) That, the words “*to*” and “*a*” in the fifth line be deleted.
- (c) That, the full stop at the end be deleted and add the following words:- “*within seven days*”.

Sub-Article 162(4)

- (a) That, in the second line insert the words “*shall in writing inform*” after the word “*the Chief Justice*”
- (b) That, in the third line, delete the word “*or*”
- (c) That, the word “*who*” be inserted after the word “*Assembly*” in the third line.

Sub-Article 162(5)

That, in the second line, delete the words “*two thirds*” in the and insert in place thereof, the words “*one half*”.

Sub-Article 162(6)

- (a) That, delete the word “*not*” in the sixth line.
- (b) That, delete the word “*cease*” in the seventh line and insert the word “*continue*” in place thereof.

Sub-Article 162 (7)

- (a) That, the words “*any Member of Parliament at any time during*” be inserted after the word “*proposed*” in the second line.
- (b) That, the word “*at*” in the second line be deleted.
- (c) That, delete the full stop at the end and add the words “*after seven days notice*”.

Rearrangement of Sub-Articles

That, the Sub-Articles be rearranged in the following sequence:-

(1)+(6)+(3)+(2)+(4)+(5)+(7)

- (iii) The Convenor, with the consensus of the Committee deferred the disposal of the amendments to tomorrow, January 20, 2004.

MIN.NO. 039/2004: ADJOURNMENT

The Convenor adjourned the Meeting at fifty minutes past Four O'clock until Nine O'clock, tomorrow Tuesday, January 20, 2004.

SIGNED

CONVENOR

DATE

.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-FIRST SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, JANUARY 20, 2004 AT 09.30 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|------------------------------------|---|-------------------|
| 1. 181. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. 182. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mghanga | - | Parliament |
| 6. Hon. Dalmas Otieno | - | Political Parties |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. Enock Kibung'uchi | - | Parliament |
| 12. Hon. Fred Gumo | - | Parliament |
| 13. Hon. George Nyamweya | - | Political Parties |
| 14. Hon. Gideon Moi | - | Parliament |
| 15. Hon. Gideon Ndambuki | - | Parliament |
| 16. Hon. Hannah Kimani | - | District |
| 17. Hon. Hellen Yego | - | NGOS |
| 18. Hon. Joel Chebii | - | Trade Unions |
| 19. Hon. John Gitari Munyi | - | District |
| 20. Hon. Mwangi Kiunjuri | - | Parliament |
| 21. Hon. Joseph Lagat | - | Parliament |
| 22. Hon. Sammy Leshore | - | Parliament |
| 23. Hon. Ajaa Olubayi | - | District |
| 24. Hon. Mike Olieo | - | Political Parties |
| 25. Hon. Moses Wetang'ula | - | Parliament |
| 26. Hon. Mwalimu Digore | - | District |
| 27. Hon. Nick K. Salat | - | Parliament |
| 28. Hon. Nyiva Mwendwa | - | Parliament |
| 29. Hon. Oburu Oginga | - | Parliament |
| 30. Hon. Orie Rogo-Manduli | - | Political Parties |
| 31. Hon. Ogembo Masese | - | Political Parties |
| 32. Hon. Otieno Kajwang' | - | Parliament |
| 33. Hon. P.G. Muriithi | - | Parliament |
| 34. Hon. Dubat Ali Amey | - | District |
| 35. Hon. Raphael Muriungi | - | Parliament |
| 36. Hon. Reuben Ndolo | - | Parliament |

45. Hon. Reuben Tsumah	-	District
46. Hon. Rihal Singh	-	Professional Organizations
47. Hon. Sammy Aswani Amunga	-	District
48. Hon. Sally Chepkoech	-	District
49. Hon. Stanislaus W.Kasoka	-	District
50. Hon. Thimangu Muketha	-	District
51. Hon. William arap Ruto	-	Parliament
52. Hon. Ernest Kaitany	-	District
53. Hon. Maasai Maroa	-	District
54. Comm. Charles Maranga	-	<i>Ex-officio</i>
55. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Maina Kamanda	-	Parliament
4. Hon. Rev.Mutava Musyimi	-	Religious Organizations
5. Hon. Paul Muite	-	Parliament
6. Hon. Bonny Khalwale	-	Parliament
7. Hon. Kipkalya Kones	-	Parliament
8. Hon. Lucas Maitha	-	Parliament
9. Hon. Hussein M. Mohammed	-	Parliament
10. Hon. Jimmy Angwenyi	-	Parliament
11. Hon. Gonzi Rai	-	Parliament
12. Hon. John Koech	-	Parliament
13. Hon. Michael Sengech	-	District
14. Hon. William Kabogo	-	Parliament

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba- District Delegate

IN ATTENDANCE

Prof. V.C. Crabbe	-	Draftsperson
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder

OBSERVERS

1. Eusebio Wanyama	-	NGO Council
2. Rebecca Kitana	-	MYW
3. Halima Ismail	-	ANISA
4. Zachariah Momanyi	-	KRRP
5. Yusuf S. Sheikh	-	SUPKEM
6. Nyabonyi Kasungu	-	CJPC
7. Gordon Muga	-	OBS.No.066
8. Silvance O. Obeka	-	Egerton University
9. George Mirie	-	NCEC

MORNING SESSION

MIN.NO. 040/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 9.30 a.m with a word of prayer by Hon. Oliewo Del. No. 613.

MIN.NO. 041/2004:

CONFIRMATION OF MINUTES

The Minutes of the Seventeenth Meeting held on January 15, 2004, were confirmed **with** the corrections herebelow. The confirmation was proposed by Hon. Masese Ogembo Del. No.591 and seconded by Hon Ohare Del. No.386.

Corrections:

- (i) Page 2 – the name “*Earnest*” was amended to read “*Ernest*”
- (ii) Page 8 – Min. No.027/2004 (6) was reworded to read “*The proceedings which had been interrupted were resumed*”.
- (iii) Page 9 – item No.2 (1) (b) the word “*though*” was corrected to read “*through*”
- (iv) Page 12 – the name “Digole” was corrected to read “Digore”

MIN.NO. 042/2004: MATTERS ARISING

The following matters arose:-

- (i) Page 7 – Item (iv) Minority Report
 - (a) Delegates deliberated at length on the processes by which minority views would be expressed in the Plenary.
 - (b) It was resolved that, minority views will be dealt with pursuant to Regulation 45 of the procedure; i.e., that such views would be put in a report to be annexed to the report of the Committee which will be presented to the Plenary.

MIN.NO. 043/2004:

ADOPTION OF AGENDA

The Agenda for the Twenty-First Meeting was adopted. The adoption was proposed by Hon. Orie Rogo-Manduli Del. No.594 and seconded by Hon. Tsuma Del.235.

MIN.NO. 044/2004:

CONFIRMATION OF MINUTES

The Minutes of the Twentieth Meeting held on January 19, 2004 were confirmed **with** corrections. The confirmation was proposed by Hon. Oliewo Del. No.613 and seconded by Hon. Ernest Kaitany Del. No.341.

Corrections:

- (i) Page 2 – the Hon. Enock Kibunguchy Del. No.056 be recorded as present.
- (ii) Page 6 – Item (v) delete the word “of” appearing before the word “that” in the second line.
- (iii) Page 7 – Item 8 – add the letter “f” after the letter “o”
- (iv) Page 8 – (a) Item (c) correct the spelling of the word is “*practitioners*”
 - (b) Sub-Article 162(2) – correct the word “*send*” to read “*sent*”
 - (c) Sub-Article 162(4) – reword paragraph (a) to read thus – “That, in the second line insert the words “*shall within seven days in writing inform*” after the word “*the Chief Justice.*”

MIN.NO. 045/2004:

MATTERS ARISING

There were no Matters Arising.

**MIN.NO. 046/2004: CONSIDERATION OF THE DRAFT
CONSTITUTION OF KENYA BILL**

1. ARTICLE NO.162 – REMOVAL OF PRESIDENT ON GROUNDS OF INCAPACITY

- (i) The deliberations started on January 19, 2004 resumed.
- (ii) The Convenor put the questions for amendments of the Sub-Articles and were resolved as indicated.

(a) Sub-Article 162(1)

- (i) “That, delete the words *“and they so”* in the fourth line, and insert in places thereof the words *“the Speaker shall”*”
- (ii) That, in the fifth line, delete the words *“the Chief Justice”*, and insert in places thereof the word *“who”*
- (iii) That, in the sixth line, insert the words *“nominated by the National Medical Practitioners and Dentists Board”* after the words *“five persons”*
 - The Convenor put severally the question of the amendments which were **agreed to** on a voice vote.

- **Sub-Article 162(1) was adopted with amendments.**

(b) Sub-Article 162(2)

“That, delete the full-stop and add the words *“”within fourteen days of appointment, with a report send to the Speaker of the National Assembly.”*”

- The Convenor put severally the questions of the amendments which were **agreed to** on a Division. The results of the Division were:-

AYES 16

NOES 14

- **Sub-Article 162(2) was adopted with amendments.**

(c) Sub-Article 162(3)

- (i) That, all the words between the words *“Clause (1)”* in the second line and the words *“the Speaker”* in the fourth line be deleted.
- (ii) That, the words *“to”* and *“a”* in the fifth line be deleted.
- (iii) That, the full stop at the end be deleted and add the following words:- *“within seven days”*.
 - The Convenor put severally the questions of the amendments which were **agreed to** on voice vote.
 - **Sub-Article 162(3) was adopted with amendments.**

(d) Sub-Article 162(4)

- (i) That, in the second line insert the words *“shall in writing inform”* after the word *“the Chief Justice”*

- (ii) That, in the third line, delete the word “or”
- (iii) That, the word “who” be inserted after the word “Assembly” in the third line.
- (iv) That, all the words from the word “If” to the word “office” in the second line be deleted.
- (v) That, all the words in Sub-Article 162(5) be deleted.
- (vi) That, the words deleted in (iv) above be inserted in Sub-Article 162(5) and add the words “*shall cease to hold office*”, *at the end*.

- The Convenor put severally the questions of the amendments which were **agreed to** on a voice vote.
- **Sub-Article 162 (4) was adopted with amendments.**
- Sub-Article 162(4) as amended, reads as follows:-
“The Chief Justice shall within seven days in writing inform the Speaker of the National Assembly who shall certify in writing accordingly and table the certificate together with the report of the tribunal before the National Assembly.”

(e) **Sub-Article 162(5)**

- Hon. Kajwang’ Del. No.037 moved an amendment in the following terms:-
- That, all the words in Sub-Article 162(5) be deleted and insert in places thereof the following:-
 - (i) *“That, if the tribunal reports that the President is incapable of discharging the functions of the office, he shall forthwith cease to hold office”*
 - (ii) *“That, the National Assembly may with the votes of one half of its members ratify the decision of the tribunal.”*
- The Convenor proposed the questions of the amendments.
- Deliberations ensued.
- The Convenor put severally the questions of the amendments which were **agreed to** on a voice vote.
- **Sub-Article 162(5) was adopted with amendments.**

MIN.NO. 047/2004:

ADJOURNMENT

The Convenor adjourned the Meeting at One O’clock, until Two O’clock this afternoon, Tuesday, January 20, 2004, to enable the delegates have their lunch.

AFTERNOON SESSION

MIN.NO. 048/2004:

RESUMPTION OF PROCEEDINGS

1. The Meeting was called to order by the Convenor at fifteen minutes past Two O’clock.

2. The proceedings interrupted to facilitate a lunch break, were resumed.

3. ARTICLE 162: REMOVAL OF PRESIDENT ON GROUNDS ON INCAPACITY

(f) Sub-Article 162 (6)

- (i) That, delete the word “*not*” in the sixth line.
- (ii) That, delete the word “*cease*” in the seventh line and insert the word “*continue*” in place thereof.
- The Convenor put severally the questions for amendments which were **agreed to** on a voice vote.
- **Sub-Article 162 (6) was adopted with amendments.**
- (g) Sub-Article 162 (7)
 - (i) That, the words “*by any Member of the National Assembly at any time during*” be inserted after the word “*proposed*” in the second line.
 - (ii) That, the word “*at*” in the second line be deleted.
 - (iii) That, delete the full stop at the end and add the words “*after seven days notice*”.
 - The Convenor put severally, the question for amendments which was **agreed to** on a voice vote.
 - **Sub-Article 162(7) was adopted with amendments.**

(h) Re-arrangement of the Sub-Articles

That, the Sub-Articles be rearranged in the following sequence:-

(1)+(6)+(3)+(2)+(4)+(5)+(7)

- **The Convenor, with the consensus of the Committee, put the question, “that, the re-arrangement of the Sub-Articles shall be dealt with by the draftsman.”**
- Question put and **agreed to** on voice vote.
- **Article 162 was adopted with amendments.**

4. ARTICLE 163 : IMPEACHMENT AND REMOVAL OF PRESIDENT

- (i) The Convenor proposed the question for the adoption of Article 163 – Impeachment and Removal of President .
- (ii) Deliberations ensued which developed into a consensus on all Sub-Articles, except Sub-Article (3), where an amendment was moved by Hon. Oliewo Del. No.613 to insert the word “*one half*” after the words “*Clause 2*”.
- (iii) The Convenor put the question for the adoption, which was **agreed to** with amendments of a voice vote.
- (iv) **Article 163 adopted with amendments.**

5. ARTICLE NO.164: VACANCY IN THE OFFICE OF PRESIDENT

- (i) The Convenor proposed the question for the adoption of Article 164- Vacancy in the Office of President.
- (ii) Deliberations ensued which developed into a consensus whereby as per a previous resolution, the word “*Vice*” was deleted and the word “*Deputy*” inserted in place thereof.
- (iii) The Convenor put the question for adoption of Article No.164 which was **agreed to** on a voice vote.

(iv) **Article 164 was adopted with amendment.**

6. ARTICLE NO.165: OFFICE OF DEPUTY PRESIDENT

(i) The Convenor proposed the question for the adoption of Article 165 – Office of Deputy President.

(ii) Deliberations ensued which developed into a consensus on all Sub-Articles. The Word “*Vice*” was deleted and substituted with the word “*Deputy*” as resolved earlier.

(iii) The Convenor put severally the questions for the adoption of Article 165, which were **agreed to** on a voice vote.

(iv) **Article 165 was adopted with amendments.**

7. ARTICLE NO.166: VACANCY IN THE OFFICE OF DEPUTY PRESIDENT

(i) The Convenor proposed the question for the adoption of Article No.166 – Vacancy in the Office of Deputy President.

(ii) Deliberations ensued which developed into a consensus on all Sub-Articles; except Sub-Article (4) which was amended by consensus to delete the words “*not later than fourteen days of the approval*” in the second and third lines and insert therein the word “*forthwith*”.

(iii) The Convenor put severally the questions for the adoption of Article No.166 which were **agreed to** on a voice vote.

(iv) **Article No.166 was adopted with amendment.**

8. ARTICLE NO.167: FUNCTIONS OF THE DEPUTY PRESIDENT

(i) The Convenor proposed the question for the adoption of Article 167 – Functions of the Deputy President.

(ii) Deliberations ensued which developed into a consensus that, the full deliberation of this Article be deferred to tomorrow.

9. ARTICLE NO.168: DEATH BEFORE ASSUMING OFFICE

(i) The Convenor proposed the question for the adoption of Article 168 – Death before assuming office.

(ii) Deliberations ensued which developed into a consensus on all Sub-Articles, except Sub-Article (4) which was amended by deletion of the word “*thirty*” in the fourth line and insertion therein of the word “*sixty*”, which was **agreed to on a Division**. The results of the Division were:-

Those in favour of 90 days – 3

Those in favour of 60 days – 25

Those in favour of 45 days – 3

Those in favour of 30 days – Nil

(iii) **Article No. 168 adopted with amendment.**

10. ARTICLE NO.169: SALARIES AND ALLOWANCES OF PRESIDENT AND DEPUTY PRESIDENT

(iii) The Convenor proposed the question for the adoption of Article No.169 – Salaries and Allowances of President and Deputy President.

(iv) Deliberations ensued which developed into a consensus on all Sub-Articles.

(v) The Convenor put the question for the adoption, which was **agreed to** on a voice vote.

(vi) **Article No.169 was adopted without amendment.**

MIN.NO. 049/2004:

ADJOURNMENT

The Convenor adjourned the Meeting at Four O'clock until Nine O'clock tomorrow, Wednesday, January 21, 2004.

SIGNED **CONVENOR**

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-SECOND SITTING OF THE TECHNICAL COMMITTEE ‘D’ ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY, JANUARY 21, 2004 AT 09.15 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|-------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mghanga | - | Parliament |
| 6. Hon. Dalmas Otieno | - | Political Parties |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. Enock Kibung'uchi | - | Parliament |
| 12. Hon. Fred Gumo | - | Parliament |
| 13. Hon. George Nyamweya | - | Political Parties |
| 14. Hon. Gideon Moi | - | Parliament |
| 15. Hon. Gideon Ndambuki | - | Parliament |
| 16. Hon. Hannah Kimani | - | District |
| 17. Hon. Hellen Yego | - | NGOS |
| 18. Hon. Jimmy Angwenyi | - | Parliament |
| 19. Hon. Joel Chebii | - | Trade Unions |
| 20. Hon. John Gitari Munyi | - | District |
| 21. Hon. Mwangi Kiunjuri | - | Parliament |
| 22. Hon. Joseph Lagat | - | Parliament |
| 23. Hon. Sammy Leshore | - | Parliament |
| 24. Hon. Ajaa Olubayi | - | District |
| 25. Hon. Mike Oliewo | - | Political Parties |
| 26. Hon. Mwalimu Digore | - | District |
| 27. Hon. Nick K. Salat | - | Parliament |
| 28. Hon. Nyiva Mwendwa | - | Parliament |
| 29. Hon. Oburu Oginga | - | Parliament |
| 30. Hon. Orie Rogo-Manduli | - | Political Parties |
| 31. Hon. Ogembo Masese | - | Political Parties |
| 32. Hon. Otieno Kajwang' | - | Parliament |
| 33. Hon. P.G. Muriithi | - | Parliament |

56. Hon. Dubat Ali Amey	- District
57. Hon. Raphael Muriungi	- Parliament
58. Hon. Reuben Ndolo	- Parliament
59. Hon. Reuben Tsumah	- District
60. Hon. Rihal Singh	- Professional Organizations
61. Hon. Sammy Aswani Amunga	- District
62. Hon. Sally Chepkoech	- District
63. Hon. Stanislaus W. Kasoka	- District
64. Hon. Thimangu Muketha	- District
65. Hon. William Kabogo	- Parliament
66. Hon. William arap Ruto	- Parliament
67. Hon. Ernest Kaitany	- District
68. Hon. Maasai Maroa	- District
69. Comm. Charles Maranga	- <i>Ex-officio</i>
70. Comm. Alice Yano	- <i>Ex-officio</i>

ABSENT WITH APOLOGY

Hon. Wahu Kaara	- Religious Organizations
Hon. Gonzi Rai	- Parliament

ABSENT:

1. Hon. George Saitoti	- Parliament
2. Hon. John Michuki	- Parliament
3. Hon. Maina Kamanda	- Parliament
4. Hon. Rev. Mutava Musyimi	- Religious Organizations
5. Hon. Paul Muite	- Parliament
6. Hon. Bonny Khalwale	- Parliament
7. Hon. Kipkalya Kones	- Parliament
8. Hon. Lucas Maitha	- Parliament
9. Hon. Hussein M. Mohammed	- Parliament
10. Hon. Michael Sengech	- District
11. Hon. John Koech	- Parliament
12. Hon. Moses Wetang'ula	- Parliament

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba

IN ATTENDANCE

Prof. V.C. Crabbe	- Drafts person - CKRC
Mr. Murumba Werunga	- Deputy Clerk - National Assembly
Mr. Wycliffe Owade	- Program Officer - CKRC
Ms. Lucky Waindi	- Program Officer - CKRC
Ms Halima Amran	- Verbatim Recorder- CKRC

OBSERVERS

1. Eusebio Wanyama	- NGO Council
2. Rebecca Kitana	- MYW
3. George N. Mirie	- NCEC
4. Zachariah Momanyi	- KRRP
5. Yusuf S. Sheikh	- SUPKEM

- | | | |
|-----------------------|---|--------------------|
| 6. Nyabonyi Kasungu | - | CJPC |
| 7. Silvance O. Okeka | - | Egerton University |
| 8. Stephen M. Malului | - | SUPKEM |

MORNING SESSION

MIN.NO. 050/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 9.15 a.m. with a word of prayer by Hon. Hannah Kimani Del. No.318.

MIN.NO. 051/2004:

CONFIRMATION OF MINUTES

Minutes of the Twenty First Meeting of January 20, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Dubat, Del. No.252 and seconded by Hon. Oliewo, Del. No.613.

Corrections

- (v) Page 2 - (a) The absence with apology of the following was recorded:-

Hon. Wahu Kaara Del.No. 521

Hon. Gonzi Rai Del.No.117

- (b) The presence of the following on January 20, 2004 was recorded:

Hon. Thimangu Muketha, Del.No. 272.

- (vi) Page 4 - That, in Min.No.042/2004(i)(b), delete the word “could” and insert in place thereof the word “would”.
- (vii) Page 6 - That, in Item (b) delete the word “*send*” and insert in place thereof the word “sent”.
- (viii) Page 8 - That in Item (ii) a comma be inserted after the word “*may*”.
- (ix) Page 10 - That, in Article 165(i) delete the word “*Vice*” and insert in place thereof the word “*Deputy*”.
- (x) Page 11 - That, the sequence of the result of the Division be recorded as follows;

Those in favour of 90 days	-	3
Those in favour of 60 days	-	25
Those in favour of 45 days	-	3
Those in favour of 30 days	-	Nil

MIN.NO. 052/2004:

MATTERS ARISING

The following matters arose.

1. Min.No.042/2004 of January 20, 2004

The delegates expressed their concern on the recurrent misrepresentation and misreporting of their proceedings and decisions.

2. Min.No.046/2004 (1)

That, in the first bullet of (a)(iii), the word “*severally*” be deleted and be replaced by the word “*all*”. Further that, this change be effected throughout the minutes.

MIN.NO. 053/2004:

CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL.

1. ARTICLE NO.167: FUNCTIONS OF THE DEPUTY PRESIDENT.

- (i) The deliberations that were deferred yesterday, January 20, 2004, resumed.

- (ii) The Convenor, on the consensus of the Committee, requested delegates to forward their proposals to the Rapporteurs; for them to be deliberated upon later.

PART III – THE PRIME MINISTER AND CABINET

2. ARTICLE 170: PRIME MINISTER

- (i) The Convenor proposed the question for the adoption of Article 170 – Prime Minister.
- (ii) Deliberations ensued and developed into a consensus to deal with the following proposals for amendments.

Hon. Rihal, Del. No.487

- (a) That, Sub-Article 170(1) be amended by deleting all the words in the Sub-Article to the end; and insert in place thereof the words “*There shall be a Prime Minister of the Republic of Kenya.*”
- (b) The Convenor proposed the question of the amendment in the terms in (a) above.

- (c) Deliberations ensued.

- (d) **The Convenor put the question of the amendment, which was agreed to on a voice vote.**

Hon. Dalmas Otieno, Del. No.614

- (a) “*That, there shall be a Prime Minister of the Republic of Kenya who shall be the chief operating officer of the Cabinet*”.
- (b) *The Prime Minister and other members of the national executive exercise their authority within the Republic by:*
 - (c) *developing and implementing national budgets and policy;*
 - (d) *preparing and initiating government legislation for introduction in Parliament.*
 - (e) *Implementation and administering Acts of Parliament.*
 - (f) *Co-ordinating the functions of ministries and departments;*
and
 - (g) *Performing any other executive function provided for by the Constitution or an Act of Parliament, except those functions assigned to the President.*
- (h) The Convenor proposed the question of the amendment as in (a) and (b) above.
- (i) Deliberations ensued.
- (j) The Convenor put the question of the amendment; which on a Division was **not agreed to**. The result of the Division were:-

AYES 21

NOES NIL

Hon. Boniface Mghanga, Del. No.100.

- (i) “*That, there shall be a Prime Minister of the Republic of Kenya.*”
- (ii) *The Prime Minister shall co-ordinate the implementation of Cabinet decisions and together with other members of the Cabinet shall be responsible for:-*

- (a) *developing and implementing national budgets and policy;*
- (b) *preparing and initiating government legislation for introduction in Parliament.*
- (c) *implementation and administering Acts of Parliament.*
- (d) *Co-ordinating the functions of ministries and departments; and*
- (e) *Performing functions provided for by the Constitution or an Act of Parliament and any other duties as may be assigned by the President.*

The Convenor proposed the question of the amendment as in (i) and (ii) above.

- (a) Deliberations ensued.
- (b) The Convenor put the question of the amendment, which was **not agreed to** on voice vote.

(c) Sub-Article 170(1) was adopted with amendment.

Sub-Article 170(2) (a)

The Convenor proposed the question of the adoption of Sub-Article (2).

- (a) Deliberations ensued
- (b) Hon. Lagat, Del. No.065 moved an amendment to Sub-Article (2)(a) in the following terms:
“That, the words “*in conjunction with Parliament*” be inserted after the word “*developing*”.
- (c) The Convenor proposed the question of the amendment.
- (d) Deliberations ensued.
- (e) The Convenor put the question of the amendment which was **agreed to** on a voice vote.

(f) Sub-Article 170 (2)(a) adopted with amendment.

Sub-Articles 170(2) (b), (c) and (d)

The Convenor proposed all questions for the adoption of these paragraphs, which were **agreed to** on a voice vote.

Sub-Article 170(2)(e)

- (a) Hon. Masese Ogembo, Del. No.591 moved an amendment in the following terms:- “That the word “*executive*” be deleted.”
- (b) The Convenor proposed the question of the amendment as in (a) above.
- (c) Deliberations ensued.
- (d) The Convenor put the question of the amendment which was **agreed to** on a voice vote.
- (e) **Sub-Article No.170(2) was adopted with amendments.**

Sub-Article 170(3)

- (a) The Convenor on the basis of a consensus of the Committee proposed the question for the addition of a new Sub-Article (3) in the following terms:-

“That, in the absence of the President and the Deputy President, the Prime Minister shall chair meetings of the Cabinet.”

- (b) Deliberations ensued which re-affirmed the consensus.
(c) The Convenor put the question for adoption of the Sub-Article, which was **agreed to** on a voice vote.
(d) **Article No. 170 was adopted with amendments.**

MIN.NO. 054/2004: ADJOURNMENT

The Convenor adjourned the Meeting at One O'clock until Two O'clock this afternoon, Wednesday, January 21, 2004, to enable the delegates have their lunch.

AFTERNOON SESSION

MIN.NO. 055/2004: RESUMPTION OF PROCEEDINGS

1. The Meeting was called to order by the Convenor at fifteen minutes past Two O'clock.
2. The proceedings which were interrupted to facilitate a lunch break, were resumed.

3. ARTICLE NO.171: APPOINTMENT OF PRIME MINISTER

- (i) The Convenor proposed the question for the adoption of Article 171 – Appointment of Prime Minister.
(ii) Deliberations ensued which developed into consensus to deal with the following amendments:-

Sub-Article No.171(1)

Hon. Musila Del. No.125 moved an amendment in the following terms:-

That, the word “*thirty*” be deleted and replaced by the word

“*sixty*”.

The Convenor proposed and put the question of the amendment in the terms in (a) above, which was **agreed to** on a Division. The result of the Division was:

AYES – 19

NOES - 11

Hon. Oliewo Del. No.613 moved an amendment to Sub-Article 171(1) to delete paragraphs (b) and (c). The amendment was seconded by Hon. Nyiva Mwendwa Del. No.134.

- (a) Deliberations ensued.
(b) The Convenor put the question of the amendment, which was **not agreed to** on a voice vote.
(c) Closure of the deliberations was moved by Hon. Digore, Del. No.231; and was on a voice vote **agreed to**.
(d) The Convenor put the question for the adoption of Sub-Articles (1), (2),(3), (4) and (5), which was **agreed to** on a voice vote.
(e) **Sub-Articles No.171 (1), (2), (3), (4), (5) – Appointment of Prime Minister were adopted without amendment.**

Sub-Article No.171(6)

- (a) **Hon. Lagat Del. No.035** moved an amendment in the following terms:

“That, all the words after the words “the President shall” be deleted– and insert in places thereof the words “elect one from among their membership to be the Prime Minister.”

- (b) The Convenor proposed the question of the amendment in the terms in (a) above.
- (c) Hon. Nyiva Mwendwa Del. No.134 proposed a closure.
- (d) The Convenor put the question for the closure which was **agreed to** on a voice vote.
- (e) The Convenor put the question of the amendment, which on a voice vote was **not agreed to**.

Further Amendment

(a) **Hon. Aswani Del. No.382** moved an amendment in the following terms:-

“That,

- the word “by” in the second line be deleted;
- the words “the President shall” in the third line be deleted;
- the words in paragraph (a) be deleted and the words “Parliament shall stand dissolved” be inserted in places thereof.
- The word “require” and “to” in paragraph (b) be deleted and insert in the later case the word “shall”.

- (b) The Convenor proposed all questions of the amendments.
- (c) Deliberations ensued.
- (d) The Convenor put the question of the amendment, which was **agreed to** on a voice vote.

4. ARTICLE 172: TERM OF OFFICE

Sub-Article 172 (1)

- (i) The Convenor proposed the question for the adoption of Article 172 – Term of Office.
- (ii) Deliberations ensued.
- (iii) **Sub-Article 172 (1) was adopted by consensus.**

Sub-Article 172(2)

Hon. Gacuru wa Karengi Del. No.314 moved an amendment in the following terms:-

“That, a new Sub-Article (3) be added”.

- (a) Deliberations ensued which developed into a consensus.
- (b) The Convenor put the question of the amendment which on a Division was **not agreed to**. The results were:-
AYES - 20
NOES –06

(c) **Article 172– Term of Office was adopted without amendment.**

5. ARTICLE NO.173: RESIGNATION OF PRIME MINISTER

- (i) The Convenor proposed the question for the adoption of Article No.173 – Resignation of the Prime Minister.
- (ii) Deliberations ensued which developed into a consensus.

(iii) The Convenor put the question of the adoption of Article No.173 – Resignation of Prime Minister, which was **agreed to** on a voice vote.

(iv) **Article 173 – Resignation of Prime Minister was adopted without amendment.**

6. ARTICLE NO.174: DISMISSAL OF PRIME MINISTER

(i) The Convenor proposed the question for the adoption of Article 174 – Dismissal of Prime Minister.

(ii) Deliberations ensued which developed into a consensus and the following amendment was moved and **agreed to** on a voiced vote; viz:

That. The words “*Parliament*” in the first line; “*the other members of* ” in the fourth line of Sub-Article No.174(1); be deleted and insert in the first case the words “*National Assembly*” and the word “*Ministers*” at the end.

(iii) **Article 174 – Dismissal of Prime Minister adopted with amendments.**

MIN.NO. 056/2004: ADJOURNMENT

The Convenor adjourned the Meeting at fifteen minutes past Four O’clock until Nine O’clock, tomorrow, Thursday, January 22, 2004.

SIGNED
CONVENOR

DATE
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NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-THIRD SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY, JANUARY 22, 2004 AT 09.25 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|----------------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Boniface Mghanga | - | Parliament |
| 6. Hon. Dalmas Otieno | - | Political Parties |
| 7. Hon. David Musila | - | Parliament |
| 8. Hon. David Oyao | - | District |
| 9. Hon. Edward Ohare | - | District |
| 10. Hon. Elizabeth Okelo | - | District |
| 11. Hon. Enock Kibung'uchi | - | Parliament |
| 12. Hon. Fred Gumo | - | Parliament |
| 13. Hon. George Nyamweya | - | Political Parties |
| 14. Hon. Gideon Moi | - | Parliament |
| 15. Hon. Gideon Ndambuki | - | Parliament |
| 16. Hon. Hannah Kimani | - | District |
| 17. Hon. Hellen Yego | - | NGOS |
| 18. Hon. Jimmy Angwenyi | - | Parliament |
| 19. Hon. Joel Chebii | - | Trade Unions |
| 20. Hon. Mwangi Kiunjuri | - | Parliament |
| 21. Hon. Joseph Lagat | - | Parliament |
| 22. Hon. Sammy Leshore | - | Parliament |
| 23. Hon. Lucas Maitha | - | Parliament |
| 24. Hon. Ajaa Olubayi | - | District |
| 25. Hon. Mike Oliebo | - | Political Parties |
| 26. Hon. Moses Wetang'ula | - | Parliament |
| 27. Hon. Mwalimu Digore | - | District |
| 28. Hon. Nick K. Salat | - | Parliament |
| 29. Hon. Nyiva Mwendwa | - | Parliament |
| 30. Hon. Oburu Oginga | - | Parliament |
| 31. Hon. Orie Rogo-Manduli | - | Political Parties |
| 32. Hon. Ogembo Masese | - | Political Parties |
| 33. Hon. Otieno Kajwang' | - | Parliament |
| 34. Hon. P.G. Muriithi | - | Parliament |
| 35. Hon. Dubat Ali Amey | - | District |
| 36. Hon. Raphael Muriungi | - | Parliament |
| 37. Hon. Reuben Tsumah | - | District |
| 38. Hon. Rihal Singh | - | Professional Organizations |

39. Hon. Sammy Aswani Amunga	-	District
40. Hon. Sally Chepkoech	-	District
41. Hon. Stanislaus W. Kasoka	-	District
42. Hon. Thimangu Muketha	-	District
43. Hon. William Kabogo	-	Parliament
44. Hon. William arap Ruto	-	Parliament
45. Hon. Wahu Kaara	-	Religious Organizations
46. Hon. Ernest Kaitany	-	District
47. Hon. Maasai Maroa	-	District
48. Comm. Charles Maranga	-	<i>Ex-officio</i>
49. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGY

Hon. Gonzi Rai	-	Parliament
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ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Maina Kamanda	-	Parliament
4. Hon. Rev. Mutava Musyimi	-	Religious Organizations
5. Hon. Paul Muite	-	Parliament
6. Hon. Bonny Khalwale	-	Parliament
7. Hon. Kipkalya Kones	-	Parliament
8. Hon. Hussein M. Mohammed	-	Parliament
9. Hon. Michael Sengech	-	District
10. Hon. John Koech	-	Parliament
11. Hon. Reuben Ndolo	-	Parliament
12. Hon. John Gitari Munyi	-	District

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

9. Eusebio Wanyama	-	NGO Council
10. Rebecca Kitana	-	MYW
11. George N. Mirie	-	NCEC
12. Zachariah Momanyi	-	KRRP
13. Yusuf S. Sheikh	-	SUPKEM
14. Nyabonyi Kasungu	-	CJPC
15. Silvan O. Okeka	-	Egerton University
16. Stephen M. Malului	-	SUPKEM
17. Gordon Muga	-	OBS NO.066

MORNING SESSION

MIN.NO. 057/2004: COMMENCEMENT AND PRAYER

The Meeting commenced at 9.25 a.m. with a word of prayer by Hon. Dubat Del. No.252.

MIN.NO. 058/2004: ADOPTION OF AGENDA

1. Hon. Muketha, Del. No.272 proposed the adoption of the Agenda and was seconded by Hon. Chebii, Del. No. 441.
2. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 059/2004: CONFIRMATION OF MINUTES

Minutes of the Twenty Second Meeting held on January 21, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Ohare, Del. No.386 and seconded by Hon. Chebii, Del. No.441.

Corrections:

- (i) Page 6 -
- (a) That, the results of the Division be recorded as follows:-

Those in favour	-	Nil
Those not in favour	-	21
 - (b) That,
 - (i) In Item (b)(i) the word “budges” should read “budgets”. Further that the same change be effected on page 7.
 - (ii) That, the words “*A person shall not hold office as the Prime Minister for more than two terms of five years*” be inserted after the figure (3) in the amendment in Sub-Article 172(2) by Hon. Gacuru was Karenga Del. No.314.
 - (iii) The presence of the following on January 19, 2004 was recorded.

- Hon. Thimangu Muketha Del. No.272

- (iv) Page 12 – That, the sequence of the result of the Division be recorded as follows:-

Those in favour	-	06
Those not in favour	-	20

MIN.NO. 060/2004: MATTERS ARISING

There were no Matters Arising.

MIN.NO. 061/2004: CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL

1. The deliberations that were interrupted yesterday, January 22, 2004, were resumed.

PART III – THE PRIME MINISTER AND CABINET

2. ARTICLE 175: CABINET

- (i) The Convenor proposed the question for the adoption of Article 175 – Cabinet.
- (ii) Deliberations ensued and developed into a consensus to deal with the following proposals for amendments.

Sub-Article 175 (1)

- (i) **Hon. Kellan Wavomba, Del. No.390**, that the words “*in accordance with recommendation of*” in the second line, be deleted and insert in place thereof the word “*nominated*”.
- (ii) **Hon. Hellen Yego, Del. No.468**, “*that, the words “the majority of” in the third line be deleted and insert in places thereof the words “more than one half of all”*
 - (a) The Convenor proposed all the questions of the amendments.
 - (b) Deliberations ensued which developed into a consensus.
 - (c) The Convenor put all the questions of the amendments which were **agreed to** on a voice vote.
- (iii) **Hon. Angwenyi, Del. No.007**, “*that, all the words after the word “approval” in the third line to the end, be deleted and insert in places thereof the words “of fifty percent of all members of the National Council”*.
 - (a) The Convenor proposed the question of he amendment.
 - (b) Deliberations ensued.
 - (c) Hon. Moi, Del. No.109 claimed a closure.
 - (d) The Convenor put the question for the closure, which was **agreed to** on a voice vote.
 - (e) The Convenor put the question of the amendment; which was **not agreed to** on a voice vote.
- (iv) **Hon. Ruto, Del. No.179**
 - (a) “*that, all the words in the third line be deleted and insert in places thereof the words “from among Members of the National Assembly”*”
 - (b) *that, the words “Deputy Ministers” be inserted after the word “Cabinet” in the second line*”
 - (c) The Convenor proposed the questions of the amendments.
 - (d) Deliberations ensued.
 - (e) *The Convenor put the questions of the amendments which were **agreed to** on a voice vote.*
 - (f) *Sub-Article No.175(1) as amended to reads as follows:-
“The President shall appoint the remaining members of the Cabinet and Deputy Ministers nominated by the Prime Minister from amount members of the National Assembly.*

Sub-Article 175(2)

Hon. Digore, Del. No.231

- (a) “That, the words “*and Deputy Ministers*” be inserted after the word “*Cabinet*”. in the second line.
- (b) “That, the existing Sub-Article 175(2) be renumbered as paragraph (a) and add a new paragraph (b) to read “*The President shall dismiss the Cabinet Ministers and Deputy Ministers upon such recommendation by the Prime Minister*”.
- (c) The Convenor proposed the question of the amendment.
- (d) Deliberations ensued.

- (e) The Convenor put all the questions of the amendments, which were **agreed to** on a voice vote.

Minority Report

The Hon. Kabogo, Del. No.027 informed the Committee that he would present a minority report pursuant to Regulation 45 of the Regulations.

Sub-Article No.175(3)

The Sub-Article was deleted by the consensus of the Committee.

Sub-Article No.175(4)

(a) Paragraph (a) - **agreed to** on a voice vote.

(b) Paragraph (b) - **agreed to** on a voice vote.

(c) Paragraph (c) - **agreed to** on a voice vote with the consensus to substitute the v

3. ARTICLE NO.176 – DECISIONS, RESPONSIBILITY AND ACCOUNTABILITY OF CABINET.

- (i) The Convenor proposed the question for the adoption of Article No.176 – Decisions, Responsibility and Accountability of Cabinet.

(ii) Sub-Article No.176 (1)

Hon. Oliewo Del. No.613, “that, Sub-Article 176(1) be reworded to read as follows:-

“That, the Cabinet shall meet at least once monthly with a quorum of at least one half of the entire membership and all decisions made shall be in writing.”

(a) The Convenor proposed the question for amendment.

(b) Deliberations ensued.

(c) Hon. Chebii Del. No.441 claimed to move a closure.

(d) The Convenor put the question of the closure, which was **agreed to** on a voice vote.

(e) The Convenor put the question of the amendment which was **agreed to** on a voice vote.

Hon. Rihal Del. No.487

That, the amendment made to this Sub-Article be further amended as follows:-

- (a) *That, Sub-Article No.176 (1) be renumbered as (a) and the following new paragraphs be added.*

(b) All decisions will not be valid and not be implemented unless signed by the Prime Minister and the President.

(c) A decision of the Cabinet invalidated as in (b) may be referred to the National Assembly which shall decide on the matter by a two-third majority vote to validate the decision.

(d) The Convenor proposed the question of the amendment.

(e) Deliberations ensued.

(f) The Convenor put the question of the amendment; which was **agreed to** on a voice vote.

Sub-Article No.176(2)

Was **agreed to** with amendments by consensus on a voice vote.

Sub-Article No.176(3)

Hon. Ruto, Del. No.179 “that, the words “*the exercise of the powers*” in the second and third lines, be deleted.”

- (a) The Convenor proposed the question of the amendment.
- (b) Deliberations ensued.
- (c) The Convenor put the question of the amendment, which was **agreed to** on a voice vote.

Sub-Articles No. 176(4) and (5)

These Sub-Articles were **agreed to** on a voice vote.

Article No.176 was adopted with amendments.

MOTION FOR ADJOURNMENT

- (i) Hon. Dubat Del. No.252 moved that, “*the Meeting do now adjourn until tomorrow, Friday, January 23, 2004 at 9.00 a.m. O’clock. Hon. Digore 231 seconded the Motion*”.
- (ii) The Convenor proposed the question of the Motion.
- (iii) Deliberations ensued.
- (iv) The Convenor put the question of the Motion which was **agreed to** on a voice vote.

MIN.NO. 056/2004: ADJOURNMENT

The Convenor adjourned the Meeting at fifty minutes past One O’clock until Nine O’clock, tomorrow, Friday, January 23, 2004.

SIGNED

CONVENOR

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-FOURTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY, JANUARY 23, 2004 AT 09.25 HRS

PRESENT: The following honorable delegates were present:-

- | | | |
|-------------------------------|---|----------------------------|
| 1. Hon. Joseph Martin Shikuku | - | Convenor |
| 2. Hon. Gacuru wa Kareng'e | - | District |
| 3. Hon. Kellan Wavomba | - | District |
| 4. Hon. Beatrice Kamamia | - | District |
| 5. Hon. Dalmas Otieno | - | Political Parties |
| 6. Hon. David Oyao | - | District |
| 7. Hon. Edward Ohare | - | District |
| 8. Hon. Elizabeth Okelo | - | District |
| 9. Hon. Enock Kibung'uchi | - | Parliament |
| 10. Hon. George Nyamweya | - | Political Parties |
| 11. Hon. Gideon Moi | - | Parliament |
| 12. Hon. Gideon Ndambuki | - | Parliament |
| 13. Hon. Gonzi Rai | - | Parliament |
| 14. Hon. Hannah Kimani | - | District |
| 15. Hon. Hellen Yego | - | NGOS |
| 16. Hon. Jimmy Angwenyi | - | Parliament |
| 17. Hon. John Gitari Munyi | - | District |
| 18. Hon. Joel Chebii | - | Trade Unions |
| 19. Hon. Kipkalya Kones | - | Parliament |
| 20. Hon. Ajaa Olubayi | - | District |
| 21. Hon. Mike Oliewo | - | Political Parties |
| 22. Hon. Mwalimu Digore | - | District |
| 23. Hon. Nick K. Salat | - | Parliament |
| 24. Hon. Nyiva Mwendwa | - | Parliament |
| 25. Hon. Oburu Oginga | - | Parliament |
| 26. Hon. Orie Rogo-Manduli | - | Political Parties |
| 27. Hon. Ogembo Masese | - | Political Parties |
| 28. Hon. Otieno Kajwang' | - | Parliament |
| 29. Hon. Dubat Ali Amey | - | District |
| 30. Hon. Reuben Tsumah | - | District |
| 31. Hon. Rihal Singh | - | Professional Organizations |
| 32. Hon. Sammy Aswani Amunga | - | District |
| 33. Hon. Sally Chepkoech | - | District |
| 34. Hon. Stanislaus W. Kasoka | - | District |
| 35. Hon. Thimangu Muketha | - | District |
| 36. Hon. Wahu Kaara | - | Religious Organizations |
| 37. Hon. Ernest Kaitany | - | District |
| 38. Hon. Maasai Maroa | - | District |
| 39. Comm. Charles Maranga | - | <i>Ex-officio</i> |

50. Comm. Alice Yano	-	<i>Ex-officio</i>
<u>ABSENT:</u>		
1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Maina Kamanda	-	Parliament
4. Hon. Rev.Mutava Musyimi	-	Religious Organizations
5. Hon. Paul Muite	-	Parliament
6. Hon. Bonny Khalwale	-	Parliament
7. Hon. Hussein M. Mohammed	-	Parliament
8. Hon. Michael Sengech	-	District
9. Hon. John Koech	-	Parliament
10. Hon. Reuben Ndolo	-	Parliament
11. Hon. Boniface Mghanga	-	Parliament
12. Hon.David Musila	-	Parliament
13. Hon. Mwangi Kiunjuri	-	Parliament
14. Hon. Fred Gumo	-	Parliament
15. Hon. Joseph Lagat	-	Parliament
16. Hon. Sammy Leshore	-	Parliament
17. Hon. Lucas Maitha	-	Parliament
18. Hon. Moses Wetang'ula	-	Parliament
19. Hon. P.G. Muriithi	-	Parliament
20. Hon. Raphael Muriungi	-	Parliament
21. Hon. William Kabogo	-	Parliament
22. Hon. William arap Ruto	-	Parliament

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

18. Eusebio Wanyama	-	NGO Council
19. Rebecca Kitana	-	MYW
20. Zachariah Momanyi	-	KRRP
21. Yusuf S. Sheikh	-	SUPKEM
22. Nyabonyi Kasungu	-	CJPC

MORNING SESSION

MIN.NO. 063/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 9.25 a.m. with a word of prayer by Hon. Dubat Del. No.252.

MIN.NO. 064/2004:

ADOPTION OF AGENDA

- Hon. Rihal, Del. No.487 proposed the adoption of the Agenda and was seconded by Hon. Angwenyi Del. No. 007.

4. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 065/2004: CONFIRMATION OF MINUTES

Minutes of the Twenty-Third Meeting held on January 23, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Ohare, Del. No.386 and seconded by Hon. Oyao, Del. No.416.

Corrections:

- (i) Page 4 – (a) That, in future the result of the Division shall record the delegates abstaining.
(b) That, in Item (b)(ii) the name should read as “Gacuru wa Kareng’e”
- (ii) Page 6 – That, in item (f) the word “*amount*” should read “*among*”
- (iii) Page 7 – (a) That, in Sub-Article No.175(3) it be recorded that Hon. Ohare Del. No. 386 and Hon Aswani Del. No. 382 will draft a Minority Report pursuant to Regulation 45 of the Regulations.
(b) That, in Sub-Article No.176(1)(c) substitute the name “Hon. Kaitany Del. No.341” for the name “Hon. Chebii, Del.No.441.”
- (iv) Page 9 - That in the Motion for adjournment, add, the words “*to enable delegates attend the requiem mass for the late Hon. Joab Omino, M.P. Del. No.066*” after the word “*O’clock*” in the third line.

MIN.NO. 066/2004: MATTERS ARISING

There was no Matters Arising.

MIN.NO. 067/2004: CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL

- 1. The deliberations that were interrupted yesterday, January 22, 2004, were resumed.

PART III – THE PRIME MINISTER AND CABINET

2. ARTICLE 177 - ASSIGNMENT OF FUNCTIONS

- (i) The Convenor proposed the question for the adoption of Article 177 – Assignment of functions.
- (ii) Deliberations ensued and developed into a consensus and Sub-Articles (1), (2) and (3) were **agreed to** on a voice vote.
- (iii) Sub-Article No.177(4)

Hon. Digore, Del.No.231

- (a) That, in the third line the words “*and the Deputy Minister*” be inserted after the “*Cabinet Member*”
- (b) That, the word “*is*” in the second line be deleted and insert in place thereof, the word “*are*”.

Hon. Kajwang’ Del.No. 087

That, there is a need to specifically allocate duties to the Cabinet Ministers and the Deputy Ministers.

The Convenor, by the consensus of the Committee, deferred further deliberations and referred the issues raised by Hon. Digore and Kajwang’ to a Sub-Committee comprising Commissioner Yano, Hon. Nyamweya, Prof. Crabbe and Hon. Kajwang’.

3. ARTICLE NO.178: CONDUCT OF MEMBERS OF THE CABINET.

- (i) The Convenor proposed the question for the adoption

of Article 178.- Conduct of Members of the Cabinet.

- (ii) Deliberations ensued and consensus developed in which the following amendment was dealt with:-

- (a) **The heading of the Article**

- Hon. Oyao, Del. No.416**, that, the Title be amended by adding the words “*and the Deputy Ministers*”..

- (b) The Convenor by consensus put the question of the amendment which was **agreed to** on a voice vote.

- (iii) Sub-Articles No.178(1), (2) and (3), were **agreed to** on a voice vote.

- (iv) Article No.178 was adopted **with** amendment.

4. **ARTICLE NO.179 – SALARIES AND ALLOWANCES OF THE PRIME MINISTER, THE DEPUTY PRIME MINISTERS, MINISTERS AND DEPUTY MINISTERS.**

This Article was adopted **without** amendment on a voice vote.

5. **ARTICLE NO.180 – ABSENCE OF DEPUTY PRESIDENT, PRIME MINISTER; DEPUTY PRIME MINISTERS, MINISTERS AND DEPUTY MINISTERS FROM THE REPUBLIC OF KENYA**

- (i) The Convenor proposed the question for the adoption of Article No.180 – Absence of Deputy President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers from the Republic of Kenya.

- (ii) Deliberations ensued which developed into a consensus to deal with the following amendments:-

- Hon. Nyamweya, Del. No. 615** that in Sub- Article 180 (2) delete the words “*Prime Minister*” and insert in place thereof, the word “*President*”.

- (a) Deliberation ensued.

- (b) Hon. Digore, Del. No. 231 claimed to move a Closure.

- (c) The Convenor put the question of the Closure; which was **agreed to** on a voice vote.

- (d) The Convenor put the question of the amendment, which was **agreed to** on a voice vote.

- (e) However, on a **consensus**, the Sub-Articles were merged by insertion of the words “*a Cabinet Minister and a Deputy Minister*” after the word “*Prime Minister*” in the second line of Sub-Article 180 (1)

- (f) **Article No. 180, adopted with amendments**

6. **ARTICLE NO. 181. PERMANENT SECRETARIES**

- (i) The Convenor proposed the question for the adoption of Article No. 181 – Permanent Secretaries.

- (ii) Deliberation ensued which developed into a consensus to deal with the following amendments:-

- Sub-Article 181 (I)**

- Hon. Rihal, Del. No. 487**

- (a) That, the existing Sub-Article 181 (I) be transferred to Article No. 177 as Sub-Article No.177(5).
- (b) The Convenor on the consensus put the question which was **agreed to** on a voice vote.

Sub –Article Nos. 181(2) (3) and (4)

Hon. Rihal, Del. No.487

- (a) that, all the words in Sub-Articles (2), (3) and (4) be deleted and insert in places thereof, the words
 - (i) *There is established the office of Cabinet Secretary who shall be the Head of Public Service;*
 - (ii) *The Cabinet Secretary and Permanent Secretaries shall be appointed by the President on nomination by the Prime Minister;*
 - (iii) *The Cabinet Secretary shall administer the public service under the supervision of a Prime Minister;*
 - (iii) *There is established the office of Permanent Secretary which is an office in public service;*
 - (iv) *Each Government Ministry shall be under the supervision of Permanent Secretary;*
- (b) Deliberations ensued in which the delegates expressed varied views, for instance:
 - That, the position of a Cabinet Secretary should not be specifically created, as this would lead to conflict of roles and functions with the Prime Minister;
 - That, the position of a Cabinet Secretary be an assignment to be allocated to a Permanent Secretary by the Prime Minister;
 - That, the Chairperson of the Public Service Commission be the Head of Public Service;
 - That, reference be made to the provisions on the Cabinet Secretary in the Constitution of Malawi;
 - That, the Permanent Secretary in the office of “the Prime Minister shall be the Secretary to the Cabinet;
 - That, one of the functions of the Prime Minister be that, *“the Prime Minister nominates Permanent Secretaries for appointment by the President”;*
 - That, the appointment of Permanent Secretaries be by the Public Service Commission on the advice of the Prime Minister;
 - That, the Permanent Secretaries be shielded from the vagaries of politics;
 - That, the following be considered:-
 - should there be an office of Cabinet Secretary and should the holder be Head of the Public Service;

- should there be an office of the Head of the Public Service.
 - That, the above be referred to Sub-Committee comprising the Rapporteurs, draftsman, Hon. Kajwang', Hon. Nyamweya, this Sub-Committee will also draft the functions of the Deputy President in Article 167.
- (iii) Hon. Kasoka, Del No. 296 claimed to move a closure, which was **agreed to** on a voice vote.
 - (iv) The Convenor put the question that, the views expressed above, be referred to a Sub-Committee, which was **agreed to** on a voice vote.
 - (v) Consequently, the Convenor deferred further deliberation on this Article, pending the outcome of the work of the Sub-Committee.
- 7. ARTICLE NO. 182 - OATH OR AFFIRMATION OF MINISTERS AND PERMANENT SECRETARIES**
- (i) The Convenor proposed the question for the adoption of Article No. 182 – Oath or Affirmation of Ministers and Permanent Secretaries.
 - (ii) Deliberations ensued which developed into a consensus to insert the words “**Deputy Ministers**” after the word “**Ministers**” in the title.
 - (iii) The Convenor put the question for adoption which was **agreed to** on a voice vote.
 - (iv) **Article No. 182 – Oath or Affirmation of Ministers and Permanent Secretaries adopted with amendments.**
- 8. ARTICLE NO. 183 OFFICES OF THE REPUBLIC**
- (i) The Convenor proposed the question for the adoption of Article No. 183 – offices of the Republic.
 - (ii) Deliberations ensued which developed into a consensus to amend the title to read “*Offices in the Public Service*”.
 - (iii) The Convenor put the question for adoption, which was **agreed to** on a voice vote.
 - (iv) **Article No. 183 – Offices of the Republic was adopted with amendments.**

MIN.NO. 068/2004: ADJOURNMENT

The Convenor adjourned the Meeting at fifteen minutes past One O'clock until Nine O'clock on Monday, January 26, 2004.

SIGNED
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-FIFTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY, JANUARY 26, 2004 AT 09.30 HRS

PRESENT: The following honorable delegates were present:-

1. Hon. Joseph Martin Shikuku	-	Convenor
2. Hon. Gacuru wa Karenga	-	District
3. Hon. Kellan Wavomba	-	District
4. Hon. Beatrice Kamamia	-	District
5. Hon. Boniface Mghanga	-	Parliament
6. Hon. Dalmas Otieno	-	Political Parties
7. Hon. David Oyao	-	District
8. Hon. Edward Ohare	-	District
9. Hon. Elizabeth Okelo	-	District
10. Hon. George Nyamweya	-	Political Parties
11. Hon. Gideon Ndambuki	-	Parliament
12. Hon. Gonzi Rai	-	Parliament
13. Hon. Hannah Kimani	-	District
14. Hon. Hellen Yego	-	NGOS
15. Hon. Jimmy Angwenyi	-	Parliament
16. Hon. John Koech	-	Parliament
17. Hon. Joel Chebii	-	Trade Unions
18. Hon. Joseph Lagat	-	Parliament
19. Hon. Sammy Leshore	-	Parliament
20. Hon. Lucas Maitha	-	Parliament
21. Hon. Moses Wetang'ula	-	Parliament
22. Hon. Ajaa Olubayi	-	District
23. Hon. Mike Oliewo	-	Political Parties
24. Hon. Mwalimu Digore	-	District
25. Hon. Nick K. Salat	-	Parliament
26. Hon. Nyiva Mwendwa	-	Parliament
27. Hon. Oburu Oginga	-	Parliament
28. Hon. Orie Rogo-Manduli	-	Political Parties
29. Hon. Ogembo Masese	-	Political Parties
30. Hon. Otieno Kajwang'	-	Parliament
31. Hon. P.G. Muriithi	-	Parliament
32. Hon. Dubat Ali Amey	-	District
33. Hon. Raphael Muriungi	-	Parliament
34. Hon. Reuben Ndolo	-	Parliament
35. Hon. Reuben Tsumah	-	District
36. Hon. Rihal Singh	-	Professional Organizations

37. Hon. Sammy Aswani Amunga	-	District
38. Hon. Sally Chepkoech	-	District
39. Hon. Stanislaus W. Kasoka	-	District
40. Hon. Thimangu Muketha	-	District
41. Hon. Wahu Kaara	-	Religious Organizations
42. Hon. William arap Ruto	-	Parliament
43. Hon. Ernest Kaitany	-	District
44. Hon. Maasai Maroa	-	District
45. Comm. Charles Maranga	-	<i>Ex-officio</i>
46. Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1. Hon. George Saitoti	-	Parliament
2. Hon. John Michuki	-	Parliament
3. Hon. Maina Kamanda	-	Parliament
4. Hon. Rev. Mutava Musyimi	-	Religious Organizations
5. Hon. Paul Muite	-	Parliament
6. Hon. Bonny Khalwale	-	Parliament
7. Hon. Hussein M. Mohammed	-	Parliament
8. Hon. Michael Sengech	-	District
9. Hon. Enock Kibunguchy	-	Parliament
10. Hon. David Musila	-	Parliament
11. Hon. Mwangi Kiunjuri	-	Parliament
12. Hon. Fred Gumo	-	Parliament
13. Hon. William Kabogo	-	Parliament
14. Hon. Gideon Moi	-	Parliament
15. Hon. John Gitari Munyi	-	District
16. Hon. Kipkalya Kones	-	Parliament

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba

Hon. Stephen K. Tarus

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

23. Eusebio Wanyama	-	NGO Council
24. Rebecca Kitana	-	MYW
25. Zachariah Momanyi	-	KRRP
26. Yusuf S. Sheikh	-	SUPKEM
27. Nyabonyi Kasungu	-	CJPC

MORNING SESSION

MIN.NO. 069/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 9.30 a.m. with a word of prayer by Hon. Chebii Del. No.441.

MIN.NO. 070/2004: ADOPTION OF AGENDA

5. Hon. Angwenyi, Del. No.007 proposed the adoption of the Agenda and was seconded by Hon. Tsumah Del. No.235

6. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 071/2004: CONFIRMATION OF MINUTES

Minutes of the Twenty-Fourth Meeting held on January 23, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Masese Del. No.591 and seconded by Hon. Maroa, Del. No.422.

Corrections:

Page 9 - (iii) that, the words “*claimed to*” be deleted and the word “**move**” be reworded to read “*moved*”. Further, that, in future this rewording be used in all similar cases.

MIN.NO. 072/2004: MATTERS ARISING

There was no Matters Arising.

MIN.NO. 073/2004: CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL

47. The deliberations that were interrupted on Friday, January 23, 2004, were resumed.

PART II - THE PRESIDENT AND THE DEPUTY PRESIDENT

8. ARTICLE 167 FUNCTIONS OF THE DEPUTY PRESIDENTS

- (i) The Convenor proposed the question for the adoption of Article 167 – Function of the Deputy President as proposed by the Sub-Committee.
- Shall be the Speaker of the National Council
 - Shall be a member of the Cabinet and preside over its meetings in the absence of the President.
 - Shall be the Chairperson of the Defense Council.
 - Shall be the member of the National Council.
 - Shall be the member of the National Security Council.
 - Shall be the Deputy Commander-in-Chief of the Armed Forces.
 - Shall preside over international functions outside Kenya in the absence of the President.
 - Shall be the Chairperson of the National Intelligence Council.
 - May perform any function of the President when the President is incapacitated.
 - On behalf of the President, may at any other time perform any function of the President, as assigned by the President generally or from time to time.
 - The President may direct the Deputy President to perform any function or exercise any power of the President.

- (ii) Deliberations ensued and developed into a consensus to deal with each Paragraph.
- (iii) The Convenor put all the questions for the adoption of the proposals.
 - (a) Paragraph (a) was **not agreed to** on a voice vote.
 - (b) Paragraph (b) was **agreed to** on a voice vote.
 - (c) Paragraph (c) was **not agreed to** on a voice vote.
 - (d) Paragraph (d) was **not agreed to** on a voice vote.
 - (e) Paragraph (e) was **agreed to** on a voice vote.
 - (f) Paragraph (f) was **not agreed to** on a voice vote.
 - (g) Paragraph (g) was **not agreed to** on a voice vote.
 - (h) Paragraph (h) was **not agreed to** on a voice vote.
 - (i) Paragraph (i) was **not agreed to** on a voice vote.
 - (j) Paragraph (j) was **not agreed to** on a voice vote.
 - (k) Paragraph (k) was **not agreed to** on a voice vote.
- (iv) Though, the Committee had agreed to paragraphs (b), and (e), it latter transpired that, the two were adequately provided for in other provisions in the draft Bill. The Committee therefore reverted to deal with the CKRC draft.
- (v) The Convenor, then proposed the question for the adoption of Article 167 as in the draft Bill.
 - (a) Sub-Article 167(1) **agreed to** on a voice vote.
 - (b) Sub-Article 167(2) **agreed to** on a voice vote.
 - (c) Sub-Article 167(3) **agreed to** on a voice vote.
 - (d) **Sub-Article 167(4)**
 - Hon. Rihai Del. No.487 proposed that, the word *temporarily* be inserted before the word *incapacitated* in the second line and further that the words “*of Kenya*” be added at the end. He was seconded by Hon. Ohare Del. No.368.
 - The Convenor proposed the question of the amendment.
 - Deliberations ensued.
 - The Hon. Nyiva Mwendwa, Del. No. 134 moved a Closure;
 - The Convenor put the question of the Closure, which was **agreed to** on a voice vote.
 - The Convenor put the question of the amendment, which was **agreed to** on a voice vote. Sub-Article 167(4) was **adopted with** amendment.
 - (e) **Article 167 was adopted with amendments on a voice vote.**

3. ARTICLE NO.178(A) FUNCTIONS OF MINISTERS AND DEPUTY MINISTERS

- (i) The Convenor reminded the Committee that, the report of the Sub-Committee which is reproduced here below; arose when they realized that, the draft Bill had not have provisions for Functions of Ministers and Deputy Ministers. They shall have the following function.

- To advise the President and Prime Minister;
 - To direct, co-ordinate and supervise the activities of the Government departments, including parastatal bodies;
 - To initiate Bills for submission to the National Assembly and to explain those bills;
 - To prepare, explain and formulate for both the National Assembly and the National Council, the budget of the state and its economic programmes;
 - To be available to both Houses of Parliament for the purpose of answering any queries or participating in any debate pertaining to the content of the policies of the government;
 - To assist the President and Prime Minister in determining what international agreements are to be concluded or acceded to and to inform Parliament thereon;
 - To take responsibility for the implementation and administration of laws; and
 - To carry out such other functions reasonably necessary for the performance of their duties in accordance with this Constitution, as may be prescribed by an Act of Parliament or the President and the Prime Minister.
 - In performing the duties and functions referred in this section, the Cabinet shall make legislative proposals available in time in order to permit sufficient canvassing of expert and public opinion.
- (ii) The Convenor proposed the question for the adoption of the recommendations of the Sub-Committee.
- (iii) Deliberations ensued.
- (a) **Amendment of the words “Deputy Minister”**
- Hon. Wetang’ula, Del. No.209 moved that, the words “*Deputy Minister*” be deleted and insert in place thereof, the words “*Ministers of State*”. Hon. Chebii, Del. No.441 seconded.
 - Deliberations ensued.
 - The Convenor put the question of the amendment, which was not **agreed to** on a voice vote.
- (iv) Deliberations resumed on the report of the Sub-Committee. The delegates expressed varied views on the recommendations of the Sub-Committee.
- (a) Hon. Oyao, Del. No.416 moved that, the deliberations be adjourned and the report be

referred back to the Sub-committee which would avail a new report this afternoon.

- (b) The Convenor put the question for adjournment of the deliberations; which was **agreed to** on a voice vote.

AFTERNOON SESSION

MIN.NO. 074/2004: RESUMPTION OF PROCEEDINGS

1. The Meeting was called to order by the Convenor at fifteen minutes past Two O'clock.

2. The proceedings which had been interrupted to facilitate a lunch break were resumed.

3. ARTICLE 178(A) – FUNCTIONS OF THE MINISTERS AND DEPUTY MINISTERS.

1. The Convenor proposed the question of the adoption of Article No.178(A).

2. The Sub-Committee drafting the Functions of the Cabinet Ministers and Deputy Ministers reported that, most of their recommendations presented in the Morning Session were already catered for by provisions in the draft Bill.

3. The Convenor, on the consensus of the Committee, deferred further deliberations on the report of the Sub-Committee and allocated them more time, to present their report to the Committee, tomorrow, January 27, 2004.

4. ARTICLE NO.181 – PERMANENT SECRETARIES

- (i) The Convenor proposed the question for the adoption of the report of the Sub-Committee on the Permanent Secretaries, which had the following particulars:-

Article 181(4) various suggestions were offered as follows:-

- (a) That, the Secretary to the Cabinet should also be the Head of the Public Service.
- (b) That, there be a Secretary to the Cabinet assigned by the Prime Minister as provided for in the Draft.
- (c) That, the Secretary to the Cabinet be part of the National Executive in Article 149 on structure of the National Executive.
- (d) That, the Civil Service should be completely delinked from politics and hence should be independent and autonomous right from the Head of the Public Service. They should be employers of the Public Service Commission and answerable to the PSC on implementation of policies of the Government.
- (e) That, there should be no creations of offices like “Head of Civil Service” or “Chief Secretary” or Secretary to the Cabinet as it might conflict with powers and functions of the Prime Minister who shall be the Chief Executive of the government.
- (f) That, there should be a Permanent Secretary who will be Secretary to the Cabinet as a technical assistant in all policy matters.
- (g) The Prime Minister in consultation with the Public Service Commission, must assign:

- A Permanent Secretary to manage the administration of the Office of the President and serve as Secretary to the Cabinet; and
 - A Permanent Secretary to manage the administration of each Ministry within the National Government.
- (h) That, one of the functions of the Prime Minister be that “the Prime Minister shall nominate Permanent Secretaries for appointment by the President.
- (i) The Secretary to the Cabinet shall also serve as a depository of the records, Minutes and related documents of the Cabinet.
- (j) The Secretary shall be deemed to have been appointed to such office on the recommendation of the Public Service Commission.
- (k) The Secretary to the Cabinet shall before assuming the duties of his or her office, take and subscribe the oath of allegiance and oath of Secretary to the Cabinet as specified to this Constitution.
- (l) Permanent Secretary –
- Holds office until dismissal; and
 - May resign by giving notice in writing to the Prime Minister.
- (ii) Deliberations ensued in which each paragraph was to be dealt with individually.
- (iii) However, a proposal by Hon. Wavomba, Del. No. 390 to deferred further deliberation of the report and return it for detailed study and recommendation; which would report back tomorrow, January 27, 2004, was **agreed to** on a voice vote. Thus, the Committee further agreed to add Hon. Lagat, Del. No.065 and Hon. Nyiva Mwendwa Del. No. 134 to the Sub-Committee.

MIN.NO. 075/2004:

ADJOURNMENT

The Convenor adjourned the Meeting at forty-five minutes past Two O’clock until tomorrow, Tuesday, January 27, 2004 at Nine O’clock.

SIGNED

CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-SIXTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, JANUARY 27, 2004 AT 09.30 HRS

PRESENT: The following honorable delegates were present:-

- | | | | |
|-----|----------------------------|---|-------------------|
| 1. | Hon. Joseph Martin Shikuku | - | Convenor |
| 2. | Hon. Gacuru wa Karengi | - | District |
| 3. | Hon. Kellan Wavomba | - | District |
| 4. | Hon. Beatrice Kamamia | - | District |
| 5. | Hon. Boniface Mghanga | - | Parliament |
| 6. | Hon. Dalmas Otieno | - | Political Parties |
| 7. | Hon. David Musila | - | Parliament |
| 8. | Hon. David Oyao | - | District |
| 9. | Hon. Edward Ohare | - | District |
| 10. | Hon. Elizabeth Okelo | - | District |
| 11. | Hon. George Nyamweya | - | Political Parties |
| 12. | Hon. Gideon Moi | - | Parliament |
| 13. | Hon. Gideon Ndambuki | - | Parliament |
| 14. | Hon. Gonzi Rai | - | Parliament |
| 15. | Hon. Hannah Kimani | - | District |
| 16. | Hon. Hellen Yego | - | NGOS |
| 17. | Hon. Jimmy Angwenyi | - | Parliament |
| 18. | Hon. Joel Chebii | - | Trade Unions |
| 19. | Hon. John Gitari Munyi | - | District |
| 20. | Hon. Joseph Lagat | - | Parliament |
| 21. | Hon. Sammy Leshore | - | Parliament |
| 22. | Hon. Lucas Maitha | - | Parliament |
| 23. | Hon. Moses Wetang'ula | - | Parliament |
| 24. | Hon. Ajaa Olubayi | - | District |
| 25. | Hon. Mike Oliewo | - | Political Parties |
| 26. | Hon. Mwalimu Digore | - | District |
| 27. | Hon. Nick K. Salat | - | Parliament |
| 28. | Hon. Nyiva Mwendwa | - | Parliament |
| 29. | Hon. Oburu Oginga | - | Parliament |
| 30. | Hon. Orie Rogo-Manduli | - | Political Parties |
| 31. | Hon. Ogembo Masese | - | Political Parties |
| 32. | Hon. Otieno Kajwang' | - | Parliament |
| 33. | Hon. Dubat Ali Amey | - | District |
| 34. | Hon. Raphael Muriungi | - | Parliament |
| 35. | Hon. Reuben Ndolo | - | Parliament |

36.	Hon. Mwangi Kiunjuri	-	Parliament
37.	Hon. Reuben Tsumah	-	District
38.	Hon. Rihal Singh	-	Professional Organizations
39.	Hon. Sammy Aswani Amunga	-	District
40.	Hon. Sally Chepkoech	-	District
41.	Hon. Stanislaus W. Kasoka	-	District
42.	Hon. Thimangu Muketha	-	District
43.	Hon. Wahu Kaara	-	Religious Organizations
44.	Hon. Ernest Kaitany	-	District
45.	Hon. Maasai Maroa	-	District
46.	Comm. Charles Maranga	-	<i>Ex-officio</i>
47.	Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

1.	Hon. George Saitoti	-	Parliament
2.	Hon. John Michuki	-	Parliament
3.	Hon. Maina Kamanda	-	Parliament
4.	Hon. Rev. Mutava Musyimi	-	Religious Organizations
5.	Hon. Paul Muite	-	Parliament
6.	Hon. Bonny Khalwale	-	Parliament
7.	Hon. Hussein M. Mohammed	-	Parliament
8.	Hon. Michael Sengech	-	District
9.	Hon. Enock Kibunguchy	-	Parliament
10.	Hon. Fred Gumo	-	Parliament
11.	Hon. William Kabogo	-	Parliament
12.	Hon. John Koech	-	Parliament
13.	Hon. P.G. Muriithi	-	Parliament
14.	Hon. William arap Ruto	-	Parliament
15.	Hon. Kipkalya Kones	-	Parliament

DELEGATES IN ATTENDANCE

Hon. David Marcos Rakamba – Del. No.433

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

1.	Eusebio Wanyama	-	NGO Council
2.	Rebecca Kitana	-	MYW
3.	Zachariah Momanyi	-	KRRP
4.	Yusuf S. Sheikh	-	SUPKEM
5.	Gordon Muga	-	Langata 3 C
6.	Fatuma Ahmed	-	WATTA
7.	Nyabonyi Kasungu	-	CJPC

MORNING SESSION

MIN.NO. 076/2004: **COMMENCEMENT AND PRAYER**

The Meeting commenced at 9.30 a.m. with a word of prayer by Hon. Wavomba, Del. No. 390.

MIN.NO. 077/2004: **ADOPTION OF AGENDA**

7. Hon. Rihai Del. No.487 proposed the adoption of the Agenda and was seconded by Hon. Chebii Del. No.441.

8. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 078/2004: **CONFIRMATION OF MINUTES**

Minutes of the Twenty-Fifth Meeting held on January 26, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Orie Rogo-Manduli Del. No. 594 and seconded by Hon. Ohare Del. No. 386.

Corrections:

Page 11 - That, in Item (k), the word “*to*” be inserted after the word “*prescribe*”

MIN.NO. 079/2004: **MATTERS ARISING**

There was no Matters Arising.

MIN.NO. 080/2004: **CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL**

The deliberations that were interrupted on Monday, January 26, 2004, were resumed.

PART II - THE PRESIDENT AND THE DEPUTY PRESIDENT

9. NEW ARTICLE 178(A) FUNCTIONS OF THE MINISTERS AND DEPUTY MINISTERS

- (i) The Convenor proposed the question for the adoption of the New Article 178(A)– Functions of Ministers and Deputy Ministers proposed by the Sub-Committee. The report is as follows:-

Sub-Article 178(A)(1) – Functions of Ministers

As may be provided for by other Articles of this Constitution, the Functions of a Minister are:

- (a) to advise the President, the Prime Minister and the Cabinet;
- (b) to exercise general direction and control over the appropriate Ministry, departments and other statutory bodies;
- (c) initiating and preparing Government legislation for introduction in Parliament;
- (d) developing in conjunction with Parliament and implementing national budget and policy;
- (e) appearing before Parliament or a Committee of Parliament when required to do so and answer any questions that may be put to the Minister or regarding the Minister’s conduct.
- (f) Advising the President, Prime Minister and the Cabinet in considering and approving international treaties;
- (g) To take responsibility for the administration and implementation of legislation assigned to the Minister.
- (h) Providing Parliament with full and regular reports concerning matters under the control of the Minister;

- (i) To account to the Prime Minister for the performance of the functions assigned to the Minister;
- (j) To account individually and collectively for the administration or their Ministries and work of the Cabinet;
- (k) Carrying out any other functions as may be prescribed by Parliament or in accordance with the Constitution.

(ii) The Paragraphs were dealt with individually as herebelow:-

- (a) Paragraph (a) **agreed to** on a voice vote.
- (b) Paragraph (b) **agreed to** on a voice vote
- (c) Paragraph (c) **agreed to** on a voice vote
- (d) Paragraph (d)
 - Hon. Rihal Del. No.487 – moved an amendment to split it into two paragraphs; as follows:-
 - (d) developing, in conjunction with Parliament, national budget and policy;
 - (e) implementing national budget and policy;
 - Subsequent paragraphs be renumbered.
 - The Convenor put all the questions of the amendments, which were **agreed to** on a voice vote.
- (e) Paragraph (f) – **agreed to** on a voice vote, with an amendment to delete all the words after the words “the Minister” in the second line.
- (f) Paragraph (g) was **not agreed to** on a voice vote.
- (g) Paragraph (h) was **agreed to** on a voice vote.
- (h) Paragraph (i) was **agreed to** on a voice vote.
- (i) Paragraph (j) was **agreed to** on a voice vote.
- (j) Paragraph (k) was **agreed to** on a voice vote.
- (k) Paragraph (l) was **agreed to** on a voice vote.

Sub-Article 178(A)(2) - Functions of Deputy Ministers

(iii) The recommendations of the Sub-Committee are as herebelow:-

As may be provided for by the other articles of this Constitution, the functions of the Deputy Ministers are:-

- (a) to deputise for the Minister in the performance of the Minister’s functions;
- (b) to perform the functions of the Minister during temporary incapacity or absence of the Minister from the Republic of Kenya.
- (c) to attend Cabinet meetings in relation to the functions of the Minister as specified in clause (1) of this Article when the Minister is unable to attend the meeting.

(iv) The paragraphs were dealt with individually as herebelow:

- (a) New Paragraph (a) - deliberations ensued, which developed into a consensus that;
 - a new paragraph(a) be added to read “to perform the functions and duties assigned by the Prime Minister and the Minister.”
 - the word “jointly” in Article No.177(2)(b) be deleted.
 - The Convenor put the questions of the amendments, which were **agreed to** on a voice vote.

- The Convenor put the question for the adoption of the new paragraph (a) and was **agreed to** on a voice vote.
- (b) Paragraph (b) was **agreed to** on a voice vote.
- (c) Paragraph (c) was **agreed to** on a voice vote.
- (d) Paragraph (d) was **not agreed to** on a voice vote.

4. ARTICLE NO.175 – SECRETARY TO THE CABINET.

- (i) The Convenor proposed the question for the adoption of the report of the Sub-Committee on the Secretary to the Cabinet. The recommendations, which were dealt with individually, would be added to existing Article No.175 – Cabinet. The following are the recommendations.

- 6. There shall be the Secretary to the Cabinet
- 7. The Secretary shall be appointed by the President on the recommendation for the Prime Minister.
- 8. The Office of Secretary to the Cabinet shall be a public office.
- 9. The Secretary to the Cabinet shall
 - (a) have charge of the Cabinet office;
 - (b) be responsible, subject to the directions of the Cabinet, for arranging the business and keeping the minutes of the Cabinet;
 - (c) convey the decisions of the Cabinet to the appropriate person or authorities; and
 - (d) have any other functions as directed by the Cabinet.
- 10. The Secretary to the Cabinet -
 - (e) may be dismissed or replaced by the President on the recommendation of the Prime Minister, or
 - (f) may resign from office in writing addressed to the President through the Prime Minister and the resignation takes effect on receipt of the letter of resignation by the President.
- 11. On the assumption of office or a new government, the Secretary to the Cabinet shall cease to hold this office.

(ii) Deliberations ensued which developed into a consensus to deal with the Paragraphs individually; as herebelow:-

- (a) Title – **agreed to** on a voice vote
- (b) Sub-Article (6) – **agreed to** on a voice vote.
- (c) Sub-Article (7) – **agreed to** on a voice vote
- (d) Sub-Article (8) – **agreed to** on a voice vote
- (e) Sub-Article (9) – **agreed to** on a voice vote
- (f) Sub-Article (10) – **agreed to** on a voice vote
- (g) Sub-Article (11) – **agreed to** on a voice vote

5. ARTICLE NO.181 -PERMANENT SECRETARIES

- (i) The Convenor proposed the question for the adoption of the report of the Sub-Committee on the Permanent Secretaries. The recommendations are as herebelow.
 - (1) There is established the office of Permanent Secretary which is an office in the Public Service.

- (2) Each Government Ministry shall be under the supervision of one Permanent Secretary.
 - (3) A Permanent Secretary shall be nominated by the Prime Minister in consultation with the Public Service commission for appointment by the President in accordance with Articles 102 and 103 (4)
 - (4) A Permanent Secretary:-
 - (a) may be dismissed by the President on the recommendation of the Prime Minister; or
 - (b) may resign from office in writing addressed to the President through the Prime Minister and the resignation takes effect on receipt of the letter of resignation by the President.
 - (5) On the assumption to office of a new government, the Permanent Secretaries shall cease to hold office.
- (ii) **Deliberations ensued and consensus developed to deal with the Sub-Articles individually.**
- (a) Sub-Article (1) – **agreed to** on a voice vote.
 - (b) Sub-Article (2) – **agreed to** on a voice vote
 - (c) Sub-Article (3) – **agreed to** on a voice vote
 - (d) Sub-Article (4) – **agreed to** on a voice vote
 - (e) Sub-Article (5) – **was deferred.**
- After a Division on an amendment by Hon. Orie Rogo-Manduli Del. No.594 to insert the words “*and acknowledgement*” after the word “*receipt*”, was **not agreed to**.
The result of the Division was:-

Those not in favour	- 19
Those in favour	- 07
Those abstaining	- 02
 - A second amendment by Hon. Oyao Del. No. 416 that, “*all the words in this Sub-Article be deleted.*”
 - Hon. Angwenyi, Del. No.007 moved a Closure, which was agreed to on a voice vote.

QUORUM OF THE COMMITTEE

Hon. Salat, Del. No.182 rose on a point of order and drew the attention of the Convenor to the fact that, there was no Quorum in the Committee.

The Convenor having counted the delegates present and confirmed that, there was a Quorum.

The proceedings interrupted by the point of order were resumed.

The Convenor put the question of the amendment, which on a Division was deferred for further consideration tomorrow, January 28, 2004. The result of the Division was:-

Those in favour	- 15
Those not in favour	- 15

MIN. NO. 080/2004: ADJOURNMENT

The Convenor adjourned the Meeting at forty minutes past One O'clock until tomorrow Wednesday, January 28, 2004 at Nine

O'clock.

SIGNED
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY, JANUARY 28, 2004 AT 09.30 HRS

PRESENT: The following honorable delegates were present:-

- | | | | |
|-----|----------------------------|---|----------------------------|
| 1. | Hon. Joseph Martin Shikuku | - | Convenor |
| 2. | Hon. Kellan Wavomba | - | District |
| 3. | Hon. Boniface Mghanga | - | Parliament |
| 4. | Hon. Dalmas Otieno | - | Political Parties |
| 5. | Hon. David Oyao | - | District |
| 6. | Hon. Edward Ohare | - | District |
| 7. | Hon. Fred Gumo | - | Parliament |
| 8. | Hon. Elizabeth Okelo | - | District |
| 9. | Hon. Gideon Moi | - | Parliament |
| 10. | Hon. George Nyamweya | - | Political Parties |
| 11. | Hon. Gonzi Rai | - | Parliament |
| 12. | Hon. Hannah Kimani | - | District |
| 13. | Hon. Hellen Yego | - | NGOS |
| 14. | Hon. Jimmy Angwenyi | - | Parliament |
| 15. | Hon. Joel Chebii | - | Trade Unions |
| 16. | Hon. John Gitari Munyi | - | District |
| 17. | Hon. Moses Wetang'ula | - | Parliament |
| 18. | Hon. Ajaa Olubayi | - | District |
| 19. | Hon. Mike Oliewo | - | Political Parties |
| 20. | Hon. Mwalimu Digore | - | District |
| 21. | Hon. Nick K. Salat | - | Parliament |
| 22. | Hon. Nyiva Mwendwa | - | Parliament |
| 23. | Hon. Oburu Oginga | - | Parliament |
| 24. | Hon. Orie Rogo-Manduli | - | Political Parties |
| 25. | Hon. Ogembo Masese | - | Political Parties |
| 26. | Hon. P.G. Muriithi | - | Parliament |
| 27. | Hon. Dubat Ali Amey | - | District |
| 28. | Hon. Reuben Ndolo | - | Parliament |
| 29. | Hon. Reuben Tsumah | - | District |
| 30. | Hon. Rihal Singh | - | Professional Organizations |
| 31. | Hon. Sammy Aswani Amunga | - | District |
| 32. | Hon. Sally Chepkoech | - | District |
| 33. | Hon. Stanislaus W. Kasoka | - | District |
| 34. | Hon. Thimangu Muketha | - | District |
| 35. | Hon. William Kabogo | - | Parliament |
| 36. | Hon. Wahu Kaara | - | Religious Organizations |

- | | | | |
|-----|-----------------------|---|-------------------|
| 37. | Hon. Ernest Kaitany | - | District |
| 38. | Hon. Maasai Maroa | - | District |
| 39. | Comm. Charles Maranga | - | <i>Ex-officio</i> |
| 40. | Comm. Alice Yano | - | <i>Ex-officio</i> |

ABSENT:

- | | | | |
|-----|--------------------------|---|-------------------------|
| 1. | Hon. George Saitoti | - | Parliament |
| 2. | Hon. John Michuki | - | Parliament |
| 3. | Hon. Maina Kamanda | - | Parliament |
| 4. | Hon. Rev. Mutava Musyimi | - | Religious Organizations |
| 5. | Hon. Paul Muite | - | Parliament |
| 6. | Hon. Bonny Khalwale | - | Parliament |
| 7. | Hon. Hussein M. Mohammed | - | Parliament |
| 8. | Hon. Michael Sengech | - | District |
| 9. | Hon. Enock Kibunguchy | - | Parliament |
| 10. | Hon. Gideon Ndambuki | - | Parliament |
| 11. | Hon. John Koech | - | Parliament |
| 12. | Hon. Raphael Muriungi | - | Parliament |
| 13. | Hon. William arap Ruto | - | Parliament |
| 14. | Hon. Kipkalya Kones | - | Parliament |
| 15. | Hon. Gacuru wa Karege | - | District |
| 16. | Hon. Beatrice Kamamia | - | District |
| 17. | Hon. David Musila | - | Parliament |
| 18. | Hon. Mwangi Kiunjuri | - | Parliament |
| 19. | Hon. Joseph Lagat | - | Parliament |
| 20. | Hon. Sammy Leshore | - | Parliament |
| 21. | Hon. Lucas Maitha | - | Parliament |
| 22. | Hon. Otieno Kajwang' | - | Parliament |

IN ATTENDANCE

- | | | |
|---------------------|---|----------------------------------|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk - National Assembly |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Halima Amran | - | Verbatim Recorder- CKRC |

OBSERVERS

- | | | |
|-------------------|---|-------------|
| Eusebio Wanyama | - | NGO Council |
| Zachariah Momanyi | - | KRRP |

MORNING SESSION

MIN.NO. 081/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 9.45 a.m. with a word of prayer by Hon. Wahu Kaara Del. No. 521.

MIN.NO. 082/2004:

ADOPTION OF AGENDA

9. Hon. Rihal Del. No.487 proposed the adoption of the Agenda and was seconded by Hon. Masese Del. No.591.
10. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 083/2004:

CONFIRMATION OF MINUTES

Minutes of the Twenty-Sixth Meeting held on Tuesday, January 27, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Dubat Del. No. 252 and seconded by Hon. Orie Rogo-Manduli Del. No. 594.

Corrections:

- (i) Page 6 - That, an (l) be added after (k) to read as “To assign functions and duties to the Deputy Ministers”
- (ii) Page 9 - That, the number of those abstaining should read “04”
- (iii) Page 10- That , in the result of the Division, add the words “Those abstaining - 02”

MIN.NO. 084/2004:

MATTERS ARISING

There was no Matters Arising.

MIN.NO. 085/2004:

CONSIDERATION OF DRAFT CONSTITUTION OF KENYA BILL

The deliberations that were interrupted ton Tuesday, January 27, 2004, were resumed.

3. ARTICLE NO.181 – PERMANENT SECRETARIES

Sub-Article No.181(5)

- (i) **Amendment of the title - Permanent Secretary.**
 - (a) he Convenor proposed the question that, the word “*Permanent*” in the title “*Permanent Secretary*” be deleted and insert in place thereof the word “*Principal*”. Hon. Orie Rogo-Manduli, Del. No.594.
 - (b) Deliberations ensued.
 - (c) Hon. Olubayi Del. No. 395 moved a Closure; which was **agreed to** on a voice vote.
 - (d) The Convenor put the question of the amendment, which was **agreed to** on a voice vote.
 - (e) The title “*Permanent Secretary*” was replaced by “*Principal Secretary*”.
- (ii) **Sub-Article No.181(5)**
 - (a) Deliberations deferred yesterday, Tuesday, January 27, 2004; were resumed on the amendment that “ *Sub-Article No.181(5) be deleted*”
 - (b) Hon. Dubat Del. No. 252 moved a Closure, which was **not agreed to** on a voice vote.
 - (c) The Convenor put the question of the amendment, which was **agreed to** on a voice vote.
 - (d) Sub-Article 181(5) was **not adopted**.

MIN.NO. 086/2004: ADJOURNMENT

- (a) The Convenor informed the Committee that, as the Secretariat needed time to come up with a draft report, in view of the fact that, the Committee had successfully examined each of the Articles within their purview.

(b) The Convenor adjourned the Meeting at Eleven O'clock until Nine O'clock, tomorrow, Thursday, January 29, 2004.

SIGNED
CONVENOR

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-EIGHTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY, JANUARY 29, 2004 AT 11.00 HRS

PRESENT: The following honorable delegates were present:-

- | | | | |
|-----|----------------------------|---|-------------------------------|
| 1. | Hon. Joseph Martin Shikuku | - | Convenor |
| 2. | Hon. Gacuru wa Karege | - | District |
| 3. | Hon. Kellan Wavomba | - | District |
| 4. | Hon. Beatrice Kamamia | - | District |
| 5. | Hon. Boniface Mghanga | - | Parliament |
| 6. | Hon. Dalmas Otieno | - | Political Parties |
| 7. | Hon. David Oyao | - | District |
| 8. | Hon. Edward Ohare | - | District |
| 9. | Hon. Fred Gumo | - | Parliament |
| 10. | Hon. Elizabeth Okelo | - | District |
| 11. | Hon. George Nyamweya | - | Political Parties |
| 12. | Hon. Gideon Ndambuki | - | Parliament |
| 13. | Hon. Gonzi Rai | - | Parliament |
| 14. | Hon. Hannah Kimani | - | District |
| 15. | Hon. Hellen Yego | - | NGOS |
| 16. | Hon. Jimmy Angwenyi | - | Parliament |
| 17. | Hon. Joel Chebii | - | Trade Unions |
| 18. | Hon. Joseph Lagat | - | Parliament |
| 19. | Hon. Lucas Maitha | - | Parliament |
| 20. | Hon. Ajaa Olubayi | - | District |
| 21. | Hon. Mike Oliewo | - | Political Parties |
| 22. | Hon. Mwalimu Digore | - | District |
| 23. | Hon. Nick K. Salat | - | Parliament |
| 24. | Hon. Nyiva Mwendwa | - | Parliament |
| 25. | Hon. Oburu Oginga | - | Parliament |
| 26. | Hon. Orie Rogo-Manduli | - | Political Parties |
| 27. | Hon. Ogembo Masese | - | Political Parties |
| 28. | Hon. Dubat Ali Amey | - | District |
| 29. | Hon. Raphael Muriungi | - | Parliament |
| 30. | Hon. Reuben Ndolo | - | Parliament |
| 31. | Hon. Reuben Tsumah | - | District |
| 32. | Hon. Rihal Singh | - | Professional
Organizations |
| 33. | Hon. Sammy Aswani Amunga | - | District |
| 34. | Hon. Sally Chepkoech | - | District |

- | | | | |
|-----|---------------------------|---|-------------------------|
| 35. | Hon. Stanislaus W. Kasoka | - | District |
| 36. | Hon. Thimangu Muketha | - | District |
| 37. | Hon. Wahu Kaara | - | Religious Organizations |
| 38. | Hon. Ernest Kaitany | - | District |
| 39. | Hon. Maasai Maroa | - | District |
| 40. | Comm. Charles Maranga | - | <i>Ex-officio</i> |
| 41. | Comm. Alice Yano | - | <i>Ex-officio</i> |

ABSENT WITH APOLOGY

- | | | |
|-----------------|---|------------|
| Hon. Gideon Moi | - | Parliament |
|-----------------|---|------------|

ABSENT:

- | | | | |
|-----|--------------------------|---|-------------------------|
| 1. | Hon. George Saitoti | - | Parliament |
| 2. | Hon. John Michuki | - | Parliament |
| 3. | Hon. Maina Kamanda | - | Parliament |
| 4. | Hon. Rev. Mutava Musyimi | - | Religious Organizations |
| 5. | Hon. Paul Muite | - | Parliament |
| 6. | Hon. Bonny Khalwale | - | Parliament |
| 7. | Hon. Hussein M. Mohammed | - | Parliament |
| 8. | Hon. Michael Sengech | - | District |
| 9. | Hon. Enock Kibunguchy | - | Parliament |
| 10. | Hon. John Gitari Munyi | - | District |
| 11. | Hon. John Koech | - | Parliament |
| 12. | Hon. William arap Ruto | - | Parliament |
| 13. | Hon. Kipkalya Kones | - | Parliament |
| 14. | Hon. David Musila | - | Parliament |
| 15. | Hon. Mwangi Kiunjuri | - | Parliament |
| 16. | Hon. Moses Wetang'ula | - | Parliament |
| 17. | Hon. Sammy Leshore | - | Parliament |
| 18. | Hon. Otieno Kajwang' | - | Parliament |
| 19. | Hon. P.G. Muriithi | - | Parliament |
| 20. | Hon. William Kabogo | - | Parliament |

IN ATTENDANCE

- | | | |
|---------------------|---|----------------------------------|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk - National Assembly |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Halima Amran | - | Verbatim Recorder- CKRC |

OBSERVERS

- | | | |
|-------------------|---|-------------|
| Eusebio Wanyama | - | NGO Council |
| Gordon Muga | - | LANGATA 3C |
| Zachariah Momanyi | - | KRRP |
| Yusuf S. Sheikh | - | SUPKEM |

MORNING SESSION

MIN.NO. 087/2004:

COMMENCEMENT AND PRAYER

SIGNED

CONVENOR

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY-NINTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY, JANUARY 30, 2004 AT 10.00 HRS

PRESENT: The following honorable delegates were present:-

- | | | | |
|-----|----------------------------|---|----------------------------|
| 1. | Hon. Joseph Martin Shikuku | - | Convenor |
| 2. | Hon. Kellan Wavomba | - | District |
| 3. | Hon. Beatrice Kamamia | - | District |
| 4. | Hon. David Musila | - | Parliament |
| 5. | Hon. David Oyao | - | District |
| 6. | Hon. Elizabeth Okelo | - | District |
| 7. | Hon. George Nyamweya | - | Political Parties |
| 8. | Hon. Hannah Kimani | - | District |
| 9. | Hon. Hellen Yego | - | NGOS |
| 10. | Hon. Jimmy Angwenyi | - | Parliament |
| 11. | Hon. Joel Chebii | - | Trade Unions |
| 12. | Hon. Joseph Lagat | - | Parliament |
| 13. | Hon. Sammy Leshore | - | Parliament |
| 14. | Hon. Ajaa Olubayi | - | District |
| 15. | Hon. Mike Oliewo | - | Political Parties |
| 16. | Hon. Mwalimu Digore | - | District |
| 17. | Hon. Nick K. Salat | - | Parliament |
| 18. | Hon. Orie Rogo-Manduli | - | Political Parties |
| 19. | Hon. Ogembo Masese | - | Political Parties |
| 20. | Hon. P.G. Muriithi | - | Parliament |
| 21. | Hon. Dubat Ali Amey | - | District |
| 22. | Hon. Raphael Muriungi | - | Parliament |
| 23. | Hon. Reuben Tsumah | - | District |
| 24. | Hon. Hussein M. Mohammed | - | Parliament |
| 25. | Hon. Rihal Singh | - | Professional Organizations |
| 26. | Hon. Sammy Aswani Amunga | - | District |
| 27. | Hon. Sally Chepkoech | - | District |
| 28. | Hon. Stanislaus W. Kasoka | - | District |
| 29. | Hon. Thimangu Muketha | - | District |
| 30. | Hon. William arap Ruto | - | Parliament |
| 31. | Hon. William Kabogo | - | Parliament |
| 32. | Hon. Wahu Kaara | - | Religious Organizations |
| 33. | Hon. Ernest Kaitany | - | District |
| 34. | Hon. Maasai Maroa | - | District |

- | | | | |
|-----|-----------------------|---|-------------------|
| 35. | Comm. Charles Maranga | - | <i>Ex-officio</i> |
| 36. | Comm. Alice Yano | - | <i>Ex-officio</i> |

ABSENT WITH APOLOGY

- | | | |
|-------------------|---|------------|
| Hon. Gonzi Rai | - | Parliament |
| Hon. Gideon Moi | - | Parliament |
| Hon. Edward Ohare | - | District |

ABSENT:

- | | | | |
|-----|-------------------------|---|-------------------------|
| 1. | Hon. George Saitoti | - | Parliament |
| 2. | Hon. Gacuru wa Kareng | - | District |
| 3. | Hon. John Michuki | - | Parliament |
| 4. | Hon. Boniface Mghanga | - | Parliament |
| 5. | Hon. Dalmas Otieno | - | Political Parties |
| 6. | Hon. Maina Kamanda | - | Parliament |
| 7. | Hon. Rev.Mutava Musyimi | - | Religious Organizations |
| 8. | Hon. Paul Muite | - | Parliament |
| 9. | Hon. Bonny Khalwale | - | Parliament |
| 10. | Hon. Michael Sengech | - | District |
| 11. | Hon. Enock Kibunguchy | - | Parliament |
| 12. | Hon. John Gitari Munyi | - | District |
| 13. | Hon. John Koech | - | Parliament |
| 14. | Hon. Kipkalya Kones | - | Parliament |
| 15. | Hon. Mwangi Kiunjuri | - | Parliament |
| 16. | Hon. Moses Wetang'ula | - | Parliament |
| 17. | Hon. Lucas Maitha | - | Parliament |
| 18. | Hon.Otieno Kajwang' | - | Parliament |
| 19. | Hon. Fred Gumo | - | Parliament |
| 20. | Hon. Gideon Ndambuki | - | Parliament |
| 21. | Hon. Nyiva Mwendwa | - | Parliament |
| 22. | Hon. Oburu Oginga | - | Parliament |
| 23. | Hon. Reuben Ndolo | - | Parliament |

IN ATTENDANCE

- | | | |
|---------------------|---|----------------------------------|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk - National Assembly |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Halima Amran | - | Verbatim Recorder- CKRC |

OBSERVERS

- | | | |
|-------------------|---|-------------|
| Eusebio Wanyama | - | NGO Council |
| Zachariah Momanyi | - | KRRP |

MORNING SESSION

MIN.NO. 093/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 10.00 a.m. with a word of prayer by Hon. Dubat Del. No. 252.

MIN.NO. 094/2004:

ADOPTION OF AGENDA

13. Hon. Kaitany Del. No.341 proposed the adoption of the Agenda and was seconded by Hon. Muketha Del. No.272.

14. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 095/2004: **CONFIRMATION OF MINUTES**

Minutes of the Twenty-Seventh Meeting held on Thursday, January 29, 2004, were confirmed **without** corrections. The confirmation was proposed by Hon. Wahu Kaara Del. No.521 and seconded by Hon. Masese Del. No.591.

MIN.NO. 096/2004: **MATTERS ARISING**

There was no Matters Arising.

MIN.NO. 097/2004: **DELIBERATION OF DRAFT REPORT OF WORK OF THE COMMITTEE**

5. The Convenor made remarks on the Draft Report of the Work of the Committee:
- (i) it be referred to at all times as a Draft Report, since the Committee were yet to consider it and make their final recommendations;
 - (ii) its circulation be restricted only to Members of this Committee and also to the Convenors of other Committees, who have agreed to reciprocate;
 - (iii) the Convenor expressed his unreserved gratitude to the delegates and further congratulated them for the speedy manner in which they have dealt with their mandate; this has completely dumbfounded those who had cast serious aspersions on the capacity and competence of the delegates to perform and deliver on their mandate;
 - (iv) the Convenor reported that, he had yesterday addressed the media, at which he updated the public on the work of the Committee and specifically the sterling performance and co-operation of Members of Parliament;
 - (v) the Convenor intimated of a possible retreat within the environs of Nairobi to fine tune their draft.
 - (vi) the Convenor invited the delegates to express their views on the possible way forward.
6. The delegates expressed their views which in a nutshell addressed the following issues -
- (i) record of their gratitude and congratulation to the Convenor for the able and exemplary manner he had presided over their proceedings; of specific interest was his accommodating handling of occasionally contentious issues;
 - (ii) record of their gratitude to the Rapporteur, the staff of the CKRC, the Draftsperson and the Deputy Clerk, for the very able and appropriate procedural advice and guidance, which facilitated their proceedings;
 - (iii) record of the appreciation of the Members of Parliament for able and good work of the Convenor which facilitated their full participation in the proceedings, which they enjoyed as they encountered no heckling or booing; the Members of Parliament reiterated that, they stood by the stand they pronounced at their recent Kamukunji;
 - (iv) their ardent support and dedication to proceed and accomplish the constitutional review under the auspices of the CKRC Bomas process;

their respect for and readiness to forgive and work with all delegate, especially the Members of Parliament whom they continue to hold in high esteem;

- (v) their gratitude to the Almighty God for the enabling grace in their work; by which the delegates had risen to the occasion.
- 7. Hon. Hellen Yego, Del. No.468 proposed that, the Committee should reserve this week (January 31 to February 02, 2004) for delegates to peruse the Draft Report of their work. This view gained consensus.
 - 4. The Convenor put the question on the proposal by Hon Yego Del. No.468, which was **agreed to** on a voice vote.

MIN.NO. 098/2004: ADJOURNMENT

The Convenor adjourned the Meeting at Eleven O'clock until Monday, February 02, 2004 at Nine O'clock.

SIGNED
CONVENOR

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTIETH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY, FEBRUARY 02, 2004 AT 11.00 HRS

PRESENT: The following honorable delegates were present:-

37.	Hon. Joseph Martin Shikuku	-	Convenor
38.	Hon. Gacuru wa Karege	-	District
39.	Hon. Kellan Wavomba	-	District
40.	Hon. Beatrice Kamamia	-	District
41.	Hon. Dalmas Otieno	-	Political Parties
42.	Hon. David Oyao	-	District
43.	Hon. George Nyamweya	-	Political Parties
44.	Hon. Hannah Kimani	-	District
45.	Hon. Hellen Yego	-	NGOS
46.	Hon. Jimmy Angwenyi	-	Parliament
47.	Hon. Joel Chebii	-	Trade Unions
48.	Hon. Joseph Lagat	-	Parliament
49.	Hon. Lucas Maitha	-	Parliament
50.	Hon. Ajaa Olubayi	-	District
51.	Hon. Mike Oliewo	-	Political Parties
52.	Hon. Nick K. Salat	-	Parliament
53.	Hon. Enock Kibunguchy	-	Parliament
54.	Hon. Orie Rogo-Manduli	-	Political Parties
55.	Hon. Nyiva Mwendwa	-	Parliament
56.	Hon. Oburu Oginga	-	Parliament
57.	Hon. Reuben Ndolo	-	Parliament
58.	Hon. Ogembo Masese	-	Political Parties
59.	Hon. Dubat Ali Amey	-	District
60.	Hon. Michael Sengech	-	District
61.	Hon. Moses Wetang'ula	-	Parliament
62.	Hon. Edward Ohare	-	District
63.	Hon. Fred Gumo	-	Parliament
64.	Hon. Raphael Muriungi	-	Parliament
65.	Hon. Reuben Tsumah	-	District
66.	Hon. Rihal Singh	-	Professional Organizations
67.	Hon. Sammy Aswani Amunga	-	District
68.	Hon. Sally Chepkoech	-	District
69.	Hon. Stanislaus W. Kasoka	-	District
70.	Hon. Thimangu Muketha	-	District
71.	Hon. Wahu Kaara	-	Religious Organizations

- | | | | |
|-----|-----------------------|---|-------------------|
| 72. | Hon. Ernest Kaitany | - | District |
| 73. | Hon. Maasai Maroa | - | District |
| 74. | Comm. Charles Maranga | - | <i>Ex-officio</i> |
| 75. | Comm. Alice Yano | - | <i>Ex-officio</i> |

ABSENT WITH APOLOGY

- | | | |
|----------------------|---|------------|
| Hon. Gonzi Rai | - | Parliament |
| Hon. Gideon Moi | - | Parliament |
| Hon. Elizabeth Okelo | - | District |

ABSENT:

- | | | | |
|-----|--------------------------|---|-------------------------|
| 13. | Hon. George Saitoti | - | Parliament |
| 14. | Hon. John Michuki | - | Parliament |
| 15. | Hon. Maina Kamanda | - | Parliament |
| 16. | Hon. Rev. Mutava Musyimi | - | Religious Organizations |
| 17. | Hon. Paul Muite | - | Parliament |
| 18. | Hon. Bonny Khalwale | - | Parliament |
| 19. | Hon. John Gitari Munyi | - | District |
| 20. | Hon. John Koech | - | Parliament |
| 21. | Hon. William arap Ruto | - | Parliament |
| 22. | Hon. Kipkalya Kones | - | Parliament |
| 23. | Hon. David Musila | - | Parliament |
| 24. | Hon. Mwangi Kiunjuri | - | Parliament |
| 25. | Hon. Sammy Leshore | - | Parliament |
| 26. | Hon. Otieno Kajwang' | - | Parliament |
| 27. | Hon. William Kabogo | - | Parliament |
| 28. | Hon. Boniface Mghanga | - | Parliament |
| 29. | Hon. Gideon Ndambuki | - | Parliament |
| 30. | Hon. P.G. Muriithi | - | Parliament |
| 31. | Hon. Mwalimu Digore | - | District |
| 32. | Hon. Hussein M. Mohammed | - | Parliament |

DELEGATES IN ATTENDANCE

Hon. Stephen K. Tarus

IN ATTENDANCE

- | | | |
|---------------------|---|----------------------------------|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk - National Assembly |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Halima Amran | - | Verbatim Recorder- CKRC |

OBSERVERS

- | | | | |
|-----|-------------------|---|-------------|
| 28. | Eusebio Wanyama | - | NGO Council |
| 29. | Zachariah Momanyi | - | KRRP |
| 3. | Gordon Muga | - | LANGATA 3C |
| 4. | Yusuf S. Sheikh | - | SUPKEM |
| 5. | Nyambonyi Kazungu | - | CJPC |

MORNING SESSION

MIN.NO. 099/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 10.00 a.m. with a word of prayer by Hon. Wahu Kaara Del. No.521.

MIN.NO. 100/2004:

CONFIRMATION OF MINUTES

Minutes of the Twenty-Ninth Meeting held on Friday, January 30 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Angwenyi Del. No.007 and seconded by Hon. Masese Del. No.591.

Corrections:

Page 2 -

That, the following be recorded as having been present:-

Hon. Lucas Maitha, Del. No.091

Hon. Nyiva Mwendwa, Del. No.134

Hon. Gideon Ndambuki, Del. No.138

Hon. Gacuru wa Karengi, Del. No.314

MIN.NO. 101/2004:

MATTERS ARISING

1. Page 4 – arising from Item (v) – the delegates requested for elucidation on the proposed retreat for the Committee to fine tune their draft Report. In response, both the Convenor and the Rapporteur informed the Committee as follows:-

(i) that, the request for arrangements for the retreat was conveyed to the CKRC Secretariat which has, however, not made the arrangements since it was felt that, the retreat starting tomorrow for Commissioners to harmonize the draft reports of Committees would make it difficult for the Committee to have their retreat.

(ii) that, if at a later stage, the need should arise for the retreat of the Committee, then, the CKRC Secretariat would facilitate.

2. QUORUM OF THE COMMITTEE

Hon. Aswani, Del. No.382 drew the attention of the Convenor to the fact that, there was no Quorum in the Committee. The Rapporteur having counted the delegates present confirmed to the Convenor, the lack of Quorum.

Thereupon, the Convenor adjourned the Meeting for forty minutes.

3. The proceedings adjourned due to lack of a Quorum were resumed.

MIN.NO. 102/2004:

**CONSIDERATION OF THE DRAFT
CONSTITUTION ON KENYA BILL**

The proceedings that were adjourned on Friday, January 30, 2004 resumed.

MIN.NO. 103/2004:

**DELIBERATION ON THE DRAFT REPORT OF
WORK OF THE COMMITTEE**

1. The Convenor proposed the question for the adoption of the Draft Report of Work of the Committee.

2. Deliberations ensued and the Articles of the Draft Bill were considered individually.

(i) **Article No.148- Principle of Executive Authority.**

- The words “*and the laws*” were added at end of Sub-Article 148(2)(b).
- The Article was then **adopted with amendment** on a voice vote.

(ii) **Article No.149 - Structure of the National Executive.**

- The Article was **adopted without amendment** on a voice vote.

MIN.NO. 104/2004: ADJOURNMENT

The Convenor adjourned the Meeting at forty-five minutes past One O'clock until thirty Minutes past Two O'clock today Monday, February, 02, 2004.

AFTERNOON SESSION

MIN.NO. 105/2004: RESUMPTION OF PROCEEDINGS

Proceedings which had been adjourned to facilitate a lunch break were resumed at forty minutes past Two O'clock.

MIN.NO. 106/2004: CONSIDERATION OF THE DRAFT REPORT OF WORK OF THE COMMITTEE

(iii) **Article No.150 - Authority of President**

(a) That, in Sub-Article 150(2)(a);

- In the first line delete the word "*Defence*" and insert the word "*Armed*";
- In the second line delete all the words after the word "*Forces*"
- The reworded Sub-Article 150(2)(a) to read as follows:-
"*is the Head of State and Commander-in-Chief of the Armed Forces*".

(b) That, in Sub-Article 150(2)(b)-

- delete the word "*protect*" and insert therein the words "*ensure protection of*"
- The reworded Sub-Article 150(2)(b) was **adopted with amendment**, on a voice vote.

(c) Sub-Articles 150(3) and (4) were adopted without amendments, on a voice vote.

- Article No.150 was **adopted with amendments** on a voice vote.

(iv) **Article No.151 – State Functions of President**

(a) That, in Sub-Article 151(1)-

- In the first line, delete all the words after the word "Cabinet" and, respectively, transfer them to the functions of the Deputy President and the Prime Minister.
- The Sub-Article be reworded to read as follows:-
"The President:-
 - (a) shall preside at meetings of the Cabinet; and
 - (b) shall be the Chairperson of the National Security Council".

- The Sub-Article 151(1) was **adopted with amendment** on a voice vote.

(b) Sub-Article 151(2) was adopted without amendment.

(c) That, in Sub-Article 151(3) –

- In paragraph (a)(i) delete the word "*Parliament*" and insert therein the words "*National Assembly*"

- In paragraph (a)(i), delete all the words after the words “*Prime Minister*” upto and including the word “*Parliament*”.

(v) **Sub-Article 151(3)**

QUORUM OF THE COMMITTEE

Hon. Olubayi, Del. No.395 drew the attention of the Convenor to the lack of quorum in the Committee. The Rapporteur counted the delegates present and confirmed that there was no quorum in the Committee. The Convenor thereafter adjourned the Meeting.

MIN.NO. 107/2004: ADJOURNMENT

The Convenor adjourned the Meeting at thirty minutes past Three O'clock, until tomorrow, Tuesday, February 03, 2004.

SIGNED.....
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FIRST SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, FEBRUARY 03, 2004 AT 09.40 HRS

PRESENT: The following honorable delegates were present:-

76.	Hon. Joseph Martin Shikuku	-	Convenor
77.	Hon. Kellan Wavomba	-	District
78.	Hon. Beatrice Kamamia	-	District
79.	Hon. Dalmas Otieno	-	Political Parties
80.	Hon. David Oyao	-	District
81.	Hon. Edward Ohare	-	District
82.	Hon. Fred Gumo	-	Parliament
83.	Hon. George Nyamweya	-	Political Parties
84.	Hon. Hannah Kimani	-	District
85.	Hon. Hellen Yego	-	NGOS
86.	Hon. Joel Chebii	-	Trade Unions
87.	Hon. John Koech	-	Parliament
88.	Hon. Ajaa Olubayi	-	District
89.	Hon. Mike Oliewo	-	Political Parties
90.	Hon. Gideon Moi	-	Parliament
91.	Hon. Nick K. Salat	-	Parliament
92.	Hon. Orie Rogo-Manduli	-	Political Parties
93.	Hon. Nyiva Mwendwa	-	Parliament
94.	Hon. Oburu Oginga	-	Parliament
95.	Hon. Ogembo Masese	-	Political Parties
96.	Hon. Dubat Ali Amey	-	District
97.	Hon. Otieno Kajwang'	-	Parliament
98.	Hon. Reuben Tsumah	-	District
99.	Hon. Rihal Singh	-	Professional Organizations
100.	Hon. Sammy Aswani Amunga	-	District
101.	Hon. Sally Chepkoech	-	District
102.	Hon. Stanislaus W. Kasoka	-	District
103.	Hon. Thimangu Muketha	-	District
104.	Hon. Wahu Kaara	-	Religious Organizations
105.	Hon. Ernest Kaitany	-	District
106.	Hon. Maasai Maroa	-	District
107.	Comm. Charles Maranga	-	<i>Ex-officio</i>
108.	Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGY

Hon. Gonzi Rai	-	Parliament
Hon. Elizabeth Okelo	-	District

ABSENT:

33.	Hon. George Saitoti	-	Parliament
34.	Hon. John Michuki	-	Parliament
35.	Hon. Gacuru wa Karengi	-	District
36.	Hon. Maina Kamanda	-	Parliament
37.	Hon. Rev. Mutava Musyimi	-	Religious Organizations
38.	Hon. Paul Muite	-	Parliament
39.	Hon. Bonny Khalwale	-	Parliament
40.	Hon. John Gitari Munyi	-	District
41.	Hon. William arap Ruto	-	Parliament
42.	Hon. Jimmy Angwenyi	-	Parliament
43.	Hon. Kipkalya Kones	-	Parliament
44.	Hon. David Musila	-	Parliament
45.	Hon. Mwangi Kiunjuri	-	Parliament
46.	Hon. Sammy Leshore	-	Parliament
47.	Hon. Enock Kibunguchy	-	Parliament
48.	Hon. William Kabogo	-	Parliament
49.	Hon. Boniface Mghanga	-	Parliament
50.	Hon. Gideon Ndambuki	-	Parliament
51.	Hon. P.G. Muriithi	-	Parliament
52.	Hon. Mwalimu Digore	-	District
53.	Hon. Hussein M. Mohammed	-	Parliament
54.	Hon. Joseph Lagat	-	Parliament
55.	Hon. Lucas Maitha	-	Parliament
56.	Hon. Moses Wetang'ula	-	Parliament
57.	Hon. Michael Sengech	-	District
58.	Hon. Raphael Muriungi	-	Parliament
59.	Hon. Reuben Ndolo	-	Parliament

DELEGATES IN ATTENDANCE

Hon. Stephen K. Tarus

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

30. Eusebio Wanyama	-	NGO Council
31. Zachariah Momanyi	-	KRRP
3. Gordon Muga	-	LANGATA 3C

MORNING SESSION**MIN.NO. 108/2004: COMMENCEMENT AND PRAYER**

The Meeting commenced at 09.40 a.m. with a word of prayer by Hon. Dubat Del. No.252.

MIN.NO. 109/2004: ADOPTION OF THE AGENDA

1. Hon. Orie Rogo-Manduli Del. No.524 proposed the adoption of the Agenda and was seconded by Hon. Wahu Kaara, Del. No.521.
2. The Convenor put the question which was **agreed to** on a voice vote.

MIN.NO. 110/2004: CONFIRMATION OF MINUTES

Minutes of the Thirtieth Meeting held on Monday, February 02, 2004, were confirmed **with** corrections. The confirmation was proposed by Hon. Chebii Del. No.441. seconded by Hon. Kaitany Del. No.341.

Corrections:

- (i) Page 4 - That, Item (i) be amended by inserting the words “all Convenors, Rapporteurs, Programme Officers and Clerks to discuss overlapping matters” after the word “Commissioners”.
- (ii) Page 5 - That, in the title, the letter ‘s’ be added after the word “Principle” and the word “the” be inserted between the words “at” and “the” on the first bullet.

MIN.NO. 111/2004: MATTERS ARISING

There were no Matters Arising.

MIN.NO. 112/2004: DELIBERATION ON THE DRAFT REPORT OF WORK OF THE COMMITTEE

1. MODALITY OF OPERATION

- (a) Hon. Aswani, Del. No.382 moved a resolution that, the proceedings be guided by the Convenor in strict adherence to the documents that the Committee had been using; further that, deliberations on the principles of the specific Articles be minimized.
- (b) The Convenor proposed the question of the resolution.
- (c) Deliberations ensued which developed into a consensus.
- (d) The Convenor put the question of the resolution which was **agreed to** on a voice vote.

2. ARTICLE NO.151

- a. Sub-Article 151(3) – **agreed to** on a voice vote
- b. Sub-Articles 151(4),(5),(6),(7) and (8) – **agreed to** on a voice vote.

3. ARTICLE NO.152 - **Legislative Functions Of President**

- **agreed to** on a voice vote.

4. ARTICLE NO.153 – **Decisions of President**

- **agreed to** on a voice vote.

5. ARTICLE NO.154 – **Curtailment of Presidential Powers**

- **agreed to** on a voice vote

6. ARTICLE NO.155 – **Right to vote and timing of Presidential Elections**

- **agreed to** on a voice vote.

7. ARTICLE NO.156 – **Qualifications and Disqualifications for Election of President.**

- Paragraph (i)(f) was deleted
- was **agreed to** on a voice vote.
- 8. **ARTICLE NO.157** – **Procedure at Presidential Election.**
 - **agreed to** on a voice vote
- 9. **ARTICLE NO.158** – **Questions as to Validity of Presidential Election.**
 - **agreed to** on a voice vote
- 10. **ARTICLE NO.159** – **Assumption of Office of President.**
 - **agreed to** on a voice vote
- 11. **ARTICLE NO.160** – **Term of Office of President.**
 - **agreed to** on a voice vote
- 12. **ARTICLE NO.161** – **Protection of President in respect of legal proceedings during office.**
 - **agreed to** on a voice vote
- 13. **ARTICLE NO.162** – **Removal of President on grounds of incapacity.**
 - **agreed to** on a voice vote
- 14. **ARTICLE NO.163** – **Impeachment and removal of President.**
 - **agreed to** on a voice vote
- 15. **ARTICLE NO.164** – **Vacancy in the Office of President.**
 - **agreed to** on a voice vote
- 16. **ARTICLE NO.165** – **Office of Deputy-President**
 - **agreed to** on a voice vote
- 17. **ARTICLE NO.166** – **Vacancy in the Office of Deputy President**
 - **agreed to** on a voice vote
- 18. **ARTICLE NO.167** – **Functions of the Deputy President**
 - **agreed to** on a voice vote
- 19. **ARTICLE NO.168** – **Death before assuming office**
 - **agreed to** on a voice vote
- 20. **ARTICLE NO.169** – **Salaries and Allowances of President and Deputy President**
 - **agreed to** on a voice vote
- 21. **ARTICLE NO.170** – **Prime Minister**
 - **agreed to** on a voice vote
- 22. **ARTICLE NO.171** – **Appointment of Prime Minister**
 - **agreed to** on a voice vote
- 23. **ARTICLE NO.172** – **Term of Office**
 - **agreed to** on a voice vote
- 24. **ARTICLE NO.173** – **Designation of Prime Minister**
 - **agreed to** on a voice vote
- 25. **ARTICLE NO.174** – **Dismissal of Prime Minister**
 - **agreed to** on a voice vote.
- 26. **ARTICLE NO.175** – **Cabinet**

- agreed to on a voice vote.
- 27. **ARTICLE NO.175A** – secretary to the Cabinet
 - agreed to on a voice vote.
- 28. **ARTICLE NO.176**– Decisions, Responsibility and Accountability of Cabinet
 - agreed to on a voice vote.
- 29. **ARTICLE NO.177** – Assignment of Functions
 - agreed to on a voice vote.
- 30. **ARTICLE NO.178** – Conduct of members of the Cabinet
 - agreed to on a voice vote.
- 31. **ARTICLE NO.178A** – functions of Ministers and Deputy Ministers
 - agreed to on a vote voice.
- 32. **ARTICLE NO.179** – Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Ministers.
 - agreed to on a voice vote.
- 33. **ARTICLE NO.180** – Absence of the Deputy President, the Prime Minister, Deputy Prime Ministers, Cabinet Ministers and Deputy Ministers from the Republic.
 - agreed to on a voice vote
- 34. **ARTICLE NO.181** – Principal Secretaries
 - agreed to on a voice vote
- 35. **ARTICLE NO.182** – Oath of Affirmation of Cabinet Ministers and Principal Secretaries.
 - agreed to on a voice vote
- 36. **ARTICLE NO.183** – Offices in the Republic
 - agreed to on a voice vote
- 37. The Convenor put the question for the adoption of the draft Report of the Work of the Committee which was **agreed to** with amendment on a voice vote.
- 38. **MINORITY REPORTS**
 - a. Hon. Nyamweya Del. No.615 raised the issue of Minority Reports. Further, he re-emphasized that, he wanted to know the status of his intention to move such reports as he had already informed the Committee.
 - b. The Convenor invited the Rapporteur to explain the procedure for handling Minority Reports.
 - c. The Rapporteur, Commissioner Maranga, read out aloud the relevant provisions of Regulation 45.
- 39. The Convenor expressed his gratitude to the delegates of the very ample and expeditious manner they had dealt with their mandate. Thereafter, he distributed the programme for the work to be covered between now and February 13, 2004.

MIN.NO. 113/2004: ADJOURNMENT

The Convenor adjourned the Meeting at twenty-five minutes past Eleven O'clock until Nine O'clock on Wednesday, February 04, 2004.

SIGNED.....
CONVENOR

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-SECOND SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, FEBRUARY 17, 2004 AT 10.45 HRS

PRESENT: The following honorable delegates were present:-

109.	Hon. Joseph Martin Shikuku	-	Convenor
110.	Hon. Kellan Wavomba	-	District
111.	Hon. Beatrice Kamamia	-	District
112.	Hon. Boniface Mganga	-	Parliament
113.	Hon. Dalmas Otieno	-	Political Parties
114.	Hon. David Oyao	-	District
115.	Hon. Edward Ohare	-	District
116.	Hon. Elizabeth Okelo	-	District
117.	Hon. Fred Gumo	-	Parliament
118.	Hon. George Nyamweya	-	Political Parties
119.	Hon. Gideon Moi	-	Parliament
120.	Hon. Gideon Ndambuki	-	Parliament
121.	Hon. Hannah Kimani	-	District
122.	Hon. Hellen Yego	-	NGOS
123.	Hon. Joel Chebii	-	Trade Unions
124.	Hon. John Gitari Munyi	-	District
125.	Hon. Mwangi Kiunjuri	-	Parliament
126.	Hon. Joseph Lagat	-	Parliament
127.	Hon. Ajaa Olubayi	-	District
128.	Hon. Mike Oliewo	-	Political Parties
129.	Hon. Rev. David Oginde	-	Religious Organizations
130.	Hon. Mwalimu Digore	-	District
131.	Hon. Nyiva Mwendwa	-	Parliament
132.	Hon. Oburu Oginga	-	Parliament
133.	Hon. Ogembo Masese	-	Political Parties
134.	Hon. Orie Rogo-Manduli	-	Political Parties
135.	Hon. Dubat Ali Amey	-	District
136.	Hon. Raphael Muriungi	-	Parliament
137.	Hon. Reuben Ndolo	-	Parliament
138.	Hon. Reuben Tsumah	-	District
139.	Hon. Rihal Singh	-	Professional Organizations
140.	Hon. Sammy Aswani Amunga	-	District

141.	Hon. Sally Chepkoech	-	District
142.	Hon. Stanislaus W. Kasoka	-	District
143.	Hon. Thimangu Muketha	-	District
144.	Hon. Ernest Kaitany	-	District
145.	Hon. Maasai Maroa	-	District
146.	Hon. Enock Kibunguchy	-	Parliament
147.	Comm. Charles Maranga	-	<i>Ex-officio</i>
148.	Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT:

60.	Hon. George Saitoti	-	Parliament
61.	Hon. John Michuki	-	Parliament
62.	Hon. Gacuru wa Kareng	-	District
63.	Hon. Maina Kamanda	-	Parliament
64.	Hon. Nick K. Salat	-	Parliament
65.	Hon. Paul Muite	-	Parliament
66.	Hon. William arap Ruto	-	Parliament
67.	Hon. Jimmy Angwenyi	-	Parliament
68.	Hon. Kipkalya Kones	-	Parliament
69.	Hon. David Musila	-	Parliament
70.	Hon. Sammy Leshore	-	Parliament
71.	Hon. William Kabogo	-	Parliament
72.	Hon. P.G. Muriithi	-	Parliament
73.	Hon. Hussein M. Mohammed	-	Parliament
74.	Hon. Lucas Maitha	-	Parliament
75.	Hon. Moses Wetang'ula	-	Parliament
76.	Hon. Michael Sengech	-	District
77.	Hon. Wahu Kaara	-	Religious Organizations
78.	Hon. John Koech	-	Parliament
79.	Hon. Gonzi Rai	-	Parliament
80.	Hon. Otieno Kajwang'	-	Parliament
81.	Hon. Bonny Khalwale	-	Parliament

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Halima Amran	-	Verbatim Recorder- CKRC

OBSERVERS

32. Aisha Omar	-	MDWG
33. Clephas Nyangiro	-	Nyakach CCC
34. Silvanice O. Obeka	-	Egerton University
35. Fatuma Ahmed	-	WATTA
36. Eusebio Wanyama	-	NGO Council
37. Zachariah Momanyi	-	KRRP
38. Mrs Christine Nyagitha	-	MILLER
39. Rebecca M. Kijana	-	MYWO

MORNING SESSION**MIN.NO. 114/2004: COMMENCEMENT AND PRAYER**

The Meeting commenced at 10.45 a.m. with a word of prayer by Hon. Dubat Del. No.252.

MIN.NO. 115/2004: CONFIRMATION OF MINUTES

Minutes of the Thirty-First Meeting held on Tuesday, February 03, 2004, were confirmed. The confirmation was proposed by Hon. Muketha Del. No. 272 and seconded by Hon. Wavomba Del.No.390.

MIN.NO. 116/2004: MATTERS ARISING

There were no Matters Arising.

MIN.NO. 117/2004: INTRODUCTION OF AN HONOURABLE DELEGATE

The Committee welcomed Hon. Rev. Oginda Del. No.534 to replace Rev. Mutava Musyimi who had resigned from the Committee.

MIN.NO. 118/2004: DELIBERATION ON THE DRAFT REPORT OF WORK OF THE COMMITTEE

1. **THE ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION BASED ON THE DECISIONS OF THE TECHNICAL WORKING COMMITTEES OF THE CONFERENCE**

- (ii) The Convenor informed the Meeting that only few copies were available but that an arrangement was being made to make it available to all the Honourable delegates by Two O'clock. He implored the delegates to compare the Zero Draft with their personal notes and Minutes and ensure that what was contained therein was clearly reflected.
- (iii) It was resolved that the Zero Draft be only discussed once all the Honourable delegates had been supplied with copies.

2. **CROSS CUTTING ISSUES BASED ON THE RECOMMENDATIONS AND DECISIONS OF THE TECHNICAL WORKING GROUPS**

The Convenor tabled 2 documents on the cross-cutting issues and requested the Honourable delegates to analyse them for the sake of harmonization into their chapter.

MIN. NO. 119/2004: MISREPORTING BY THE MEDIA

The Convenor expressed concern at the misreporting by the media, especially, the East African Standard for its biased reporting on the work and proceedings of the Committee. He pleaded with them to give objective reporting.

MIN. NO. 120/2004: ADJOURNMENT

The Convenor adjourned the Meeting at 11.00 a.m. until Tuesday, February 17, 2004.

SIGNED
CONVENOR

DATE.

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-THIRD SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON WEDNESDAY, FEBRUARY 18, 2004 AT 10.45 HRS

PRESENT: The following honorable delegates were present:-

149.	Hon. Joseph Martin Shikuku	-	Convenor
150.	Hon. Kellan Wavomba	-	District
151.	Hon. Beatrice Kamamia	-	District
152.	Hon. Boniface Mganga	-	Parliament
153.	Hon. Dalmas Otieno	-	Political Parties
154.	Hon. David Oyao	-	District
155.	Hon. Edward Ohare	-	District
156.	Hon. Elizabeth Okelo	-	District
157.	Hon. Enock Kibunguchy	-	Parliament
158.	Hon. Fred Gumo	-	Parliament
159.	Hon. George Nyamweya	-	Political Parties
160.	Hon. Gideon Moi	-	Parliament
161.	Hon. Gideon Ndambuki	-	Parliament
162.	Hon. Gonzi Rai	-	Parliament
163.	Hon. Hannah Kimani	-	District
164.	Hon. Hellen Yego	-	NGOS
165.	Hon. Joel Chebii	-	Trade Unions
166.	Hon. John Gitari Munyi	-	District
167.	Hon. Mwangi Kiunjuri	-	Parliament
168.	Hon. Joseph Lagat	-	Parliament
169.	Hon. Kipkalya Kones	-	Parliament
170.	Hon. Lucas Maitha	-	Parliament
171.	Hon. Ajaa Olubayi	-	District
172.	Hon. Mike Oliewo	-	Political Parties
173.	Hon. Rev. David Oginde	-	Religious Organizations
174.	Hon. Mwalimu Digore	-	District
175.	Hon. Nick K. Salat	-	Parliament
176.	Hon. Nyiva Mwendwa	-	Parliament
177.	Hon. Oburu Oginga	-	Parliament
178.	Hon. Orie Rogo-Manduli	-	Political Parties
179.	Hon. P.G. Muriithi	-	Parliament
180.	Hon. Dubat Ali Amey	-	District
181.	Hon. Raphael Muriungi	-	Parliament
182.	Hon. Reuben Ndolo	-	Parliament
183.	Hon. Reuben Tsumah	-	District
184.	Hon. Rihal Singh	-	Professional Organizations
185.	Hon. Sammy Aswani Amunga	-	District
186.	Hon. Sally Chepkoech	-	District
187.	Hon. Stanislaus W. Kasoka	-	District

188. Hon. Thimangu Muketha	- District
189. Hon. William Kabogo	- Parliament
190. Hon. Ernest Kaitany	- District
191. Hon. Maasai Maroa	- District
192. Comm. Charles Maranga	- <i>Ex-officio</i>
193. Comm. Alice Yano	- <i>Ex-officio</i>

ABSENT WITH APOLOGY

82. Hon. Moses Wetang'ula	- Parliament
83. Hon. Bonny Khalwale	- Parliament
84. Hon. Wahu Kaara	- Religious Organizations
85. Hon. Otieno Kajwang'	- Parliament
86. Hon. Gacuru wa Karege	- Political Parties

ABSENT:

1. Hon. George Saitoti	- Parliament
2. Hon. John Michuki	- Parliament
3. Hon. Maina Kamanda	- Parliament
4. Hon. Ogembo Masese	- Political Parties
5. Hon. Paul Muite	- Parliament
6. Hon. William arap Ruto	- Parliament
7. Hon. Jimmy Angwenyi	- Parliament
8. Hon. David Musila	- Parliament
9. Hon. Sammy Leshore	- Parliament
10. Hon. Hussein M. Mohammed	- Parliament
11. Hon. Michael Sengech	- District
12. Hon. John Koech	- Parliament

DELEGATES IN ATTENDANCE

Hon. Stephen K. Tarus

IN ATTENDANCE

Prof. V.C. Crabbe	- Drafts person - CKRC
Mr. Murumba Werunga	- Deputy Clerk - National Assembly
Mr. Wycliffe Owade	- Program Officer - CKRC
Ms. Lucky Waindi	- Program Officer - CKRC
Ms Lydia Moraa	- Verbatim Recorder- CKRC

OBSERVERS

41. Aisha Omar	- MDWG
42. Clephas Nyangiro	- Nyakach CCC
43. Silvance O. Obeka	- Egerton University
44. Musa Gitau	- G.B.M.
45. Eusebio Wanyama	- NGO Council
46. Zachariah Momanyi	- KRRP
47. Mrs Christine Nyagitha Miller	- Individual
48. Rebecca M. Kitana	- MYWO
49. David Malombe	- KHRC
50. Nyabonyi Kazungu	- CJPC
51. Gordon Muga	- LANGATA CCC

MORNING SESSION

MIN.NO. 121/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 10.45 a.m. with a word of prayer by Hon. Wavomba Del. No.390.

MIN.NO. 122/2004:

CONFIRMATION OF MINUTES

Minutes of the Thirty-Second Meeting held on Tuesday, February 17, 2004, were confirmed with corrections. The confirmation was proposed by Hon. Yego Del. No.468 and seconded by Hon. Ohare Del.No.386.

Corrections

1. **Page 2**
 - (i) That, the Hon. Enock Kibunguchy be recorded as having been Present.
 - (ii) That, the following Members be recorded as having been Absent with Apology.
 - Hon. Gacuru wa Kareng'e
 - Hon. Wahu Kaara
 - Hon. Otieno Kajwang'
 - Hon. Moses M. Wetang'ula
 - Hon. Bonny Khalwale
2. **Page 3**
 - (i) That, the name of No.7 in the Observers be amended to read- Mrs Christine Nyagitha Miller.
 - (ii) That, under Min.No.117/2004, the name of the new delegate be reworded to read – Hon. Rev. Oginde, Del. No.534.
3. **Page 4**
 - (i) That, in Item 2, the following sentence be added. *“The two documents were a result of a Retreat attended by the Convenors, Rapporteurs and Technical Personnel to deliberate on cross-cutting issues and the production of a Zero Draft Bill.”*
 - (ii) That, Min. No. 120/2004, be reworded to read: “The Convenor adjourned the Meeting at 11.00 O'clock, until Two O'clock to-day, Tuesday, February 17, 2004. Further, the Committee did not meet at the Two O'clock as it was felt that, the delegates needed the afternoon to peruse the Zero Draft Bill in readiness for deliberation tomorrow, Wednesday, February 18, 2004.”

MIN.NO. 123/2004:

MATTERS ARISING

There were no Matters Arising.

MIN.NO. 124/2004:

DELIBERATION ON THE ZERO DRAFT BILL OF THE CONSTITUTION OF KENYA DRAFT BILL, 2004

THE ZERO DRAFT OF THE CONSTITUTION BASED ON THE DECISIONS OF THE TECHNICAL WORKING COMMITTEE

1. The Convenor proposed the question for the deliberation on the Zero Draft Bill of the Draft Constitution of Kenya Bill, 2004.
2. Deliberations ensued which developed into a consensus, to adopt the proposal by Hon. Orie Rogo-Manduli, Del. No.594, “that, the Zero Draft Bill on Chapter Eight, the Executive, was a true and accurate reflection of the decisions and resolutions of the Committee, and be adopted without renewed debate.” The proposal was **agreed to** on a voice vote.

MIN. NO. 125/2004:

**DELIBERATION ON ANY DOCUMENTS FROM
OTHER TECHNICAL COMMITTEES**

1. The Convenor proposed the question for the deliberation on the Document containing cross-cutting issues identified at the recent retreat by Convenors, Rapporteurs and Technical Personnel.
2. Deliberations ensued which developed into a consensus whereby, the Committee resolved to hold joint meetings with the relevant Technical Working Committees to deliberate on the paragraphs with cross-cutting issues that bring out conflict between their mandates. The following are the Articles with the cross-cutting issues that conflict with the mandate of TWC “D”.

**(iii) Sovereignty of the people and supremacy of the
Constitution**

Article No.1 (3) vis-à-vis the whole Chapter.

(iv) National Goals, Values and Principles

Article No. 14(8) vis-à-vis Article No.15 (1)(d)

(v) Culture

Article 19

- the principle of affirmative action should be observed in all appointments to the National Executive.

(vi) Representation of the people

(e) Article No.76(8) vis-à-vis Articles Nos.160(2), 165(8), 172(2) and (174(1)

(f) Article No. 83(3) vis-à-vis Article No.151.

(g) Article No.100 vis-à-vis Articles Nos.150(4), 171 and 178(3)

10. The Judiciary

- (i) Article No.188(i) – should these provisions be transferred to the Legislature?
- (ii) Article No.193 vis-à-vis Article Nos.151(7)(c) and 152(2)(b).
- (iii) Article No.194 vis-à-vis Article 151(3)(c)

11. The Legislature

- (i) Article No.163(4) vis-à-vis Article No.175(1)
- (ii) Article No.124 (2) vis-à-vis Article No.152(2)(d)
- (iii) Article No.142 and 143 vis-à-vis Article No.171(6)
- (iv) Article No.163 – that, the entire provisions be transferred to the Legislature to deal with all matters of impeachment and appointment of Cabinet Ministers and Deputy Ministers who are not Members of Parliament.

(v) Land and Property, Environment and Natural Resources

Articles Nos. 237(1) and 245(1) – vis-à-vis appointments made by the President to constitutional offices.

(vi) Public Finance, Public Service and Leadership and Integrity

Article No.246 B – vis-à-vis Article No.170(2)(a).

MIN. NO. 126/2004: ADJOURNMENT

The Convenor adjourned the Meeting at One O'clock until Two O'clock, today, Wednesday, February 18, 2004.

AFTERNOON SESSION

MIN. NO. 127/2004: RESUMPTION OF PROCEEDINGS

The proceedings which had been adjourned to facilitate a lunch break, were resumed at twenty minutes past Two O'clock.

MIN. NO.128/2004: MINORITY REPORT

Hon. George O. Nyamweya, Del. No.615 presented a Minority Report to the Constitution of Kenya Draft Bill. The Committee resolved that, the report would be handled pursuant to Regulation 45.

MIN. NO. 129/2004: CONSIDERATION OF PROPOSALS FOR AMENDMENTS TO THE ZERO DRAFT BILL BY THE RETREAT

(i) Article No.148

- That, in Article No.148(1) insert the words "*the communities of*" after the words "*people and*" in the second line.

(ii) Article No.150

- That in Article 150(2)(b) insert the words "*and the communities*" after the word "*people*" in the fourth line.

(iii) Article No.151

- That Article No.151(7)(e) be reworded to read "*the Prime Minister acting on the advice of the Commission on Ethics and Integrity, shall recommend to the President the persons to be conferred with honours in the name of the people and Republic of Kenya*"

(iii) Article No.152

- (a) that, in Article No.152(2) delete paragraph (b) and renumber paragraph (c) as (b).
- (b) that, in Article No.152(2)(b), insert the words "*in accordance with Article No.124(2).*" The insertion of the words was on a Division which decided between three proposals as follows:-

those in favour of seven days -	11
those in favour of fourteen days -	9
those in favour of twenty-one days -	1
those abstaining -	1

(iv) **Article No.156**

- That, in Article No.156(1) (i) the word “*province*” be deleted and replaced by the word “*region*”

(v) **Article No.157**

- (a) that, in Article No.157(4), the words “*a minimum of twenty per cent of the votes*” be deleted and replaced by “*a minimum of twenty-five per cent of the vote*”, in the third line.
- (b) that, in Article No.157(5)(a) and (b), the word “*secured*” be replaced by the word “*scored*”.

MIN. NO. 130/2004:

ADJOURNMENT

The Convenor adjourned the Meeting at Five O’clock until Nine O’clock on Thursday, February 19, 2004.

SIGNED

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FOURTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON THURSDAY, FEBRUARY 19, 2004 AT 9.45 HRS

PRESENT: The following honorable delegates were present:-

194.	Hon. Joseph Martin Shikuku	-	Convenor
195.	Hon. Beatrice Kamamia	-	District
196.	Hon. Dalmas Otieno	-	Political Parties
197.	Hon. David Oyao	-	District
198.	Hon. Edward Ohare	-	District
199.	Hon. Elizabeth Okelo	-	District
200.	Hon. Enock Kibunguchy	-	Parliament
201.	Hon. Fred Gumo	-	Parliament
202.	Hon. George Nyamweya	-	Political Parties
203.	Hon. Gideon Moi	-	Parliament
204.	Hon. Gideon Ndambuki	-	Parliament
205.	Hon. Hannah Kimani	-	District
206.	Hon. Hellen Yego	-	NGOS
207.	Hon. Joel Chebii	-	Trade Unions
208.	Hon. John Gitari Munyi	-	District
209.	Hon. Mwangi Kiunjuri	-	Parliament
210.	Hon. Kipkalya Kones	-	Parliament
211.	Hon. Ajaa Olubayi	-	District
212.	Hon. Mike Oliewo	-	Political Parties
213.	Hon. Rev. David Oginde	-	Religious Organizations
214.	Hon. Mwalimu Digore	-	District
215.	Hon. Nick K. Salat	-	Parliament
216.	Hon. Nyiva Mwendwa	-	Parliament
217.	Hon. Orie Rogo-Manduli	-	Political Parties
218.	Hon. Dubat Ali Amey	-	District
219.	Hon. Raphael Muriungi	-	Parliament
220.	Hon. Reuben Ndolo	-	Parliament
221.	Hon. Reuben Tsumah	-	District
222.	Hon. Rihal Singh	-	Professional Organizations
223.	Hon. Sammy Aswani Amunga	-	District
224.	Hon. Sally Chepkoech	-	District
225.	Hon. Stanislaus W. Kasoka	-	District
226.	Hon. Thimangu Muketha	-	District
227.	Hon. William Kabogo	-	Parliament
228.	Hon. Ernest Kaitany	-	District
229.	Hon. Maasai Maroa	-	District
230.	Comm. Charles Maranga	-	<i>Ex-officio</i>
231.	Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGY

87.	Hon. Moses Wetang'ula	-	Parliament
88.	Hon. Bonny Khalwale	-	Parliament
89.	Hon. Wahu Kaara	-	Religious Organizations
90.	Hon. Otieno Kajwang'	-	Parliament
91.	Hon. Gacuru wa Karege	-	District
92.	Hon. Ogembo Masese	-	Political Parties
93.	Hon. William arap Ruto	-	Parliament
94.	Hon. Kellan Wavomba	-	District
95.	Hon. Gonzi Rai	-	Parliament
96.	Hon. Oburu Oginga	-	Parliament

ABSENT:

13.	Hon. George Saitoti	-	Parliament
14.	Hon. John Michuki	-	Parliament
15.	Hon. Maina Kamanda	-	Parliament
16.	Hon. Paul Muite	-	Parliament
17.	Hon. Jimmy Angwenyi	-	Parliament
18.	Hon. David Musila	-	Parliament
19.	Hon. Sammy Leshore	-	Parliament
20.	Hon. Hussein M. Mohammed	-	Parliament
21.	Hon. Michael Sengech	-	District
22.	Hon. John Koech	-	Parliament
23.	Hon. Boniface Mganga	-	Parliament
24.	Hon. Joseph Lagat	-	Parliament
25.	Hon. Lucas Maitha	-	Parliament
26.	Hon. P.G. Muriithi	-	Parliament

DELEGATES IN ATTENDANCE

Hon. Stephen K. Tarus

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Lydia Moraa	-	Verbatim Recorder- CKRC

OBSERVERS

52.	Aisha Omar	-	MDWG
53.	Silvance O. Obeka	-	Egerton University
54.	Eusebio Wanyama	-	NGO Council
55.	Zachariah Momanyi	-	KRRP
56.	Mrs Christine Nyagitha Miller	-	Individual
57.	Gordon Muga	-	LANGATA CCC

MORNING SESSION

MIN.NO. 131/2004: COMMENCEMENT AND PRAYER

The Meeting commenced at 09.45 a.m. with a word of prayer by Hon. Beatrice Wairimu Del. No.315.

MIN.NO. 132/2004: ADOPTION OF AGENDA

1. Hon. Maroa Del. No.422 proposed the adoption of the Agenda and was seconded by Hon. Muketha Del. No.272.
2. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 133/2004: CONFIRMATION OF MINUTES

Minutes of the Thirty-Third Meeting held on Wednesday, February 18, 2004, were confirmed with corrections. The confirmation was proposed by Hon. Yego Del. No.468 and seconded by Hon. Oginde Del.No.534.

Corrections

Page 2-

That, the Hons. Ogembo Masese and William Ruto be recorded among those Absent with Apology.

MIN.NO. 134/2004: MATTERS ARISING

There were no Matters Arising.

MIN.NO. 135/2004: CONSIDERATION OF PROPOSALS FOR AMENDMENTS TO THE ZERO DRAFT BILL BY THE RETREAT

1. The Convenor proposed the question for the consideration of amendments to the Zero Draft Bill by the Retreat.

(vii) Article No.159 – Assumption of Office of President

That, Article No.159 be amended and redrafted to incorporate the following:

- (e) the President-elect be sworn in within twenty-one days after the date the Electoral Commission announces the result of the Presidential election that a person has been elected; where there is no petition filed at the Supreme Court challenging the election;
 - (b) the President-elect be sworn in within seven days after the ruling of the Supreme Court on a petition challenging the election; and
1. the TWG “D” and TWG on Transition would hold a joint meeting to deliberate and harmonize their positions on this matter.

(viii) Articles 160 (3) Term of Office of President and 164(1) – Vacancy in the Office of President

- That, there appears to be some incongruence between Articles 160(3) and 164(1); hence in order to deal with this likely situation, the former be amended and redrafted as follows:-
- (e) delete the words between the words “*of the office*” in the fourth line, and the words “*it shall*” in the fifth line; and
 - (f) redefine the term Office of President.
- #### **(ix) Article 162 – Removal of President on grounds of incapacity**
- (e) that, the originator of the motion has been specified.

- (f) That, Sub-Article 162(1)(b) be redrafted to provide for an alternative means and person to nominate the person to represent the President on the Tribunal.

MIN. NO. 136/2004: **ADJOURNMENT**

The Convenor adjourned the Meeting at One O'clock until Two O'clock, today Thursday, February 19, 2004.

AFTERNOON SESSION

MIN. NO. 137/2004: **RESUMPTION OF PROCEEDINGS**

The proceedings which has been adjourned to facilitate a lunch break, were resumed at twenty minutes past Two O'clock.

MIN. NO. 138/2004: **CONSIDERATION OF PROPOSALS FOR
AMENDMENTS TO THE ZERO DRAFT BILL BY
THE RETREAT**

- (i) **Article No.162(7)**
 - It was resolved that the decision be deferred pending Quorum of the Committee.
- (ii) **Article No.163**
 - It was resolved that the issue has been comprehensively covered.
- (iii) **Article No.163(3)(a)**
 - The Committee resolved that the issue of appeal was not applicable to the Article.
- (iv) **Article 169**
 - It was unanimously resolved that the Committee on Constitutional Commissions adopt the provisions already spelt out in the Chapter on the Executive.
- (v) **Article 170(2)**
 - It was unanimously resolved that the word "*Executive*" be retained and that under Article 151 on State Functions of President be added the word "*Executive*" so as to read "*Executive and State Functions of the President*".
- (vi) **Article 171**
 - It was resolved that the issue of "*after general election*" was unnecessary and that the Article remains.
- (vii) **Article 171(6)**
 - The Committee felt that the issue had already been covered.
- (viii) **Article 174**
 - It was felt that both Article 174(1) and 171(4) needed to be harmonized. It was left for redrafting and recasting.

- It was resolved that the Article remains as approved by the Committee.
- (ix) **Article 175(1)**
- It was agreed that the Senate should approve appointment of Cabinet Ministers once appointed.
 - It was agreed that the provision on affirmative action be deleted since it was being handled by the Committee on the Representation of the people.
 - It was further argued that the Provision on Cabinet Ministers from outside the National Assembly be deleted since the Committee had already approved provision for Ministers from the National Assembly.
 - The Committee resolved that the issue on functions of the Deputy Prime Minister had already been comprehensively provided for in Article 177.
 - It was further clarified that the two Deputy Prime Ministers were not within the number provided for on the number of Ministers under Article 151(3)(iii).
- (x) **Article 176;**
- (4); The Committee resolved to stand by its earlier recommendation on the writing and signing of Cabinet decisions by both the President and the Prime Minister.
 - (5); The Committee further resolved that the issue of any emerging conflicts within the executive shall be referred to the Senate
- (xi) **Article 178A(New Article);**
- The issue of details as regards provision for functions of Cabinet and Deputy Ministers was rejected.
 - It was stated and resolved that the adoption of a mixed system of government was based on the views of Kenyans and hence has been adequately structured by the Committee into the draft Constitution.
- (xii) **Article 180;**
- The issue was deleted and the Committee stood by its earlier recommendation regarding absence of the Senior Public Officials from the Republic.
- (xiii) **Article 181;**
- It was resolved that the Cabinet Secretary shall communicate decisions of the Cabinet to the Ministers through the Principal Secretaries.
- (xiv) **Article 183;**
- It was unanimously agreed that the article be deleted and subsequently transferred to the Chapter on Public Service.
- Other Amendments Made were as Follows:-**
- Article 172(1) to add “*Speakers*” instead of “*Speaker*” in the last line of the article.

- Article 177(2)(b) be amended to read “*Cabinet*” between the word “a” and “*Minister*”.
- Article 177(4) in the first line to delete the word “*may*” and insert the word “*shall*”.

MIN.NO.139/2004 ANY OTHER BUSINESS

The Convenor informed the Committee that the Agenda for the next meeting was to discuss cross-cutting issues from other Committees. He read a memo from the Committee on the Judiciary on Articles 151(7)(c), 152(2)(b) and 163(3) and requested Honourable Members to study it with a view to giving recommendations at the next meeting.

MIN.140/2004 ADJOURNMENT

The Convenor adjourned the meeting at twenty five minutes past Four O’clock until Friday 20th February, 2004 at 9.00 a.m.

SIGNED

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FIFTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON FRIDAY, FEBRUARY 20, 2004 AT 9.55 HRS

PRESENT: The following honorable delegates were present:-

232.	Hon. Joseph Martin Shikuku	-	Convenor
233.	Hon. Beatrice Kamamia	-	District
234.	Hon. Dalmas Otieno	-	Political Parties
235.	Hon. David Oyao	-	District
236.	Hon. Edward Ohare	-	District
237.	Hon. Elizabeth Okelo	-	District
238.	Hon. George Nyamweya	-	Political Parties
239.	Hon. Hannah Kimani	-	District
240.	Hon. Hellen Yego	-	NGOS
241.	Hon. Jimmy Angwenyi	-	Parliament
242.	Hon. Joel Chebii	-	Trade Unions
243.	Hon. Ajaa Olubayi	-	District
244.	Hon. Mike Oliewo	-	Political Parties
245.	Hon. Rev. David Oginde	-	Religious Organizations
246.	Hon. Mwalimu Digore	-	District
247.	Hon. Orie Rogo-Manduli	-	Political Parties
248.	Hon. Dubat Ali Amey	-	District
249.	Hon. Reuben Tsumah	-	District
250.	Hon. Rihal Singh	-	Professional Organizations
251.	Hon. Sammy Aswani Amunga	-	District
252.	Hon. Sally Chepkoech	-	District
253.	Hon. Stanislaus W. Kasoka	-	District
254.	Hon. Thimangu Muketha	-	District
255.	Hon. Ernest Kaitany	-	District
256.	Hon. Maasai Maroa	-	District
257.	Comm. Charles Maranga	-	<i>Ex-officio</i>
258.	Comm. Alice Yano	-	<i>Ex-officio</i>

ABSENT WITH APOLOGY

97.	Hon. Moses Wetang'ula	-	Parliament
98.	Hon. Bonny Khalwale	-	Parliament
99.	Hon. Wahu Kaara	-	Religious Organizations
100.	Hon. Otieno Kajwang'	-	Parliament
101.	Hon. Gacuru wa Kareng'e	-	District
102.	Hon. Ogembo Masese	-	Political Parties
103.	Hon. William arap Ruto	-	Parliament
104.	Hon. Kellan Wavomba	-	District
105.	Hon. Gonzi Rai	-	Parliament
106.	Hon. Oburu Oginga	-	Parliament

ABSENT:

27. Hon. George Saitoti	-	Parliament
28. Hon. John Michuki	-	Parliament
29. Hon. Maina Kamanda	-	Parliament
30. Hon. Paul Muite	-	Parliament
31. Hon. David Musila	-	Parliament
32. Hon. Sammy Leshore	-	Parliament
33. Hon. Hussein M. Mohammed	-	Parliament
34. Hon. Michael Sengech	-	District
35. Hon. John Koech	-	Parliament
36. Hon. Boniface Mganga	-	Parliament
37. Hon. Joseph Lagat	-	Parliament
38. Hon. Lucas Maitha	-	Parliament
39. Hon. P.G. Muriithi	-	Parliament
40. Hon. Enock Kibunguchy	-	Parliament
41. Hon. Fred Gumo	-	Parliament
42. Hon. Gideon Moi	-	Parliament
43. Hon. Gideon Ndambuki	-	Parliament
44. Hon. John Gitari Munyi	-	District
45. Hon. Mwangi Kiunjuri	-	Parliament
46. Hon. Kipkalya Kones	-	Parliament
47. Hon. Nick K. Salat	-	Parliament
48. Hon. Nyiva Mwendwa	-	Parliament
49. Hon. William Kabogo	-	Parliament
50. Hon. Raphael Muriungi	-	Parliament
51. Hon. Reuben Ndolo	-	Parliament

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk - National Assembly
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Lydia Moraa	-	Verbatim Recorder- CKRC

OBSERVERS

58. Aisha Omar	-	MDWG
59. Stephen M. Malulu	-	Egerton University
60. Zachariah Momanyi	-	KRRP
61. Mrs Christine Nyagitha Miller	-	Individual

MORNING SESSION

MIN.NO. 141/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 09.55 a.m. with a word of prayer by Hon. Hellen Yego Del. No.468.

MIN.NO. 142/2004:

ADOPTION OF AGENDA

3. Hon. Maroa Del. No.422 proposed the adoption of the Agenda and was seconded by Hon. Ohare Del. No.386.
4. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 143/2004: **CONFIRMATION OF MINUTES**

Minutes of the Thirty-Fourth Meeting held on Thursday, February 19, 2004, were confirmed. The confirmation was proposed by Hon. Oyao Del. No.416 and seconded by Hon. Kaitany Del. No.341.

MIN.NO. 144/2004: **MATTERS ARISING**

- (x) Hon. Joseph Lagat Del. No.065 to be recorded as present.
- (xi) The term “TWG” used be corrected to “TWC” in Min.No.135 (1)(i) (c)

MIN.NO.135(1)(I)(C)

It was reported that the Rapporteur will fix a meeting with the Committee on Transition and Consequential Arrangements to deliberate and harmonize their positions on Article No.159(a). The issue to be dealt with was whether adopting this article will affect the term of the incumbent President.

Article No.159

It was resolved that a day be fixed (and not the date) of swearing in of the President and which day will be the first Thursday of September.

Article No.162(7)

The Committee agreed to defer its decision pending Quorum of the Committee.

Article No.162(1)(b)

It was resolved that it stands pending Quorum of the Committee.

Article 178(a) (New Article)

It was resolved that the position of the Committee on the Mixed System stands. It was further resolved that the views of the Consensus Building Committee on the Mixed System will be dealt with when submitted to the Committee.

MIN.145/2004 **THE CONVENOR’S STATEMENT ON THE MEDIA**

- (i) The Convenor drew the attention of the honourable delegates to the Media reports on the Executive of Daily Nation, February 20th, 2004 which was attributed to the Chairman of the National Constitutional Conference.
- (ii) He informed the Committee that he had raised the issue at the Steering Committee for more clarification.
- (iii) He further reported that the Secretary of the Conference had assured the Steering Committee that the report was not accurate. The Convenor informed the honourable members that the Committee would only accept the position after corrections in the Media.
- (iv) He further appreciated the great role and high level of commitment which the honourable members have exhibited throughout the proceedings and asserted that this should not be taken for granted.
- (v) The Committee resolved that the Chairman of the National Constitutional Conference be summoned to explain what was reported.
- (vi) The Committee further resolved that views from the Consensus Building Committee will have to be tabled before the Committee for deliberation and that they shall not allow any draft bill to be imposed on them.
- (vii) The political party representatives also informed the Committee on their position on the media reports and concurred with the sentiments expressed by the Committee.

MIN.NO. 146/2004: ADJOURNMENT

The Committee unanimously agreed to adjourn the Meeting because of the followin;

- (i) Many of the honourable delegates who are members of the Committee were attending the Ladies' HIV/AIDS Seminar at Kasarani;
- (ii) Some Honourable delegates were attending the Consensus Building Committee Meeting;
- (iii) Members of the Muslim faith were attending the prayers and that;
- (iv) Some honourable delegates were preparing to attend the funeral service of the late retired Anglican Archbishop, Most Rev. Dr. Festus H. Olang'.

The Meeting was subsequently adjourned at Twelve noon until Monday February 23, 2004 at Nine O'clock.

SIGNED

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-SIXTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON MONDAY, FEBRUARY 23, 2004 AT 10.00 HRS

PRESENT: The following honorable delegates were present:-

1. Hon. Joseph Martin Shikuku -	Convenor
2. Hon. Kellan Wavomba	- District
3. Hon. Beatrice Kamamia	- District
4. Hon. Boniface Mganga	- Parliament
5. Hon. Dalmas Otieno	- Political Parties
6. Hon. David Oyao	- District
7. Hon. Edward Ohare	- District
8. Hon. Elizabeth Okelo	- District
9. Hon. George Nyamweya	- Political Parties
10. Hon. Gideon Moi	- Parliament
11. Hon. Hellen Yego	- NGOS
12. Hon. Jimmy Angwenyi	- Parliament
13. Hon. Joel Chebii	- Trade Unions
14. Hon. John Koech	- Parliament
15. Hon. Ajaa Olubayi	- District
16. Hon. Mike Oliewo	- Political Parties
17. Hon. Rev. David Oginde	- Religious Organizations
18. Hon. Mwalimu Digore	- District
19. Hon. Ogembo Masese	- Political Parties
20. Hon. Orie Rogo-Manduli	- Political Parties
21. Hon. Dubat Ali Amey	- District
22. Hon. Reuben Tsumah	- District
23. Hon. Rihal Singh	- Professional Organizations
24. Hon. Sammy Aswani Amunga	- District
25. Hon. Sally Chepkoech	- District
26. Hon. Stanislaus W. Kasoka -	District
27. Hon. Thimangu Muketha	- District
28. Hon. William Kabogo	- Parliament
29. Hon. Ernest Kaitany	- District
30. Hon. Maasai Maroa	- District
31. Comm. Charles Maranga	- <i>Ex-officio</i>
32. Comm. Alice Yano	- <i>Ex-officio</i>
<u>ABSENT WITH APOLOGY</u>	
107. Hon. Moses Wetang'ula	- Parliament
108. Hon. Bonny Khalwale	- Parliament

- | | | |
|-----------------------------|---|-------------------------|
| 109. Hon. Wahu Kaara | - | Religious Organizations |
| 110. Hon. Otieno Kajwang' | - | Parliament |
| 111. Hon. Gacuru wa Karende | - | District |
| 112. Hon. William arap Ruto | - | Parliament |
| 113. Hon. Gonzi Rai | - | Parliament |
| 114. Hon. Oburu Oginga | - | Parliament |

ABSENT:

- | | | |
|------------------------------|---|------------|
| 52. Hon. George Saitoti | - | Parliament |
| 53. Hon. John Michuki | - | Parliament |
| 54. Hon. Maina Kamanda | - | Parliament |
| 55. Hon. Paul Muite | - | Parliament |
| 56. Hon. David Musila | - | Parliament |
| 57. Hon. Sammy Leshore | - | Parliament |
| 58. Hon. Hussein M. Mohammed | - | Parliament |
| 59. Hon. Michael Sengech | - | District |
| 60. Hon. Hannah Kimani | - | District |
| 61. Hon. Joseph Lagat | - | Parliament |
| 62. Hon. Lucas Maitha | - | Parliament |
| 63. Hon. P.G. Muriithi | - | Parliament |
| 64. Hon. Enock Kibunguchy | - | Parliament |
| 65. Hon. Fred Gumo | - | Parliament |
| 66. Hon. Gideon Ndambuki | - | Parliament |
| 67. Hon. John Gitari Munyi | - | District |
| 68. Hon. Mwangi Kiunjuri | - | Parliament |
| 69. Hon. Kipkalya Kones | - | Parliament |
| 70. Hon. Nick K. Salat | - | Parliament |
| 71. Hon. Nyiva Mwendwa | - | Parliament |
| 72. Hon. Raphael Muriungi | - | Parliament |
| 73. Hon. Reuben Ndolo | - | Parliament |

IN ATTENDANCE

- | | | |
|---------------------|---|---|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk - National Assembly-
CKRC |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Lydia Moraa | - | Verbatim Recorder- CKRC |

OBSERVERS

- | | | |
|-----------------------------------|---|------------|
| 62. Rebecaca Kitana | - | MYWO |
| 63. Zachariah Momanyi | - | KRRP |
| 64. Mrs Christine Nyagitha Miller | - | Individual |

MORNING SESSION

MIN.NO. 147/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 10.00 a.m. with a word of prayer by Hon. Oliewo Del. No.613.

MIN.NO. 148/2004:

ADOPTION OF AGENDA

5. Hon. Rihal Del. No.487 proposed the adoption of the Agenda and was seconded by Hon. Dubat Del. No.252.

6. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 149/2004: CONFIRMATION OF MINUTES

Minutes of the Thirty-Fifth Meeting held on Friday, February 23, 2004, were confirmed with corrections. The confirmation was proposed by Hon. Ohare Del. No.386 and seconded by Hon. Yego Del. No.468.

Corrections:

Page 2 – That, Hons. Ndolo, Kabogo, Ndambuki, Gumo, Moi, Gitari Munyi, Salat, Kones, Kiunjuri and Muriungi be recorded as present.

Page 5 - That, in Min.No.145/2004, the word “honourable” be deleted and replaced by “honourable”

MIN.NO. 150/2004: MATTERS ARISING

The following matters arose.

(xii) That, under Item (ii) on page 4, the joint Meeting with the TWC on Transition and Consequential Arrangements would be held upon the Committee on Consensus Building having finished their work and subsequently reported to the Committee.

(xiii) That, under Item 178(a) New Article on Page 5 was noted that the Consensus Building Committee had yet to complete their work and report.

MIN.151/2004 CONSIDERATION OF THE MINORITY REPORT

1. The Convenor drew the attention of the Committee to a Minority Report presented by the Hon. Nyamweya Del. No.615.

2. Deliberations ensued which developed into a consensus to proceed as per a proposal by Hon. Olubayi, Del. No.395 and seconded by Hon. Angwenyi, Del. No.007 that, the Minority Report be discussed by the Committee with the view that:-

- Some of the proposals in the Minority Report could be accommodated in the final report of the Committee on its mandate.

MIN. NO. 152/2004: ADJOURNMENT

A motion of adjournment was moved by Hon. Maasai Maroa Del. No.422 and seconded by Hon. Jimmy Angwenyi Del. No.007.

The reasons for adjournment were as follows:

(i) That, it would be easier and properly coordinated if the two documents, i.e., the Minority Report and the report from the Consensus Building Committee be discussed together.

(ii) That, since Constitution making was a Consensus building process, there was need to listen and accommodate various views to reach a Consensus and the need to adjourn to enable these documents be discussed tomorrow Tuesday, 24th February, 2004.

(iii) The Meeting was subsequently adjourned at thirty minutes past Twelve noon and to resume on Tuesday, 24th February, 2004 at Nine O'clock.

SIGNED

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-SEVENTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD IN TENT NO.4 ON TUESDAY, FEBRUARY 24, 2004 AT 10.25 HRS

PRESENT: The following honorable delegates were present:-

33. Hon. Joseph Martin Shikuku -	Convenor
34. Hon. Gacuru wa Karengi -	District
35. Hon. Kellan Wavomba -	District
36. Hon. Beatrice Kamamia -	District
37. Hon. Boniface Mganga -	Parliament
38. Hon. Dalmas Otieno -	Political Parties
39. Hon. David Musila -	Parliament
40. Hon. David Oyao -	District
41. Hon. Edward Ohare -	District
42. Hon. Elizabeth Okelo -	District
43. Hon. Enock Kibunguchy -	Parliament
44. Hon. George Nyamweya -	Political Parties
45. Hon. Gideon Moi -	Parliament
46. Hon. Gideon Ndambuki -	Parliament
47. Hon. Hannah Kimani -	District
48. Hon. Hellen Yego -	NGOS
49. Hon. Jimmy Angwenyi -	Parliament
50. Hon. Joel Chebii -	Trade Unions
51. Hon. John Koech -	Parliament
52. Hon. John Gitari Munyi -	District
53. Hon. Joseph Lagat -	Parliament
54. Hon. Lucas Maitha -	Parliament
55. Hon. Ajaa Olubayi -	District
56. Hon. Mike Oliewo -	Political Parties
57. Hon. Rev. David Oginde -	Religious Organizations
58. Hon. Mwalimu Digore -	District
59. Hon. Nick K. Salat -	Parliament
60. Hon. Nyiva Mwendwa -	Parliament
61. Hon. Oburu Oginga -	Parliament
62. Hon. Orie Rogo-Manduli -	Political Parties
63. Hon. Otieno Kajwang' -	Parliament
64. Hon. P.G. Muriithi -	Parliament
65. Hon. Dubat Ali Amey -	District
66. Hon. Reuben Ndolo -	Parliament
67. Hon. Reuben Tsumah -	District
68. Hon. Rihal Singh -	Professional Organizations
69. Hon. Sammy Aswani Amunga -	District
70. Hon. Sally Chepkoech -	District
71. Hon. Stanislaus W. Kasoka -	District

72. Hon. Thimangu Muketha	-	District
73. Hon. William Kabogo	-	Parliament
74. Hon. Ernest Kaitany	-	District
75. Hon. Maasai Maroa	-	District
76. Comm. Charles Maranga	-	<i>Ex-officio</i>
77. Comm. Alice Yano	-	<i>Ex-officio</i>
78. Prof. Y. P. Ghai	-	Chairman –CKRC
79. Prof. Okoth Ogendo	-	Rapporteur-General

ABSENT WITH APOLOGY

115. Hon. Moses Wetang'ula	-	Parliament
116. Hon. Bonny Khalwale	-	Parliament
117. Hon. Wahu Kaara	-	Religious Organizations
118. Hon. William arap Ruto	-	Parliament
119. Hon. Gonzi Rai	-	Parliament
120. Hon. Ogembo Masese	-	Political Parties

ABSENT:

74. Hon. George Saitoti	-	Parliament
75. Hon. John Michuki	-	Parliament
76. Hon. Maina Kamanda	-	Parliament
77. Hon. Paul Muite	-	Parliament
78. Hon. Sammy Leshore	-	Parliament
79. Hon. Hussein M. Mohammed	-	Parliament
80. Hon. Michael Sengech	-	District
81. Hon. Fred Gumo	-	Parliament
82. Hon. Mwangi Kiunjuri	-	Parliament
83. Hon. Kipkalya Kones	-	Parliament
84. Hon. Raphael Muriungi	-	Parliament

IN ATTENDANCE

Prof. V.C. Crabbe	-	Drafts person - CKRC
Mr. Murumba Werunga	-	Deputy Clerk National Assembly-CKRC
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Lydia Moraa	-	Verbatim Recorder- CKRC

OBSERVERS

65. Eusebio Wanyama	-	NGO Council
66. Musa Gitahi	-	G.B.M.
67. Zachariah Momanyi	-	KRRP
68. George N. Mirie	-	NCEC
69. Mrs Christine Nyagitha Miller	-	Individual
70. Gordon Muga	-	LANGATA 3C

MORNING SESSION

MIN.NO. 153/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 10.45 a.m. with a word of prayer by Hon. Rihal Del. No.487.

MIN.NO. 154/2004: **ADOPTION OF AGENDA**

7. Hon. Oliewo Del. No.613 proposed the adoption of the Agenda and was seconded by Hon. Tsuma Del. No.235.

8. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 155/2004: **CONFIRMATION OF MINUTES**

Minutes of the Thirty-Sixth Meeting held on Monday, February 23, 2004, were confirmed with corrections. The confirmation was proposed by Hon. Ohare Del. No.386 and seconded by Hon. Yego Del. No.468.

Corrections:

Page 2 – That, Hons. Nyiva Mwendwa and Reuben Ndolo be recorded as present.

Page 3 - That, in Min.No.149/2004, the figures “23” be deleted and replaced by “20”.

MIN .NO. 156/2004: **MATTERS ARISING**

There were no Matters Arising.

MIN. NO. 157/2004 **CONSIDERATION OF THE MINORITY REPORT/REPORT OF THE CONSENSUS BUILDING GROUP VIS-À-VIS THE ZERO DRAFT BILL**

The Convenor reported that at a meeting of the Steering Committee, this morning, the following transpired:-

- (i) a Report of the Consensus Building Group was released, and the copies had been distributed to each delegate.
- (ii) the Sitting of this Morning be adjourned early to enable delegates study it vi-a-vis the Minority Report and Zero Draft Bill.
- (iii) the Sitting of the Afternoon be held at a venue away from the Bomas of Kenya. However, due to lack of consensus on the change of venue, the Committee resolved to continue sitting in the Tent on a voice vote.

MIN. NO. 158/2004: ADJOURNMENT

The Convenor adjourned the Meeting at ten minutes past Eleven O'clock until Two O'clock, today, Tuesday, February 24, 2004

AFTERNOON SESSION

MIN. NO. 159/2004: **RESUMPTION OF PROCEEDINGS**

The afternoon session resumed at ten minutes past Two O'clock with the Convenor calling the Meeting to order.

He subsequently called for brainstorming on the document from the Consensus Building Committee on the Executive.

MIN. NO. 160/2004: **COMMENTS ON THE CONSENSUS BUILDING COMMITTEE REPORT**

Various views were expressed as follows:

- a. That, there was need to deliberate on the document (both the draft and the narrative)
- b. That, there was need to know the authority and source of the document for debate

- c. That, in the spirit of accommodation, there was need to be very precise and on specific sections and not the entire draft.
- d. That, the report does not record the actual feelings of the Committee as reflected in the Zero Draft Bill.
- e. That, the Committee was a creation of the Steering Committee of the National Constitutional Conference and that they looked at the contentious issues and referred their document to the Drafters for a refined document which was subsequently tabled before the Committee.
- f. That, the document tabled before the Committee was just a working document to build on the initial Zero Draft of the Committee.
- g. That, Constitution making was a give and take exercise and must be reflected in that light.
- h. That the document was to be examined together with the Zero Draft Bill and not to replace the Bill.
- i. That, the draft of the Committee must reflect the views of Kenyans and that power must be seen to be devolutionised at all levels starting from the top.
- j. That, in Constitution making, rigidity and strong positions must be put aside if consensus were to be achieved at the Plenary.
- k. That, there was need to allow reasons and not emotions in Constitution making.
- l. That, there was need to understand that Constitution making was first a political and then a legal process and must be understood from that perspective and hence to avoid all unnecessary disagreements lest it risk scuttling the process.

MIN. NO. 161/2004:

**COMMENTS BY THE CHAIR OF THE NATIONAL
CONSTITUTIONAL CONFERENCE ON THE
MEDIA AND THE CONSENSUS BUILDING
COMMITTEE REPORTS**

Prof. Pal Ghai stated as follows:

- (i) That, media reports attributed to him on the issue of the Executive was misleading.
- (ii) That the consensus Committee was primarily concerned with the contentious issues and particularly the relationship between the President, Prime Minister and the Cabinet.
- (iii) That, the Committee formed a Sub-Committee to look at the contentious issues and reported to the Plenary of the Committee on their outcome.
- (iv) That, the work of the Plenary was reduced to a legal draft with harmonization of the Committee's recommendations and Zero Draft.
- (v) That, the Drafting process applied was a standard practice all over the world.
- (vi) That, the document was subsequently endorsed by the Plenary of the Committee and tabled before the Steering Committee of the National Constitutional Conference for approval.
- (vii) That, the Steering Committee subsequently approved the document for circulation to the Committee on the Executive.

At the conclusion of his comments, the Chair paid glowing tribute to the honourable Members for the enormous work they have done in the Committee and assured them that the document in question was to build on the Zero Draft of the Committee.

He further added that the Committee was at liberty to examine the draft and the narrative report and come up with suggestions which will be forwarded to the drafters, to refine and present for the Committee's deliberations.

MIN. NO. 162/2004: **WAY FORWARD**

- (i) The Committee unanimously agreed to meet at a venue away from Bomas of Kenya on Wednesday 25th February, 2004 to enable them scrutinize the Consensus Building Committee's document and make specific recommendations.
- (ii) It was stressed that there was need to be away from the media and the public for logical discussions.
- (iii) The Committee was further implored to be prepared to work extra hours in view of time constraint and in readiness for the Committee of the Whole House.

MIN. NO. 163/2004: **ADJOURNMENT**

The Committee adjourned the Meeting at ten minutes past Four O'clock to resume on Wednesday, February 25, 2004 at Nine O'clock.

SIGNED

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-EIGHTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD AT K.W.S (SAFARI WALK) ON WEDNESDAY, FEBRUARY 25, 2004 AT 11.00 HRS

PRESENT: The following honorable delegates were present:-

80. Hon. Joseph Martin Shikuku -	Convenor
81. Hon. Gacuru wa Kareng'e -	District
82. Hon. Kellan Wavomba -	District
83. Hon. Beatrice Kamamia -	District
84. Hon. Boniface Mganga -	Parliament
85. Hon. David Musila -	Parliament
86. Hon. David Oyao -	District
87. Hon. Edward Ohare -	District
88. Hon. Elizabeth Okelo -	District
89. Hon. George Nyamweya -	Political Parties
90. Hon. Gideon Ndambuki -	Parliament
91. Hon. Hellen Yego -	NGOS
92. Hon. Jimmy Angwenyi -	Parliament
93. Hon. Joel Chebii -	Trade Unions
94. Hon. John Gitari Munyi -	District
95. Hon. Joseph Lagat -	Parliament
96. Hon. Ajaa Olubayi -	District
97. Hon. Mike Oliewo -	Political Parties
98. Hon. Rev. David Oginde -	Religious Organizations
99. Hon. Mwalimu Digore -	District
100. Hon. Nick K. Salat -	Parliament
101. Hon. Nyiva Mwendwa -	Parliament
102. Hon. Oburu Oginga -	Parliament
103. Hon. Orie Rogo-Manduli -	Political Parties
104. Hon. P.G. Muriithi -	Parliament
105. Hon. Dubat Ali Amey -	District
106. Hon. Reuben Ndolo -	Parliament
107. Hon. Rihal Singh -	Professional Organizations
108. Hon. Sammy Aswani Amunga -	District
109. Hon. Sally Chepkoech -	District
110. Hon. Stanislaus W. Kasoka -	District
111. Hon. Thimangu Muketha -	District
112. Hon. Ernest Kaitany -	District
113. Hon. Maasai Maroa -	District

- | | | |
|------------------------|---|-------------------------|
| 114.Hon. Wahu Kaara | - | Religious Organizations |
| 115.Hon. Ogembo Masese | - | Political Parties |
| 116.Hon. Sammy Leshore | - | Parliament |
| 38. Hon. John Koech | - | Parliament |

ABSENT WITH APOLOGY

- | | | |
|------------------|---|-------------------|
| Comm. Alice Yano | - | <i>Ex-officio</i> |
|------------------|---|-------------------|

ABSENT:

- | | | | |
|-----|--------------------------|---|-------------------|
| 1. | Hon. George Saitoti | - | Parliament |
| 2. | Hon. John Michuki | - | Parliament |
| 3. | Hon. Maina Kamanda | - | Parliament |
| 4. | Hon. Paul Muite | - | Parliament |
| 5. | Hon. Hussein M. Mohammed | - | Parliament |
| 6. | Hon. Michael Sengech | - | District |
| 7. | Hon. Fred Gumo | - | Parliament |
| 8. | Hon. Kipkalya Kones | - | Parliament |
| 9. | Hon. Raphael Muriungi | - | Parliament |
| 10. | Hon. Enock Kibunguchy | - | Parliament |
| 11. | Hon. Lucas Maitha | - | Parliament |
| 12. | Hon. William Kabogo | - | Parliament |
| 13. | Hon. Bonny Khalwale | - | Parliament |
| 14. | Hon. Gonzi Rai | - | Parliament |
| 15. | Hon. Charles Maranga | - | <i>Ex-officio</i> |
| 16. | Hon. Dalmas Otieno | - | Political Parties |
| 17. | Hon. Gideon Moi | - | Parliament |
| 18. | Hon. Hannah Kimani | - | District |
| 19. | Hon. Mwangi Kiunjuri | - | Parliament |
| 20. | Hon. Otieno Kajwang' | - | Parliament |
| 21. | Hon. William arap Ruto | - | Parliament |
| 22. | Hon. Moses Wetang'ula | - | Parliament |
| 23. | Hon. Reuben Tsumah | - | District |

IN ATTENDANCE

- | | | |
|---------------------|---|-------------------------------------|
| Prof. V.C. Crabbe | - | Drafts person - CKRC |
| Mr. Murumba Werunga | - | Deputy Clerk National Assembly-CKRC |
| Mr. Wycliffe Owade | - | Program Officer - CKRC |
| Ms. Lucky Waindi | - | Program Officer - CKRC |
| Ms Lydia Moraa | - | Verbatim Recorder- CKRC |

MORNING SESSION

MIN.NO. 164/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 11.00 a.m. with a word of prayer by Hon. Rihai Del. No.487.

MIN.NO. 165/2004:

ADOPTION OF AGENDA

9. Hon. Kaitany proposed the adoption of the Agenda and was seconded by Hon. Maroa.
10. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 166/2004:

CONFIRMATION OF MINUTES

Minutes of the Thirty-Seventh Meeting held on Tuesday February 24, 2004, were confirmed. The confirmation was proposed by Hon. Orie Rogo-Manduli Del. No.594 and seconded by Hon. P.G. Muriithi Del. No.120.

MIN. NO. 167/2004:

MATTERS ARISING

There were no Matters Arising.

MIN. NO. 168/2004

**CONSIDERATION OF THE MINORITY
REPORT/REPORT OF THE CONSENSUS
BUILDING CROUP VIS-À-VIS THE ZERO DRAFT
BILL**

The Convenor reported that at a meeting of the Steering Committee, this morning, the following transpired:-

- (i) each Technical Working Committee should conclude their work by to-day.
 - (ii) the narrative version of the Report of the Consensus Building Group had been availed and distributed to the delegates.
3. The Convenor invited the Chief Moderator of the Conference Consensus Building Group (CCBG) to present the report and recommendations to the Committee.

The Chief Moderator of the Conference Consensus Building Group briefed the Committee on the modalities and work of the CCBG and then presented a narration of the recommendation on the Executive.

Regarding the modalities of operation, the Chief Moderator stated thus:

- a. the participants on the CCBG were drawn from the main continent groups in the National Constitutional Conference (NCC), which basically were a reflection of the realities of the current national political dispensation;
 - b. the issues at stage which were dealt with, had become progressively more political than legal;
 - c. the participants were drawn from the three political entities, i.e., Liberal Democratic Party (LDP), National Alliance Party of Kenya (NAK) and the Coalition for National Unity (CNU);
 - d. The report and recommendations of the CCBG were first drafted by the drafts person and then deliberated upon by the entire CCBG;
 - e. The report and recommendations, which were trade off between the three political entities is a result of consensus.
4. The Convenor thereupon invited the Committee to deliberate the report and recommendations of the CCBG. Deliberations ensued.
5. The Committee deliberated at length on each of the recommendations of the CCBG. The following were results of the decisions on each recommendation are as indicated under herebelow:

The report of the Conference Consensus Building Group on the Executive.

After a preliminary discussion of the contentious issues on the Executive on 17th and 18th February 2004, the CCBG decided to set up a working group of all the parliamentary political groups, the Moderators and Chairs of the NCC, to make recommendations to the

CCBG. On Thursday 19th the working group presented its recommendations to the CCBG, as follows.

That, the Executive authority of the Republic of Kenya will repose in the President, the Prime Minister and the Cabinet.

1. that the President shall be elected in accordance with the current rules which require the President to garner majority of votes countrywide and certain percentages in specified number of Regions.
2. That the President is the Head of State, Head of government, Commander-in-Chief of the Armed Forces and Chair of the National Security Council.
3. That the President shall appoint the Prime Minister from the party or coalition of parties with the majority support in Parliament and shall submit the name of the appointed Prime Minister to the Parliament for approval by at least 50% vote of all Members of Parliament.
4. If Parliament does not approve the nominated Prime Minister, the President shall nominate the leader of the second largest party or coalition of parties and if the Parliament rejects the second nominee, then the President shall nominate the third nominee who shall be accepted by the Parliament.
5. That the President in consultation with the Prime Minister shall appoint Cabinet Ministers.
6. That Cabinet Ministers shall be Members of Parliament.
7. That the number of Cabinet Ministers shall not exceed seventeen (17)
8. That most of Government decisions shall be through the Cabinet.
9. That the Prime Minister shall be the leader of Government Business in Parliament, shall coordinate work of Ministries, shall prepare legislation and shall be responsible to the Cabinet and the Parliament.
10. That the Prime Minister may be dismissed in one or two ways:
 - Through a motion introduced by the President and supported by fifty percent (50%) of Members of Parliament.
 - Through a vote of no confidence introduced by a Member of Parliament and supported by a third of Members of Parliament and voted for by at least fifty percent (50%) of Members of Parliament.
11. That the functions of the President, the Prime Minister and the Cabinet are largely as stated in the Zero Draft.
12. That the President shall serve a maximum of two-five-year-terms.
13. That the emphasis is on the President and the Prime Minister working in harmony.
14. That the Cabinet should reflect the Kenyan cultural and ethnic diversity.
15. That the above proposals be forwarded to a legal Draftsperson to prepare a Revised Legal Text on Executive.

MIN. NO. 169/2004: ADJOURNMENT

The Convenor adjourned the Meeting at fifty minutes past Twelve O'clock until Two O'clock, today, Wednesday, February 25, 2004

AFTERNOON SESSION

MIN. NO. 170/2004:

RESUMPTION OF PROCEEDINGS

The afternoon session resumed at fifteen minutes past Two O'clock with the Convenor calling the Meeting to order.

The following resolutions were reached on the consideration of the consensus Building Group report on the Executive.

Number 1:

That, the provision on the Executive authority as reflected in Article 149 stand part of the draft bill without any amendment.

It was resolved that the Article needs to be very precise and specific as to who constitutes the Executive authority of the Republic.

Number 2:

That, since it tallies with the provisions in Article 157 on procedure of Presidential elections, it was already carried.

Number 3:

Various comments made were as follows:

- (i) that, since the President chairs the Cabinet, he/she should automatically be the Head of Government.
- (ii) That, there was need to be concerned with the powers provided in the various offices of the National Executive rather than the placement of the offices.
- (iii) That, the draft from the Consensus Group gives elaborate provisions in the various offices of the National Executive and needs to be examined.
- (iv) That, the Zero draft reflects and demarcates powers and functions of the various offices.
- (v) That, since the Prime Minister shall enjoy the majority in the Government, he/she should be the Head of Government.
- (vi) That, the fundamental issue of Kenyans was concentration of power in one individual.
- (vii) That if the Prime Minister was the Head of Government, then he/she should be directly elected by the people.

After an intensive debate, a question was put and the result was as follows:

AYES	-	9
NOES	-	21

The NOES carried the day.

Hons. Gacuru wa Karege and George Nyamweya recorded a minority position to go with the Consensus Group report.

Number 4:

It was unanimously resolved that Article 171 stand part of the draft bill without any amendment.

Number 5:

It was resolved that in circumstances where the President proposes to the Speaker the appointment of Prime Minister and the appointment fails to attain confirmation from the National Assembly in both first and second nominations, then the National Assembly shall nominate to the President one person to be appointed by the President who shall be the Prime Minister.

It was further resolved that in circumstances where National Assembly fails to nominate the Prime Minister, the provision in Article 171 will apply regarding dissolution of the National Assembly.

Number 6:

A question was put on Number 6 regarding the appointment of Cabinet Ministers. The Committee approved the provision to stand part of the draft bill without any amendment. Minority position supporting the consensus Group report was recorded by Hons. Karange, Muketha, Muriithi, Munyi, Beatrice Kamamia and Hannah Kimani.

Number 7:

It was unanimously adopted since it has already been covered in the Zero Draft. The word “*Parliament*” to be deleted and to be replaced with “*National Assembly*”.

Number 8:

It was resolved that the position stand part of the draft bill without any amendment. A minority position was recorded by Hon. G. Nyamweya as reflected in the Committee’s Minority Report.

Number 9:

It was unanimously approved with amendments to reflect on Article 176 on the Zero Draft.

Number 10:

It was approved since it had already been captured in the Zero Draft subject with amendment to delete “*Parliament*” and insert “*National Assembly*”.

Number 11:

It was unanimously resolved that Article 174 be reworded to reflect as follows:

Article 174(2) to take care of 11(a)

Original Article 174(2) in the Zero Draft changes to Article 174(3) as amended.

It was further resolved that the Articles 167A and 173A of the Minority Report regarding the incapacity of the Deputy President and Prime Minister be adopted.

Number 12:

It was resolved that it be adopted with amendment to include the Deputy President.

Number 13:

The Committee’s position stand part of the draft bill without any amendment.

Number 14:

It was approved but stated that it was not a constitutional issue.

Number 15:

Various issues raised were as follows:

- (i) That, belonging to a tribe was not a weakness but a strength.
- (ii) That, the Cabinet should reflect on quality.
- (iii) That, it has already been captured in Articles 148 and 150.
- (iv) That, there was need to ensure a balanced Cabinet reflective of all regions.
- (v) The recommendation was rejected.

Number 16:

The Committee’s position stand part of the draft bill without any amendment.

Further Resolutions

- It was resolved that all the recommendations adopted by the Committee be verified before being tabled to the Committee of the Whole Conference.

MIN. NO. 171/2004:

ADJOURNMENT

The Committee adjourned the Meeting at fifteen minutes past Five O’clock to resume on Thursday, February 26, 2004 at Nine O’clock.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-NINTH SITTING OF THE TECHNICAL COMMITTEE 'D' ON THE EXECUTIVE HELD AT TENT 'D' ON THURSDAY, FEBRUARY 26, 2004 AT 11.30 HRS

PRESENT: The following honorable delegates were present:-

117.Hon. Joseph Martin Shikuku	-	Convenor
118.Hon. Gacuru wa Kareng'e	-	District
119.Hon. Kellan Wavomba	-	District
120.Hon. Beatrice Kamamia	-	District
121.Hon. Boniface Mganga	-	Parliament
122.Hon. David Musila	-	Parliament
123.Hon. David Oyao	-	District
124.Hon. Edward Ohare	-	District
125.Hon. Elizabeth Okelo	-	District
126.Hon. George Nyamweya	-	Political Parties
127.Hon. Gideon Ndambuki	-	Parliament
128.Hon. Hellen Yego	-	NGOS
129.Hon. Jimmy Angwenyi	-	Parliament
130.Hon. Joel Chebii	-	Trade Unions
131.Hon. John Gitari Munyi	-	District
132.Hon. Joseph Lagat	-	Parliament
133.Hon. Ajaa Olubayi	-	District
134.Hon. Mike Oliewo	-	Political Parties
135.Hon. Rev. David Oginde	-	Religious Organizations
136.Hon. Mwalimu Digore	-	District
137.Hon. Nick K. Salat	-	Parliament
138.Hon. Nyiva Mwendwa	-	Parliament
139.Hon. Oburu Oginga	-	Parliament
140.Hon. Orié Rogo-Manduli	-	Political Parties
141.Hon. Dubat Ali Amey	-	District
142.Hon. Reuben Ndolo	-	Parliament
143.Hon. Rihal Singh	-	Professional Organizations
144.Hon. Sammy Aswani Amunga	-	District
145.Hon. Sally Chepkoech	-	District
146.Hon. Stanislaus W. Kasoka	-	District
147.Hon. Thimangu Muketha	-	District
148.Hon. Ernest Kaitany	-	District
149.Hon. Maasai Maroa	-	District
150. Hon. Dalmas Otieno	-	Political Parties
150.Hon. Wahu Kaara	-	Religious Organizations

151. Hon. Ogembo Masese	-	Political Parties
152. Hon. Sammy Leshore	-	Parliament
153. Hon. John Koech	-	Parliament
154. Comm. Alice Yano	-	<i>Ex-officio</i>
155. Hon. Reuben Tsumah	-	District

ABSENT:

24. Hon. George Saitoti	-	Parliament
25. Hon. John Michuki	-	Parliament
26. Hon. Maina Kamanda	-	Parliament
27. Hon. Paul Muite	-	Parliament
28. Hon. Hussein M. Mohammed	-	Parliament
29. Hon. Michael Sengech	-	District
30. Hon. Fred Gumo	-	Parliament
31. Hon. Kipkalya Kones	-	Parliament
32. Hon. Raphael Muriungi	-	Parliament
33. Hon. Enock Kibunguchy	-	Parliament
34. Hon. Lucas Maitha	-	Parliament
35. Hon. William Kabogo	-	Parliament
36. Hon. Bonny Khalwale	-	Parliament
37. Hon. Gonzi Rai	-	Parliament
38. Hon. Gideon Moi	-	Parliament
39. Hon. Hannah Kimani	-	District
40. Hon. Mwangi Kiunjuri	-	Parliament
41. Hon. Otieno Kajwang'	-	Parliament
42. Hon. William arap Ruto	-	Parliament
43. Hon. Moses Wetang'ula	-	Parliament
44. Hon. P.G. Muriithi	-	Parliament
45. Com. Charles Maranga	-	<i>Ex-officio</i>

IN ATTENDANCE

Mr. Murumba Werunga	-	Deputy Clerk - National Assembly-CKRC
Mr. Wycliffe Owade	-	Program Officer - CKRC
Ms. Lucky Waindi	-	Program Officer - CKRC
Ms Lydia Moraa	-	Verbatim Recorder- CKRC

OBSERVERS

71. Eusebio Wanyama	-	NGO Council
72. Aisha Omar	-	MDWG
73. Mrs Christine Nyagitha Miller	-	Individual
74. Gordon Muga	-	LANGATA 3C

MORNING SESSION

MIN.NO. 172/2004:

COMMENCEMENT AND PRAYER

The Meeting commenced at 11.30 a.m. with a word of prayer by Hon. Kellan wavomba, Delegate No. 390.

MIN.NO. 173/2004:

ADOPTION OF AGENDA

11. Hon. Gitari Munyi Delegate No. 284 proposed the adoption of the Agenda and was seconded by Hon. Rihal Delegate No. 487.
12. The Convenor put the question which was **agreed to** on a voice vote.

MIN. NO. 174/2004: CONFIRMATION OF MINUTES

Minutes of the Thirty-Eighth Meeting held on Wednesday, February 25, 2004, were confirmed with corrections. The confirmation was proposed by Hon. Orie Rogo-Manduli Del. No.594 and seconded by Hon. Masai Maroa Del. No.422.

MIN.NO. 175/2004: MATTERS ARISING

MIN. NO. 168/2004: . CONSIDERATION OF THE MINORITY REPORT/REPORT OF THE CONSENSUS BUILDING GROUP VIS-À-VIS THE ZERO DRAFT BILL

(3) (i) In the second line to delete the word “continent” and insert the word “constituent”.

(3) (ii) to delete the word “stage” and insert the word “stake”

Number 3

It was agreed that the statement on the voting should read as follows:

“After an intensive debate, a question that, the President would be the Head of Government was put and the result was as follows:

Those in favour - 9

Those not in favour - 21

The committee subsequently resolved that the Prime Minister shall be Head of Government.

Number 6

- It was noted that it should read as follows; “ that the Committee approved the position regarding the appointment of Cabinet Ministers as provided for in the Zero draft under Article 151(3)”

- It was further resolved that a statement from Hon. Oburu Odinga from the Consensus group be included to read as follows:

“That the President in consultation with and taking into consideration the views of the Prime Minister, shall appoint Cabinet Ministers”.

It was however noted that the position of the committee on the draft bill, stands.

- The name Hon. Kareng'e be corrected accordingly.

Number 8

The recommendation was corrected to read as follows;

“It was resolved that the position in the Zero Draft regarding the appointment of Ministers in Article 151 (3) stand part of the Draft Bill without any amendment”.

Number 15

- To correct “ahs” in (iii) to read “has.”

MIN .NO. 176/2004: MOTION

A motion was moved by Hon. Mwalimu Digore Delegate No. 231 and seconded by Hon. Orie-Rogo Manduli Delegate No. 594 as follows:

MOTION

“That this Committee resolves that arising out of our debate on February 25th 2004, we the Committee amend article 170 (1) of the Zero Draft to read that

“There shall be a Prime Minister of the Republic of Kenya who shall be the Head of Government”.

The debate was as follows:

- That there was need to realize that the State and the Government have no difference and hence being the chair of the Cabinet, the President should automatically be the Head of Government.
- That if the Prime Minister must be Head of Government, then he/she should be directly elected by the people.
- That the whole idea was to build a consensus by providing a middle ground on the powers of the President and Prime Minister.
- That there was need for a Head of Government who can be accessible to the people of Kenya due to mandate given to him/her by the people.
- That there was danger making the President and his Deputy part of the Cabinet and yet the Prime Minister is Head of Government.
- That the Prime Minister should be Head of Government since he/she will enjoy the majority support in Parliament.
- That the President as Chair of the Cabinet shall check on the accountability of the Prime Minister and other officers.
- That the Constitution being written was not for a particular tribe(s) or particular interests but for posterity and in the interest of the nation.
- That the Main Report of the Draft Constitution (page 243) supported the creation of an Executive Prime Minister and he/she being the Head of Government.

After lengthy deliberations on the Motion, a question was put and the Motion was agreed to on a voice vote.

MIN .NO. 177/2004: ADJOURNMENT

The Convenor adjourned the meeting at One O'clock until Two O'clock Thursday, February 26th, 2004.

AFTERNOON SESSION

MIN .NO. 178/2004: RESUMPTION OF PROCEEDINGS

The afternoon session resumed at twenty minutes past Two O'clock with the Convenor calling the meeting to order.

MIN .NO. 179/2004: QUORUM

The issue of Quorum was raised at the resumption of the proceedings.

MIN .NO. 180/2004: ADJOURNMENT

There being no Quorum, the Convenor adjourned the meeting at thirty-one minutes past Two O'clock to resume on Friday, February 27th, 2004 at Nine O'clock.

SIGNED
(CONVENOR)

DATE.....

APPENDIX F

Agendas

NATIONAL CONSTITUTIONAL CONFERENCE

26th May, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that the First meeting of the Committee will be held on Monday 26th May, 2003 in Tent “D” Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers
2. Introduction.
3. Election of the Convenor
4. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

19th August, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on 19th August, 2003 in Tent “D” Bomas of Kenya at 4.00 P.m..

AGENDA

1. Prayers
2. Consideration of Draft Constitution Chapter Eight (The Executive)
3. Election of the Deputy Convenor
4. Any other Business
5. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

9th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday, 9th September, 2003 in Tent “D” Bomas of Kenya at 2.45 P.M.

AGENDA

1. Prayers
2. Committee Programme
3. Any other Business
4. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

10th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday, 10th September, 2003 in Tent “D” Bomas of Kenya at 2.45 p.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the commission /Conference Reports
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

11th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday, 11th September, 2003 in Tent “D” Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Motions
5. General Debate on the Main Report
6. Any other Business
7. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

12th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday, 12th September, 2003 in Tent “D” Bomas of Kenya at 9.55 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Expert’s Presentation on the Executive systems
5. Conclusion of the General Debate and Adoption of the main Report
6. Debate on the Rapporteur General’s Report
7. Any other Business
8. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

15th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Monday 15th September, 2003 in Tent “D” Bomas of Kenya at 12.25 p.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Any other Business
5. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

17th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 17th September, 2003 in Tent “D” Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Debate on Chapter 8 (The Executive)
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

18th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 18th September, 2003 in Tent “D” Bomas of Kenya at 9.30 .m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. General Debate on the Article 5 on Chapter 8
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

19th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 19th September, 2003 in Tent “D” Bomas of Kenya at 3.40 p.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. General Debate on Articles on Chapter 8
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

22nd September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Monday 22nd September, 2003 in Tent “D” Bomas of Kenya at 9.00 p.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. General Debate on Articles of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

23rd September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 23rd September, 2003 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. General Debate on Articles of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

24th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 24th September, 2003 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. General Debate on Articles of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

25th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 25th September, 2003 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Motions
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

26th September, 2003

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 26th September, 2003 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Motions
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

13th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 13th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

14th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 14th January, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

15th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 15th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

16th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 16th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

19th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Monday 19th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Deliberation/Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

20th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 20th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

21st January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 21st January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

22nd January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 22nd January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

23rd January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 23rd January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

26th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on January 26th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

7. Prayers
8. Confirmation of Minutes
9. Matters Arising
10. Consideration of the Draft Bill
11. Any other Business
12. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

27th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 27th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

28th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 28th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Draft Bill
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

29th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 29th January, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. Confirmation of the twenty-Seventh meeting held on January 28 2004
4. Consideration of Draft Constitution of Kenya Bill – Chapter Eight – The Executive-to deliberate on the Draft Report of the Committee.
5. Matters Arising
6. Any other Business
7. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

30th January, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 30th January, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Deliberation on the Draft Report of the Committee
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

2nd February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Monday 2nd February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Deliberation on the Draft Report of the Committee
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

3rd February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 3rd February, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Deliberation on the Draft Report of the Committee
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

17th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 17th February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Deliberation on the Zero Draft
5. Cross-Cutting Issues
6. Any other Business
7. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

18th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 18th February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

7. Prayers
8. Confirmation of Minutes
9. Matters Arising
10. Deliberation on the Zero Draft
11. Cross-cutting issues
12. Minority Report
13. Any other Business
14. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

19th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 19th February, 2004 in Tent “D” Bomas of Kenya at 9.00 a.m.

AGENDA

15. Prayers
16. Confirmation of Minutes
17. Matters Arising
18. Consideration of Proposals on the Zero Draft
19. Any other Business
20. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

20th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Friday 20th February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of Proposals on the Zero Draft
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

23rd February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Monday 23rd February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Minority Report
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

24th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Tuesday 24th February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Minority Report/ Report of the Consensus Building Group
Vis-A-Vis
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

25th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Wednesday 25th February, 2004 at K.W.S (SAFARI WALK) at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Minority Report/ Report of the Consensus Building Group
Vis-à-vis the Zero Draft
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

26th February, 2004

TECHNICAL WORKING COMMITTEE “D” ON THE EXECUTIVE

The Convenor presents compliments to Members of the Technical working Committee “D” on the Executive and has the honour to inform them that a meeting of the Committee will be held on Thursday 26th February, 2004 in Tent “D” Bomas of Kenya at 10.00 a.m.

AGENDA

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of the Minority Report/ Report of the Consensus Building Group
5. Any other Business
6. Date of the Next Meeting.

Approved for circulation – Convenor

Signature.....

Date.....

Time.....