

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “K” ON
CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE
CONSTITUTION**

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

2005

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ACKNOWLEDGEMENT.

The Committee on Constitutional Commissions and Constitutional Offices and Amendments to the Constitution would like to recognise and appreciate dedicated and tireless efforts and services of: -

Convenor: **Hon. Kiriro wa Ngugi.**

Rapporteurs: **Comm. Riunga Raiji and Comm. Keriako Tobiko.**

Draftsperson: **Mr. Lawrence Kamugisha**

Assistant Programme Officers: **Fredrick Fadey Oundo, Jonuba Bekah and Sahara Ibrahim.**

Parliamentary Clerk: **Mrs. Esther Kamau**

Verbatim recorder: **Ms. Asha Boru**

Support staff: **Faith Kananu, Raphael Kamama, Maureen, Cathreen Mbobua and Zipporah Chemtai.**

1. INTRODUCTION

The Technical Working Committee “K” dealing with Chapters Seventeen and Eighteen of the Draft Bill on Constitutional Commissions and Constitutional Offices and Constitutional Amendments respectively, was mandated to discuss, amend, recommend and propose additions or removal of the provisions stipulated therein.

The Committee commenced its work on 19th August 2003 and adjourned on 26th September 2003. It reconvened on 13th January 2004 and completed debate on 27th February 2004. The Committee had a total membership of twenty-nine honourable delegates who represented various categories including Members of Parliament, District Representatives, Political Party Representatives, Religious Organisations, Professional Organizations, Womens’ Organisations, Special Interest and NGO’s and Trade Unions.

The committee discussed Volume one of the Main Report, covered all articles in Chapters Seventeen and Eighteen of the Draft Bill and made reference, where appropriate to the Annotated Version of the Draft Bill.

On Constitutional Commissions, members recognized the importance of Constitutional Commissions describing them as “a fourth arm” of the government. A criterion was set out on establishment of Constitutional Commissions.

The members established and entrenched a new constitutional commission; the Health Service Commission.

The proposed Cultural and National Honours Commission was catered for under the National Commission on Culture.

The committee had a keener focus on the independence and efficiency of constitutional commissions. The committee placed checks and balances on the mode of appointment of members of commissions and equally important ensured total financial independence of Commissions.

As to amendments to the Constitution, the Committee put caveats on Parliament’s traditional preserve on Constitutional amendments to the extent that entrenched provisions can only be amended with the citizens’ mandate after a referendum. The committee distinguished the core aspects of the Constitution, labeled them entrenched provisions and put them higher in hierarchy with regard to their amendment. Entrenched provisions shall require a two-third majority in both Houses and approval by citizens in a referendum to amend. The committee added the ‘term of office of the President’ to the list of the entrenched provisions in the Draft Bill.

The committee introduced a novel idea called popular initiative. This is an innovation where the citizens can on their own motion initiate amendment to the Constitution by a way of a popular initiative either in the form of a general suggestion or a formulated draft bill. The committee explained that their intention was a starting point towards curbing dictatorship by Parliament.

2. MANDATE AND METHOD OF WORK.

2.1 Committee's mandate.

The Constitution of Kenya Review Act Cap 3A, Section 17 (d) (iii) and (xvi) required the Committee, to examine and make recommendations on:

- ❖ Improvements to the existing Constitutional Commissions, institutions and offices and the establishment of additional ones to facilitate constitutional governance and the respect for human rights and gender equity in Kenya as an indispensable and integral part of the enabling environment for economic, social, religious, political and cultural development.
- ❖ Any other matter, which is connected with, or incidental to the foregoing.

The Technical Committee “K” on Constitutional Commissions and Amendments to the Constitution was formed under Regulations 44 and 49 of The Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2003.

Under regulation 45, the Committee was mandated to discuss and make recommendations on all issues relating to Chapters seventeen and eighteen of the Draft Bill.

Specifically, the Committee had the mandate to: -

- Examine all issues raised during the general debate and any other matter touching on the Main Report and the Draft Bill,
- Make recommendations on the issues contained in the Main Report and propose amendments to the contents of the Draft Bill relevant to the subjects,
- Report the proposed amendments to the Steering Committee for presentation to and debate by the Conference.

2.2 Committee's method of work.

The Committee discussed and made comments on the Main Report and amended Chapters seventeen and eighteen of the Draft Bill. The committee approached its work in two stages:

- (i) Discussion of specific themes
- (ii) Consideration of the Draft Bill article by article

The Committee's discussion under these chapters was characterized by:

- a) A General overview/debate of chapters seventeen and eighteen.
- b) Presentations by delegates from other Committees, interested groups and lobby groups.
- c) Expert presentations.

d) Deliberation of specific articles of the Draft Bill.

The committee confined its specific discussion on Constitutional Commissions and Offices to those established under chapter seventeen of the Draft Bill whereas it laid the general principles and guidelines to apply to all other commissions and offices established elsewhere in the Draft Bill.

3. **THE COMMITTEE DEBATE.**

3.1 **General issues raised about the Committee's work.**

At the inception of the Committee's deliberations, there arose an issue as to whether the Committee should first examine their respective articles under the Draft Bill before venturing into the contents of the Main Report. There also was an issue as to whether the Committee could amend the Main Report and if not, whether it made any sense to discuss a report that was not their own and that they had no mandate to alter.

Finally, the Committee came to a consensus that; they would start their work by examining the Main Report, they had no mandate to amend the Main Report, and where their decision differed with one in the Main Report, they would register their variance to that extent.

For the effective operation of the Committee business, members set out regulations and rules governing the working group;

Regulations guiding Committee Proceedings.

On the method of discussion, the committee agreed that they would debate paragraph after paragraph and article by article of the Main Report and Draft Bill respectively, and resolve on whether to adopt or amend at the end.

The Committee discussed the rules of the Working Group and agreed to follow them in order to have orderly and systematic debates.

The Committee also agreed that 1½ hour would be dedicated to general discussions on the Draft Report and Bill before specific consideration of paragraphs of the report and articles of the draft bill.

The members agreed to allow interested members, delegates and other groups' time to make presentations to the Committee at their individual, group interests and lobby levels and to call in experts where they felt that expert advice was needed in order to help them in their decision making.

Committee Meetings, Leadership and Protocol.

Committee meetings were the mode of disposing formal Committee business. Quorum was verified and certified before commencement of every session of the committee and making any decision.

The Committee was led through its deliberations under the leadership of Hon. Kiriro wa Ngugi as the Convener and Hon. Kimaiyo arap Sego occasionally acting in the same position during the absence of the former.

The Rapporteurs, Comm. Riunga Raiji and Comm. Keriako Tobiko effectively discharged their legal mandate with regard to keeping the records of the Committee and making clarifications on the Main Report, Draft Bill and or any other Technical or Procedural matters.

The Secretariat staff was always at hand to ensure that all necessary logistical support was in place as would be necessary to facilitate the work of the Committee.

The Committee also paid a keen attention on the documentation of the Committee;

Documentation.

Members were availed materials for reference and use during their discussion i.e.

- List of Members of the Technical Working Committee.
- The Guidelines for the Technical Working Committees.
- National Constitutional Conference Regulations.
- Extract of the Report of Plenary Proceedings on Constitutional Commissions and Amendments to the Constitution.
- Summary of the Issues arising from the General Debate on Constitutional Commissions and Amendments to the Constitution.
- Volume One of the Main Report.
- The Draft Bill to amend the Constitution.
- The Rapporteur-General's Reports.
- The Annotated Version of the Draft Bill.
- The Constitution of Kenya
- The Independence Constitution.

Technique of Committee decisions

Decisions of the Committee were largely arrived at by consensus. However, there were occasions when decision was had to both oral and written motions. The decisions were on the basis of "ayes" or "nay" votes.

Only on one occasion did the Committee record a minority view.

Expert presentations.

The Committee hosted or called in the following experts who presented on various issues i.e.

A). Prof Yash Pal Ghai, Chair of the NCC:

He presented that:

- a) That the term of office of the President, which is restricted to two terms, should be specially entrenched therefore needing two thirds of approval by the legislature and a referendum in order to be amended.
- b) A special constitutional office holders committee should be set up to look into applications and make decisions on the appointment of constitutional office holders.

B). Eng. Abdullahi Sharawe, Secretary Public Service Commission.

Accompanied by a team of officials, they advised the Committee on the proposed establishment of the Salaries and Remuneration Commission.

C). Mr. Joab Okaka Manjala, Deputy Director Directorate of Personnell Management (Office of the President).

Accompanied by a team of officials, they advised the committee on the proposed issue of harmonization of salaries of all public servants including employees of parastatals under the Salaries and Remuneration Commission.

D). Dr. James Nyikal, Director of Kenya Medical Service.

Accompanied by the Assistant Minister, Ministry of Health, Hon. Gideon Konchella and other medical experts, they advised the Committee on the formation of the Health Service Commission.

In addition to the expert presentations the Committee also had individual and interest/lobby groups presentations, i.e.

GENERAL PRESENTATIONS

A) Hon. Kiriro wa Ng’ugi -the Convener.

(This was not an expert presentation in the strict sense the presenter, presented in his capacity as a member of the Committee).

He asked the committee to incorporate the idea of ‘popular initiative’ under the amendment of the Constitution. He set out the procedure as;

Procedure for the participation of people in Constitutional amendment.

He proposed that; -

- One million citizens entitled to vote may propose an amendment to the Constitution
- The popular initiative for an amendment of the Constitution may be in the form of a general suggestion or a formulated draft
- If the proposal is approved by majority of the counties, it shall be submitted to the National Assembly where each chamber, by a vote of two-thirds majority may accept it. If they reject it or the chambers disagree, the proposal shall be submitted to the people in referendum;
- If the people in a referendum accept the popular initiative, then the National assembly shall adopt it.

- ❖ The Committee adopted the proposal by Hon. Kiriro wa Ngugi and referred to the drafter for expert drafting and subsequently adopted it as part of the Bill.

B) Cultural Expression and Preservation Commission

It was proposed that the Commission should be constitutionally entrenched in order to promote and preserve cultural heritage of this country.

The Committee resolved that the Commission did not meet the criteria requisite for establishment of a Constitutional Commission.

C) National Archives Commission

It was proposed that the National Archives Commission should be entrenched as a Constitutional Commission in order to manage, preserve and maintain the National Archives and important government records for posterity.

It was resolved that the office of National Archives should not be elevated to a Constitutional Office.

D). Fisheries Commission.

It was proposed that this Commission should be entrenched in the Constitution in order to address fishing conflicts in Lake Victoria and to exploit and develop Kenya's Exclusive Economic Zone (EEZ).

It was resolved that the proposed Commission did not meet the criteria requisite for establishment of a Constitutional Commission.

E). Health Services Commission

It was proposed that the committee recommended the establishment and entrenchment in the Constitution of a Health Service Commission.

The Committee resolved to establish a Health Service Commission as a Constitutional Commission.

F). Sports Service Commission.

It was proposed that the Sports Service Commission should be entrenched as a Constitutional Commission in order to manage and run sports sector in the Country.

It was resolved that the proposed Commission did not meet the criteria requisite for establishment of a Constitutional Commission.

G). Heroes and Heroines Commission.

It was proposed that the Heroes and Heroines commission should be established and entrenched in the Constitution to honor living and past war veterans and national heroes and heroines (both independence and post independence democracy heroes and heroines).

It was resolved that the issues raised should be catered for under the Cultural and National Honours Commission.

D. The Gender Commission.

It was proposed and resolved that the Gender Commission should be carved out of the composite Human Rights and Administrative Justice Commission and that it should have ten commissioners, at least a third of whom should be women.

Representation of the elderly people in the Human Rights and Administrative Justice Commission.

It was proposed that elderly people should be represented in the Human Rights and Administrative Justice Commission.

It emerged that the elderly are already catered for under the Commission for Human rights vide Article 36(4) of the Draft Bill.

Nonetheless, the committee resolved that one of the Commissioners to the Human Rights Commission should be a person with relevant knowledge of human rights issues of the elderly.

3.2 Issues relating to the Report.

In consultation with the provisions under the Main Report, the Committee set out criterion and general principles on establishment Constitutional Commissions to act as a guiding beacon in their decisions on proposals to form new commissions, i.e.

3.2.1. Criteria for establishing Constitutional Commissions.

The Committee recommended that:

- ❖ Should be based on crosscutting social and economic needs of the country.
- ❖ Should be on the basis of inclusion and participation in order to cater for disparities and injustices.
- ❖ Must not have functions that are under other arms of Government.
- ❖ Should be on the basis of their unique and specific functions.
- ❖ Should be on the basis of the sheer volume of the task at hand.
- ❖ The background and history of existing commissions should also be taken into consideration.
- ❖ The Constitution should have room for ad-hoc commissions for short-term objectives.
- ❖ The objectives of the commissions should be considered.

3.2.2 General principles on the establishment of Constitutional Commission.

The committee recommended that:

1. A Constitutional Commission may not replace, duplicate or impinge on the functions of other Constitutional institutions such as the Executive arm of Government ministries, the Judiciary and or the Legislature at all levels of government.
2. The fundamental rationale underpinning the establishment of a constitutional Commission must be clearly articulated and in particular-

- (i) Proper justification why the intended functions of the commissions cannot otherwise be performed by the traditional Executive, Judiciary and Legislative arms of a democratic Government must be made.
 - (ii) A clear thematic distinction of functions allocated to a constitutional commission must be made vis-à-vis functions of Executive government.
 - (iii) Clear justification must be established why a constitutional commission cannot otherwise exist and function just as effectively under a Parliamentary Statute.
3. The general principles on objects, independence, composition, staffing, powers, proceedings, removal from office, funding and accountability as stipulated at Chapter Seventeen apply to all Constitutional Commissions in the entire Draft Bill and any deviations must be expressly stated and their rationale explained and justified in the Report by the Committee allowing such deviations.

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

The following are decisions by the Committee on specific article, sub-articles and clauses of the Draft Bill;

Article 278 “Principles applicable to all commissions”.

- All Constitutional Commission established under Chapter Seventeen of the Draft Bill or elsewhere in the Constitution, should be subject to the principles provided for in this chapter, except where specific provision is made to the contrary in the Constitution.

Article 279 “Objects and Independence of Commissions”.

- All Constitutional Commissions are under obligation to establish branches using their own staff at all devolved spheres of government and to offer their services to the public free of charge.

Article 281 “Composition of Commissions”.

- Membership to Constitutional Commissions should be subject to the principles of Affirmative Action since the former is wide in its scope and encompasses minorities and marginalized groups in addition to gender issues.
- Mode of appointment to office should be identification and recommendation in a manner prescribed by an Act of Parliament, appointment by the President and approval by Parliament.
- A member of constitutional commission should have qualifications relevant to the functions of the Commission to which he or she is appointed.
- A member of a constitutional Commission should not, save for an ex-officio member, hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and

- ❑ Members of a Constitutional Commission should at the first sitting of the commission appoint a chairperson from amongst themselves.

Article 282 A “Staff of Commissions”.

- ❑ Constitutional Commissions should recruit such staff as they may require for the discharge of their functions.

Article 282 “General functions of Commissions”.

- ❑ A Constitutional Commissions has power to investigate a complaint and award compensation or impose a fine or both.
- ❑ Complaints to the Constitutional Commissions may be lodged directly by an aggrieved individual or a member of the individual’s family, or an organization entitled to lodge the complaint.
- ❑ Officers of Constitutional Commission must reduce into writing and sign or all complaints.

Article 283 “Proceedings of Commissions”.

- ❑ Mere vacancy in the office of a Constitutional Commission does not invalidate its proceedings.

Article 284 “Removal from office”.

- ❑ The President is duty bound to enforce the recommendations of the tribunal investigating the removal of a Constitutional Commission member within thirty days.

Article 285 “Funds of the Commission”.

- ❑ Funds and expenses of Constitutional Commissions should be a charge to the Consolidated Fund.
- ❑ The office of Auditor General should audit and submit public reports every six months.

Article 286 “Annual and other reports”.

- ❑ Any person who has Locus standi to lodge a complaint against a Constitutional Commission reserves the interest to refer a part or all the reports of a commission to High Court.

Article 287 “Special Constitutional Commissions”.

- ❑ The Committee recommended the creation of an additional Commission i.e. the Health Service Commission

Article 288 “The Commission on Human Rights and Administrative Justice”.

- ❑ The Committee recommended that the composition of the Commission on Human Rights and Administrative Justice should include a Minorities Rights Commissioner and at least one person having knowledge and experience in matters of the rights of the aged.

Article 289 A “Gender Commission”.

- ❑ The Commission should deal with gender issues afflicting both women and men.

Article 289 “The Ethics and Integrity Commission”.

- ❑ The Commission should put in place measures aimed at the prevention of corruption including issuing guidelines to public bodies formed under an Act of Parliament, should be the custodian of the Leadership and Integrity Code of Conduct and of the register of assets and liabilities of all public offices and make the register of their assets and liabilities available for inspection by any citizen in a manner prescribed by an Act of Parliament.

Article 290 “Salaries and Remuneration Commission”.

- ❑ The Commission should set, regulate and harmonize salaries, allowances, pensions and other benefits of all constitutional office holders, all public officers and parastatals employees.

Article 291 “Teachers Service Commission”.

- ❑ Notwithstanding the current scenario where the Teachers Service Commission, as established under an Act of Parliament has got more than twenty-four Commissioners, it must down size its members to ten when it is reconstituted as a Constitutional Commission.
- ❑ The Teachers Service Commission shall devolve its activities subject to the provisions under devolution.
- ❑ The Teachers Service Commission shall recruit and employ registered teachers.

Article 292 “Constitution Commission”

- ❑ The functions the Constitution Commission shall be to monitor, facilitate and oversee the development of legislation required under the 4th Schedule and administrative procedures as required to fully implement the new Constitution.
- ❑ The Commission shall report twice a year to the President and Parliament on the implementation of the Constitution and any impediments to the timely implementation of the Constitution.

- ❑ The Chairperson of the Constitution Commission shall work with the Chairperson of each Constitution Commission to ensure that the letter and the spirit of the Constitution are represented.
- ❑ The Constitution Commission shall stand dissolved at the full implementation of the Constitution in a manner determined by Parliament.

Article 293 “Constitutional offices”.

- ❑ The Committee deleted article 293 since it felt that it didn’t make any sense to merely list Constitutional Offices already established elsewhere in the Draft Bill.

Article 293 A “The Health Service Commission”.

- ❑ The Commission was established as an effort towards the actualization of the right to access medical care by all Kenyans.

CHAPTER EIGHTEEN: AMENDMENTS TO THE CONSTITUTION

Article 294 “Constitutional Amendments”.

- ❑ The Committee approved the proposal under the Draft Bill to distinguish Constitutional Amendments into two i.e amendment of entrenched provisions and ordinary provisions and the procedures involved therein.

Article 295 A “Amendments requiring referendum”.

- ❑ The Committee resolved that the following provisions of the Constitution must require a referendum before amendment i.e an amendment that seeks to make any change in the territory of Kenya, sovereignty of people, the principles and values of the Republic, the Bill of Rights, the principles and values of Devolution, the term of office of the President and the Provisions of this Article. The Committee explained that this was necessary in order to safeguard core values of the Constitution from wanton amendments by the Parliament and secondly, in order to have the involvement of the citizens through a referendum.

Article 296 A “ Amendment by the People”.

- ❑ The committee introduced a novel provisions aimed at empowering the citizen and the civil society to initiate Constitutional amendments through a process called “popular initiative”.

Article 296 “Certificate of Compliance”

- ❑ The Committee recommended that Parliament should enact a ‘Referendum Act’ to govern the conduct of referenda in the country.

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

4.1 General Comments on the Report.

4.1.1 Security of tenure .

The committee commented on the;

- ❖ Relevance of security of tenure.
- ❖ Terms of service of the Constitutional Commissioners.
- ❖ Mode of appointment and approval of members.
- ❖ Financial independence of the Commissions.

4.1.2 Constitutional Offices/Officers.

The committee addressed:

- ❖ Whether or not we should have one man/woman commission/offices.
- ❖ The need for checks and balances on one-man commissions/offices.

The committee was of the conclusion that there were checks and balances on one man Commissions/offices through: -

- ❖ Separation of powers and functions.
- ❖ The establishment of the office of the Director of Prosecutions Office.
- ❖ The establishment of the office of the Ombudsman.
- ❖ The establishment of the office of the Public Defender.

4.1.3 Law Reform Commission vs Constitution Commission

Members were of the view that:

- ❖ There should be a Constitution Commission distinct from the Law Reform Commission.
- ❖ The Law Reform Commission's mandate should be to deal with ongoing amendments to the Acts of Parliament (statutory laws).
- ❖ The functions of the Constitution Commission should be to implement and supervise the Constitution and it should be an ad-hoc commission.

4.1.4. Mode of Establishment

It was resolved that;

- Constitutional Commissions should be created by the Constitution but the details should be provided in an Act of Parliament.
- The Constitution should provide the broad functions of the commissions

4.1.5. Financial Autonomy.

The committee recommended that:

- Constitutional Commissions should be financially independent institutions getting their finances from the consolidated fund after Parliament approves their budgets.

4.1.6. Number of commissioners in every commission.

- The committee recommended that the number of commissioners in all Constitutional Commission should be: not less than three but not more than ten.

4.1.7. Method of appointment

- It was resolved that members of the Commissions should be identified and recommended in a manner prescribed by an act of Parliament, appointed by the President and approved by the Parliament.

4.1.8. Staff of the Commission.

- The Committee recommended that commissions each should have power to hire and fire their own staff and to establish the terms and conditions of such staff.

4.1.9. Criteria and qualifications for appointment.

The Committee recommended that;

- The office of the commissioner should not be compatible with any other office of profit, whether private or public and shall be full time engagement save for ex-officio members.
- Constitutional commissioners shall comply with the Leadership Code.

4.1.10. Duration of appointment.

- The Committee recommended that the term of office should be a term of five years renewable only once and the retirement age should be sixty-five years and not seventy as proposed in the Draft Bill.

4.1.11. Dismissal of Commissioners.

The Committee recommended that:

- The tribunal proposed in the Draft Bill shall be the body to deal with dismissal of commissioners.
- The decision of the tribunal should be binding on the President
- Individual citizens must be availed a mechanism to complain against a commission or individual commissioners
- The President shall suspend from office, commissioners who are subject to inquiry by the tribunal and shall revoke such suspension where the tribunal finds a commissioner innocent.

4.1.12. Functions and Power.

It was resolved that: -

- Commissions shall have power to conduct public education on their role, purpose and functions.
- Commissions shall have power to investigate complaints and to subpoena officials, individuals and organizations.
- There must be capacity within commissions to inquire into complaints brought to their attention in respect of the mandate of the commissions.
- Elaborate inquiry into matters that are of a criminal nature ought to be referred to a more specialized investigatory arm of the government
- Bodies or individuals under investigation by commissions ought to be under duty to produce all necessary information be it oral or written.

- Commissions should have power to cite any person or a group before a competent court for contempt.
- Commissions should have power to extract an order by the Court
- Commissions shall have power and duty to promote reconciliation, mediation and negotiation.
- Commissioners shall have immunity for acts done in good faith.
- Commissions shall have powers to award compensation and/or fine in appropriate matters.

4.1.13. Accessibility.

- The Committee recommended that Commissions should be accessible to citizens and that they should offer their services to the public free of charge.

4.1.14. Appeals from commissions' decisions.

It was resolved that: -

- Citizens shall have a right to appeal against any decision of commissions to the High Court
- The right of access shall also include the right to indict commissions for lethargy or inaction.

4.1.15. Accountability of Commissions

- It was observed that there are gaps as regards accountability and checks and balances to the constitutional commissions.

4.1.16. Implementation of the Constitution.

The committee raised concern on;

- ❖ Which body is to implement the new Constitution?
- ❖ Whether the executive should not be left to implement the new Constitution.
- ❖ Whether there was need for a permanent or ad-hoc Constitution Commission.
- ❖ Who is to be in charge of future Constitutional Commissions?

It was resolved that:

- ❖ Civic education was necessary before implementation of the new Constitution.
- ❖ The new Constitution should be able to stand the test of time.
- ❖ There was need for an ad-hoc Constitution Commission to implement and supervise the new Constitution.
- ❖ The Constitution was self-implementing and sustaining.

4.1.17. Amendment to the Constitution.

It emerged that the Volume One of the Main Report did not provide for Constitutional Amendment. However, the Committee using the provisions under the Draft Bill made the following general comments as pertains to amendments to the Constitution;

i) Entrenched provisions and Ordinary Provisions.

It was noted that:

- ❖ The distinction between entrenched and ordinary provisions was necessary to safeguard against dictatorship by Parliament.

- ❖ The enactment and amendment of the Constitution through a referendum was cumbersome.
- ❖ The ninety days period separating the second and third Reading of the bill to amend the Constitution was necessary for consensus building.
- ❖ Constitutional amendments on ordinary provisions only require 75% majority votes in Parliament to amend.
- ❖ The new Constitution should be one of posterity and not one that is easy to amend especially as regards the core values of the Constitution, which are entrenched.
- ❖ The people should be allowed to initiate amendments to the Constitution.
- ❖ That some people can initiate amendments through representatives.
- ❖ That civil society should be allowed to amend the Constitution.

ii) **Role of the Judiciary regarding Constitutional provisions and Constitutional amendments**

The committee was of the view that:

- ❖ Pronouncements by the courts/judiciary regarding the Constitution should be binding
- ❖ Mandate of the Constitutional Court should only be to interpret and deal with constitutional matters.

4.2 General Recommendations on the Draft Bill.

These are more or less the same recommendations raised relating to specific articles and clauses of the Draft Bill, they are comprehensively discussed under the heading no. 3.3.0 at page 14-19 of the this report.

4.3 Specific Recommendations on the Amendments to the Draft Bill.

CHAPTER SEVENTEEN

ARTICLE 278 “Principles applicable to all commissions”

Article 278 was adopted with amendments, i.e.

- ❑ By introducing clause (1) and adding the words **“except where specific provision is made to the contrary in the Constitution”** so as to read;

278. (1). The principles provided for in this chapter apply to all constitutional commissions, *except where specific provision is made to the contrary in the Constitution*”.

- ❑ A new clause, (2) was introduced to read;
(2).The principles applicable to all commissions in terms of this Chapter with the necessary modifications and adaptations shall be applicable to holders of constitutional offices.

ARTICLE 279 “Objects and Independence of Commissions”.

- ❑ *Article 279 (1) (a), (b) and (c), (2) (a) and (b)* was adopted without amendment

- Clause **279 (3)** was amended to read as follows;
3. A constitutional Commission shall where appropriate;
- (a) establish branches **using its own staff** at all devolved spheres of the government; and;
 - (b) offer services *to the public* free of charge.

ARTICLES 280 “Incorporation”

- Was adopted without amendment.

ARTICLE 281 “Composition of Commissions”

Article 280 was adopted with amendments, i.e.

- Clause (1) was amended by deleting the phrase “*at least a third of whom shall be women*”, so as to read;

281 (1). A constitutional commission shall consist of not less than three and not more than ten members.

- Clause (2) was redrafted to read:
2. **The members of a Constitutional commission shall be;**
- a) identified and recommended in a manner prescribed by an Act of Parliament.**
 - b) appointed by the President.**
 - c) approved by Parliament.**
- Clause (3) was redrafted by introducing two new paragraphs, i.e. (3) (a) and (b) to read;
- (3) “A member of constitutional commission –
- (a) **may either be full time or part time.**
 - (b) **shall have qualifications relevant to the functions of the Commission to which he or she is appointed.**

Paragraph (3) (c) was amended by renaming it (e) and introducing the phrase “**save for ex-officio member and part time member**”, in order to provide an exception to the general rule “that a member of a constitutional office should not hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly”. This was done to allow ex-officio members from the Attorney General’s office, the Public Service Commission and representatives from the Treasury to be members of Salaries and Remuneration Commission. The sub-article was amended to read;

- (3) A member of a constitutional Commission shall-
- (e) shall not *save for ex-officio and part time member*, hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly, and;
- A new clause (5) was created to read;

(5). *Members of a Constitutional Commission shall at the first sitting of the commission appoint a chairperson from amongst themselves.*

ARTICLE 282 A “Staff of Commissions”.

A new Article was created to read;

282 A. *A Constitutional Commission shall recruit such staff as it may require for the discharge of their functions.*

ARTICLE 282 “General functions of Commissions”.

(Article 282 as per the Draft Bill) was adopted with amendments i.e.

- A new clause (1) was introduced, i.e.

(1). A Constitutional Commission may in addition to the functions conferred by this Constitution perform such other functions as Parliament may by law prescribe.

- Clause (1) (d) was amended by adding the words “**or impose a fine or both**” so as to read;

(e). may award compensation *or impose a fine or both*; and

- Clause (2) was renamed (3) and amended to read;

3. Complaints may be lodged directly by an aggrieved individual, or a member of the individual’s family *or by any other person entitled to lodge the complaint under Article 73 (1).*

- Clause (3) was renamed (4) and amended by adding the words “**and signed**” so as to read;

(4). Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing *and signed* by an official of the Constitutional Commission”.

ARTICLE 283 “Proceedings of Commissions”.

- Was amended by introducing clause (1) and replacing the word “*although*” with “*even where*”, i.e.

(1). The proceedings of a constitutional commission are valid *even where* there is a vacancy in its membership”

- A new clause (2) was introduced to read;

(2). A Constitutional Commission shall regulate its own proceedings.

ARTICLE 284 “Removal from office”.

Was adopted with amendments, i.e.

- A new clause was created to read;

(1) “A member of a Constitutional Commission may be removed from office only for-

(a) inability to perform the functions of his or her office arising from infirmity of body or mind;

(b) misconduct: or

(c) incompetence

(d). bankruptcy”.

- The previous Clause (1) was renamed Clause (2) i.e.

~~(1)~~ 2 Where the President considers that a member of a constitutional commission should be removed from office, the President shall appoint a tribunal to investigate the matter, and report on the facts to the President with the recommendations whether or not the member should be removed.

- A new Clause (3) was created i.e.

(3) the tribunal shall be appointed by the President with the approval of Parliament in such terms as may be imposed by Parliament.

- The previous clause (2) was renamed clause (4) and amended i.e.

~~(2)~~ 4 The tribunal shall consist of the chairperson and four other members appointed by the President from among persons-

(a) **the chairperson** should have held office as judge **in Kenya** of the superior courts of record, or

(b) **at least two** people who are qualified to be appointed as High Court judges, or

- Paragraph (2) (c) was deleted.

- The previous clause (3) was renamed clause (5) and amended by deleting the word “*may*” and replacing it with “**shall**” to read;

~~(3)~~ 5 Where reference is made to a tribunal for the removal from office of a member, the President ~~may~~ **shall** suspend that member from the performance of the functions of office as a member.

- The former clause (4) stand deleted.

- A new clause (6) was created to read:

(6) “The President shall effect the decisions of the tribunal within thirty days”.

ARTICLE 285 “Funds of the Commission”.

Article 285 was adopted with amendments i.e.:

- Article 285 clause (2) was amended by deleting the words “*the relevant Parliamentary Committee for approval*” and putting the words “**for approval**” after the word Parliament i.e;

(2) A constitutional commission shall submit its estimates of revenue and expenditure to ~~the relevant Parliamentary Committee for approval~~ by Parliament **for approval**.

- A new Clause (5) was introduced to read;

(5) The office of Auditor General shall audit and submit public reports every six months.

- The former clause (5) was renamed clause (6) and amended by deleting the words “*the constitutional commission and to the relevant Parliamentary Committee*” and replacing them with the words “**and to Parliament**” to read;

(5) The Auditor General shall within three months after submission of the books and records of account, submit the report on the account to the President **and to Parliament**.

ARTICLE 286 “Annual and other reports”.

- Article 286 was amended by creating a new clause (5) that reads;

(5) A person entitled to lodge a complaint under Article 73(1) may refer a part or all the reports of a commission to High Court.

ARTICLE 287 “Special Constitutional Commission”.

Article 287 was adopted with amendments, i.e.

- By introducing a new paragraph (b), to read;

(b) the Gender Commission.

- The former paragraphs (b), (c), (d) and (e) were renamed (c), (d), (e) and (f) respectively.

- Two new paragraphs (g) and (h) were introduced i.e.;

(g) the Health Service Commission.

(h) the Cultural and National Honours Commission.

ARTICLE 288 “The Commission on Human Rights and Administrative Justice”.

Article 288 was adopted with amendments, i.e.:

- Clause (d) was amended by deleting the words, “*Gender Commissioner*” and replacing them with the “**Minority Rights Commissioner**”, (the Gender Commissioner was taken to the Gender Commission as newly created and **named Article 289A “Gender Commission”**) i.e.

(d) the ~~*Gender Commissioner*~~, ***Minority Rights Commissioner***, and

- A new paragraph (d) was created under Article 288 (2) to read;

(d) one shall have knowledge and experience in matters relating to the rights of the aged people.

- Clause (3) paragraph (iii) was deleted and consequently the former paragraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) were to be renamed **(ii), (iii), (iv), (v), (vi), (vii) and (viii)** respectively.
- Paragraph ***288 (3) (c) was moved to Article 289A “Gender Commission”***.
- The previous ***paragraph 288 (3) (d) was renamed (c)***.

ARTICLE 289 A “Gender Commission”

- A new Article 289A was created to read;

(1) The Gender Commission shall consist of: -

(a) the Chairperson; and

(b) nine other members

(2) the functions of the gender Commission are to:-

- a. promote gender equality and equity, coordinate and facilitate mainstream in national development and to advise the Government on any of those matters;
- b. promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints;
- c. participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development;
- d. formulate programmes and advise in the establishment and strengthening of institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and to access to natural resources.

- e. plan, supervise and coordinate programmes to create public awareness and support for gender issues and liaise with the ministries, departments and other agencies of the environment on gender issues;
- f. advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions;
- g. evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution; and
- h. act as the Government's chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.

ARTICLE 289 “The Ethics and Integrity Commission”.

Article 289 (1) (b), (2) (a), (b), (c) and (d) was adopted with amendments i.e.

- Paragraph 289 (1) (a), was amended by providing that the the Ethics and Integrity Commission shall be made up of ‘nine other members’ instead of the proposed ‘six other members’ as provided in the Draft Bill, i.e.

(b) ~~six~~ **nine** other members all of whom shall be persons of integrity and high moral character.

- Paragraphs 289 (2) (a), (c) and (d) were amended by adding the words ‘of Conduct’, i.e.

(a). receive declarations inaccordance with the Leadership Code *of Conduct*.

(c). ensure compliance with the Leadership Code *of Conduct*.

(d). receive complaints about non-compliance with or breach of the Leadership Code *of Conduct* or a law in relation to theLeadership Code, or investigate the complaint and where appropriate refer the complaints to the authorities for action where it is called for.

- At paragraph 289 (2) (c), the words “*the law relating to the Leadership Code*” was deleted and replaced with the word “**Conduct**”, i.e;

289 (2) (c) ensure compliance with and where appropriate, enforce the Leadership Code of Conduct ~~.law relating to the Leadership Code.~~

- Paragraphs 289 (e), (f), (g) and (h) were deleted.
- Paragraph 289 (i) was renumbered (h).
- Paragraph 289 (2) (i) was renumbered (e) and amended as follows;
 - (i) **“put in place measures aimed at the prevention of corruption including issuing guidelines to public bodies formed under an Act of Parliament”**,
 - Clause 289 (4) was renumbered clause (3) and amended by deleting paragraphs 289 (4) (c) and (d).
 - A new Clause 289 (4) was created and reads;
 - (4) **“The commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of assets and liabilities of public offices”**
 - A new Clause 289 (5) was created to read;
 - (5) **The Commission shall make the register of the assets and liabilities of public officers available for inspection by any citizen in a manner prescribed by an Act of Parliament.**

ARTICLE 290 “Salaries and Remuneration Commission”.

Was adopted with amendments i.e.

- Article 290 (1) (b), (c) and (i) was amended by inserting the phrases **“*ex-officio member*”** i.e;
 - (b) one ***ex-officio member*** from the Attorney General’s office;
 - (c) one ***ex-officio member*** from the Public Service Commission
 - (i) one ***ex-officio member*** from the Treasury,
- Paragraphs 290 (1) (g) and (h) were amended to read;
 - (g) one nominee from an umbrella body representing ***informal sector***.
 - (h) ***one nominee from a body representing farmers”***.
- The previous paragraph **290 (1) (g)** was renamed paragraph **290 (1) (h)**.
- In order to allow the Salaries and Remuneration Commission powers to regulate and harmonize salaries of employees of the parastatals, clause (2) paragraph (a) was re-drafted as follows;

(2) The functions of the Salaries and Remuneration Commission are;

(a) to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including-

(i) the President, Vice-president, the Prime Minister, the Deputy Prime Ministers, the Ministers and Deputy Ministers;

(ii) Members of Parliament;

(iii) the Attorney-General, Judges, the Director of Public Prosecutions, the Auditor-General and the members of constitutional commissions;

(b) regulate the harmonization of salaries and remuneration of all *public officers including* officers of devolved governments and all *employees of parastatals*.

- Clause 290 (3) was deleted.

ARTICLE 291 “Teachers Service Commission”.

Was adopted with amendments i.e.

- Paragraph 291(1) (b) was amended by replacing the word ‘six’ with ‘nine’ i.e.

(b) ~~six~~ ***nine*** other commissioners.

- Paragraph 289 (2) (a) was deleted and a new paragraph 289 (2) (a) was created to read;

(a). **to register trained teachers;**

- A new sub-paragraph 291 (2) (b) (i) was created to read;

(b) Subject to the provisions under devolution;

(i) **to recruit and employ registered teachers;**

- The previous sub-articles 291 (2) (b), (c), (d) & (e) were renumbered as **(ii), (iii), (iv) & (v)** respectively.

- Paragraph 289 (2) (e) was amended by replacing the words “*paragraphs (a) to (d)*” with “***this Article***”, i.e:

(v) “to do anything which is incidental or conducive to the exercise to the exercise of its powers under ~~*paragraphs (a) to (d)*~~ ***(i) to (v)***”.

ARTICLE 292 “Constitution Commission”

- Paragraph 292 (1) (b) was amended to provide that the Constitution Commission shall be made up of nine other members instead of four, ie.

(b) ~~four~~ **nine other members.**

- Clause 292 (2) was deleted and replaced by a new clause (2) which reads;

(2). The functions of a this Constitution Commission are to implement this Constitution as follows -

(a) monitor, facilitate and oversee the development of-

(i) legislation required under the 4th Schedule, and

(ii) administrative procedures as required to fully implement the Constitution;

(b) to report twice a year to the to the President and Parliament on;

**(i) the timely implementation of the Constitution;
and**

(ii) any impediments to the timely implementation of the Constitution;

(c) to work with the chairperson of each constitutional Commission and each constitutional officer, to ensure that the letter and the spirit of the Constitution is respected.

- The previous Clause 292 (3), which was erroneously numbered as clause 292 (4) was deleted and was replaced by a new clause 292 (3), which reads;

(3). The Constitution Commission shall stand dissolved at the full implementation of the Constitution determined by Parliament in accordance with Article 294.

ARTICLE 293 “Constitutional offices”.

- Article 293 was deleted.

ARTICLE 293 A “Health Service Commission”.

The newly created “Health Service Commission” under Article 287 paragraph (g) was drafted by the Committee to read as follows;

Health Service Commission.

293A. (1) The health Service Commission shall consist of-

(a) the Chairperson,

(b) nine other members,

(2) of the nine members of the Commission, five members shall be health professionals.

(3) The functions of the commission are-

(a) to register trained health workers,

(b) subject to the provisions of this Constitution under devolution-

(i) to assign health workers employed by the Commission for service in any public hospital and other institutions;

(ii) to promote and transfer any such health workers;

(iii) to terminate the employment of any such health worker;

(c) ensure planned health, human resources development, professional standards and ethics,

(d) to prepare and disseminate information;

(e) to conduct medical audit and professional research;

(f) ensure viable technical management including procurement of services and supplies.

(g) to oversee health care financing.

CHAPTER EIGHTEEN:AMENDMENTS TO THE CONSTITUTION.

ARTICLE 294 “Constitutional Amendments”.

Article 294 (1) was adopted with amendments i.e.

- The word “*Article*” was deleted and replaced with the word “**Chapter**”. i.e.

(2) Subject to the provisions of the Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this ~~Article~~ **Chapter**.

- A new clause (3) was introduced to read as follows;

(3). Parliament shall publicize and facilitate discussion on a Bill for an Act to amend any provision of the Constitution.

ARTICLE 295 A “Amendments requiring referendum”.

- *Clause 294 (3)* was amended and elevated to a full Article and was renumbered as Article **295A** and titled “**Amendments requiring referendum**”, i.e;

Amendments requiring referendum.

295 A An amendment that seeks to make any change in-

- (a) the territory of Kenya *as set out in Article 7 (1) and described in the First Schedule of the Constitution;*
- (b) the sovereignty of people
- (c) the principles and values of the Republic *as set out in Article 6 (2) of the Constitution;*
- (d) the Bill of Rights.
- (e) the ~~structure~~-values and principles of devolution. *as set out in Chapter ten of the Constitution;*
- (f). The rights of a citizen.**
- (f) the citizenship term of office of the President; and**
- (g) the provisions of this Article

ARTICLE 296 A “Amendment by the People”.

- Article 295, titled “*Amendment by Parliament*” was deleted and replaced by Article 295 titled “**Amendment by the People**” to read as follows;

Amendment by the People

296 A (1) One million citizens entitled to vote may by a popular initiative propose an amendment to this Constitution.

- (2) A popular initiative for an amendment of this Constitution may be in the form of a general suggestion or a formulated draft bill.**
- (3) where a popular initiative for is in the form a general suggestion, the promoters of such popular initiative shall reduce it into a draft bill.**

- (4) **If the draft bill is approved by the majority of counties, it shall be submitted to the National Assembly where each chamber by a vote of two-thirds majority shall debate and pass it, it shall be submitted to the people in a referendum.**
- (5) **if the people adopt the popular initiative, the Bill shall be deemed to have been duly passed and shall be presented to the President for his assent.**

ARTICLE 296 “Certificate of Compliance”

Article 296 was adopted with amendments i.e.

- Sub-article 296 (1) was amended by replacing the words “Article 295” with Article 294, i.e.

(1) The second and third readings referred to in Article ~~295~~ **294** shall be separated by ninety days.

- Paragraph 296 (2) (b) was amended by substituting ‘Article 294 clause (3)’ referred to in the Draft Bill with ‘**Articles 295 and 295A**’ and by deleting the words “*or as the case may be, ratified by local authorities in accordance with this Chapter.*” i.e;

(b) in the case of a Bill to amend the provisions to which articles 294A and 294B apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum. ~~*or as the case may be ratified by local authorities in accordance with this Chapter.*~~

- A new clause (4) was created is to read;

(4) Parliament shall enact a Referendum Act.

4.4. Decisions Reached as Recommendations to the Conference

The Committee redrafted and resolved that the two chapters they were dealing with, as shown below, was their final decisions to the Conference.

CHAPTER SEVENTEEN:

CONSTITUTIONAL COMMISSIONS AND CONSTITUTIONAL OFFICES.

Principles applicable to all commissions

- 278. (1). The principles provided for in this Chapter apply to all constitutional commissions, except where specific provision is made to the contrary in the Constitution.

(2) The principles applicable to all commissions in terms of this Chapter with the necessary modifications and adaptations shall be applicable to holders of constitutional offices.

Objects and independence of commissions.

279. (1) The objectives of constitutional commissions established by this Constitution are to:
- (a) protect the sovereignty of the people,
 - (b) secure the observance by all organs of government of democratic principles and values, and
 - (c) ensure the maintenance of constitutionality.
- (2) In the performance of their functions, constitutional commissions are subject-
- (a) only to the Constitution and not to the direction or control of any other person or authority, and
 - (b) shall be impartial and perform their functions without fear or favour or prejudice.
- (3) A Constitutional Commission shall where appropriate;
- (a) establish branches using its own staff at all devolved spheres of the government; and
 - (b) offer services to the public free of charge.

Incorporation

280. (1) A Constitutional Commission is a body corporate and shall-
- (a) have perpetual succession and a common seal
 - (b) in its corporate name be capable of suing and being sued; and
 - (c) subject to this Constitution be capable of performing such other functions as a body corporate may perform.

Composition of Commission.

281. (1) A Constitutional Commission shall consist of not less than three and not more than ten members.

- (2) The members of a Constitutional Commission shall be;
 - (a) identified and recommended in a manner prescribed by an Act of Parliament,
 - (b) appointed by the President,
 - (c) approved by Parliament.
- (3) A member of a Constitutional Commission-
 - (a) may either be full time or part time.
 - (b) shall have qualifications relevant to the functions of the Constitutional Commission to which he or she is appointed;
 - (c) shall hold office for a term of five years, and is eligible for re-appointment for only one further term;
 - (d) shall retire from office on attaining the age of sixty-five years;
 - (d) shall not save for ex-officio and part time members hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and
 - (f) shall comply with the Leadership and Integrity Code of Conduct.
- (4) a member of a constitutional commission is not liable to an action or a suit for a matter or anything done in good faith in the performance of a function of office as a member,
- (5) members of a constitutional commission shall at the first sitting of the commission appoint a chairperson from amongst themselves.

Staff of Commissions.

282 A. A Constitutional Commission shall recruit such staff as it may require for the discharge of its functions.

General functions of commissions.

282. (1) A Constitutional Commission may in addition to the functions conferred by this Constitution perform such other functions as Parliament by law prescribe.

- (2) A Constitutional Commission shall seek to educate the public on its role, purpose and functions and-
 - (a) may conduct investigations, on its own initiative or on complaint made by a member of the public;

(b) has the powers of the High Court to issue summons, compel attendance to give evidence or produce documents for the purposes of its investigations;

(c) has the powers necessary for conciliation, mediation and negotiation with the aim of reaching an amicable settlement;

(d) may award compensation and, or impose fines; and

(e) may commit a person, or an organization to the High Court for contempt.

(3) Complaints may be lodged directly by an aggrieved individual or a member of the individual's family or any other person entitled to lodge a complaint under Article 73(1).

(4) Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing and signed by an official of the Constitutional Commission.

Proceedings of Commissions.

283. (1) The proceedings of a Constitutional Commission are valid even where there is a vacancy in its membership.

(2) A Constitutional Commission shall regulate its own proceedings

Removal from office

284. (1) A member of a Constitutional Commission may be removed from office only for –

(a) inability to perform the functions of his or her office arising from infirmity of body or mind;

(b) misconduct;

(c) incompetence; or

(d) bankruptcy

(2) Where the President considers that a member of a constitutional commission should be removed from office, the President shall appoint a tribunal to investigate the matter, and report on the facts to Parliament with the recommendations whether or not the member should be removed.

(3) The tribunal shall be appointed by the President with the approval of Parliament in such terms as may be imposed by Parliament.

(4) The tribunal shall consist of the Chairperson and four other members appointed by the President from among persons,

- (a) the Chairperson shall have held office in Kenya as judge of the superior courts of record;
- (b) at least two persons qualified to be appointed as High Court judges; or

(5) Where reference is made to a tribunal for the removal from office of a member, the President shall suspend that member from the performance of the functions of office as a member.

(6) The President shall effect the decisions of the tribunal within thirty days.

Funds of Commissions.

285. (1) The funds of a Constitutional Commission include-

- (a) moneys voted by Parliament for the purposes of the commission; and
- (b) any other moneys received by the commission in the performance of its functions.

(2) A Constitutional Commission shall submit its estimates of revenue and expenditure to Parliament for approval.

(3) The administrative expenses of a Constitutional Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the commission are a charge on the Consolidated Fund.

(4) Within three months after the end of the financial year, a constitutional commission shall submit its books and records of account to the Auditor-General for audit

(5) The office of Auditor General shall audit and submit public reports every six months.

(6) The Auditor-general shall within three months after submission of the books and records of account, submit the report on the account to the President and Parliament.

Annual and other reports.

286. (1) Within seven months after the end of the financial year a Constitutional Commission shall submit a report to the President and to Parliament.

(2) The report shall contain-

- (a) a statement on its performance in meeting its objectives;
 - (b) a statement on its activities for the year and its projection on its future activities; and
 - (c) the report of the Auditor-General.
- (3) Parliament may, at any time, request a Constitutional Commission to send to it a report on a particular issue.
- (4) The President shall respond to the report of a Constitutional Commission in writing to Parliament which shall debate the report together with the response of the President.
- (5) A person entitled to lodge a complaint under Article 73 (1) may refer part or all the reports of a commission to the High Court.

Special Constitutional Commissions.

287. In addition to such other Commissions as are established elsewhere in this Constitution, the following special commissions are established-

- (a) the Commission on Human Rights and Administrative Justice
- (b) the Gender Commission
- (c) the Ethics and Integrity Commission
- (d) the Salaries and Remuneration Commission
- (e) the Teachers Service Commission
- (f) the Constitution Commission
- (g) the Health Service Commission.
- (h) the Cultural and National Honours Commission.

The Commission on Human Rights and Administrative Justice.

288. (1) The Commission on Human Rights and Administrative Justice shall consist of-

- (a) the Chairperson;
- (b) the Human Rights Commissioner;
- (c) the People's Protector;

- (d) the Minority Rights Commissioner; and
 - (e) any such other commissioners not exceeding six in number as may be appointed in accordance with this Constitution.
- (2) Of the six commissioners referred to in clause (1)-
- (a) one shall have knowledge and experience in matters relating to children and shall ensure that the provisions of Article 37 of the Bill of Rights are adhered to;
 - (b) one shall be a person with disability who has knowledge and experience in matters relating to disability and shall ensure that the provisions of Article 39 the Bill of Rights are adhered to; and
 - (c) one shall have knowledge and experience in matters relating to basic needs.
 - (d) one shall have knowledge and experience in matters of the rights of the aged.

(3) The functions of the Commission on Human Rights and Administrative Justice are:

- (a) in relation to the jurisdiction of the Human Rights Commissioner-
 - (i) to promote respect for human rights and develop a culture of human rights;
 - (ii) to promote the protection, development and attainment of human rights in public and private institutions;
 - (iii) to monitor and access the observation of human rights in all spheres of life in the Republic;
 - (iv) to promote high standards of human rights in the Republic;
 - (v) investigate and to report on the observation of human rights;
 - (vi) take steps to secure appropriate redress where human rights have been violated;
 - (vii) to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be

improper or that could result in any impropriety or prejudice; and

- (viii) investigate human rights within the disciplined forces including their relationships with the public.

(b) in relation to the jurisdiction of the People's Protector to-

- (i) ensure that government departments, local government authorities, publicly owned business, bodies created under statute, public office holders and all other organs of the State, are responsive to the needs of the people and provide prompt remedy in cases of failure;

- (ii) receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt, unlawful, oppressive or unfair official conduct;

- (iii) initiate investigations, conduct research and make recommendations to improve the functioning of government bodies;

- (iv) improve the standards of competence, honesty, integrity and transparency in the public services;

- (v) reform legislation that is unfair or inconsistent with the Constitution;

- (vi) reform practices of organs of state that are unfair or inconsistent with the Constitution;

- (vii) promote respect for and observance of the Leadership Code;

- (viii) investigate and report on any conduct in state affairs, or in the public administration, that is alleged or suspected to be improper or to result in any impropriety or prejudice; and

- (ix) recommend appropriate remedial action.

(c) in relation to the jurisdiction of any other Commissioner, to perform such functions as may be assigned to them by the Commission.

The Gender Commission

289 A (1) The Gender Commission shall consist of -

- (a) the Chairperson; and
 - (b) nine other members.
- (2) The functions of the Gender Commission are to-
- (a) promote gender equality and equity, co-ordinate and facilitate mainstreaming in national development and to advise the Government on any of those matters;
 - (b) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints;
 - (c) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development;
 - (d) formulate programmes and advise in the establishment and strengthening of institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to natural resources;
 - (e) plan, supervise and co-ordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues;
 - (f) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions;
 - (g) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution; and
 - (h) act as the Government's chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.

The Ethics and Integrity Commission.

289. (1) The Ethics and Integrity Commission shall consist of -
- (a) the Chairperson; and

- (b) nine other members all of whom shall be persons of integrity and high moral character.
- (2) The functions of the Ethics and Integrity Commission are to-
- (a) receive declarations in accordance with the Leadership Code of Conduct;
 - (b) retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament;
 - (c) ensure compliance with and where appropriate, enforce the Leadership Code of Conduct;
 - (d) receive complaints about non-compliance with or breach of the Leadership Code or a law in relation to the Leadership Code, to investigate the complaint and where appropriate refer the complaints to the relevant authorities for action where it is called for;
 - (e) put in place measures aimed at the prevention of corruption including issuing guidelines to public bodies formed under an Act of Parliament;
- (3) The Commission shall not investigate any matter-
- (a) pending before a court of competent jurisdiction or a judicial tribunal;
 - (b) relating to the legislative power of Parliament;
- (4) The Commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of the assets and liabilities of public officers.
- (5) The Commission shall make the register of the assets and liabilities of public officers available for inspection by any citizen in a manner prescribed by an Act of Parliament.

Salaries and Remuneration Commission.

290. (1) The Salaries and Remuneration Commission shall consist of:
- (a) the Chairperson;
 - (b) one ex-officio member from the Attorney General’s office;
 - (c) one ex-officio from the Public Service Commission;
 - (d) one nominee representing professional bodies;
 - (e) one nominee from an umbrella body representing employers;
 - (f) one nominee from an umbrella body representing trade unions,

- (g) one nominee from an umbrella body representing informal sector; and
- (h) one nominee representing farmers
- (i) one ex-officio from Treasury.

(2) The functions of the Salaries and Remuneration Commission are;

(a) to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including-

- (i) the President, Vice-president, the Prime Minister, the Deputy Prime Ministers, the Ministers and Deputy Ministers;
- (ii) members of Parliament;
- (iii) the Attorney-General, Judges, the Director of Public Prosecutions, the Auditor-General and the members of constitutional commissions;

(b) regulate the harmonization of salaries and remuneration of all public officers including officers of devolved governments and employees of parastatals.

Teachers Service Commission.

291. (1) The Teachers Service Commission shall consist of:

- (a) the Chairperson; and
- (b) nine other members.

(2) The functions of the Teachers Service Commission are-

- (a) to register trained teachers;
- (b) subject to provisions under devolution;

(i) to recruit and employ registered teachers,

(ii) to assign teachers employed by the commission for service in any public school,

(iii) to promote and transfer any such teacher;

(iv) to terminate the employment of any such teacher; and

(v) to do anything which is incidental or conducive to the exercise of its powers under paragraphs (i) to (iv).

(3) The commission shall keep under review the standards of education, training and fitness to teach appropriate persons entering the teachers' service and the supply of teachers and to tender advice to the Government on matters relating to the teaching profession.

Constitution Commission.

292. (1) The Constitution Commission shall consist of-

- (a) the Chairperson;

(b) nine other members.

(2) The functions of this Constitution Commission is to implement the Constitution as follows;

(a) monitor, facilitate and oversee the development of-

(i) legislation required under the 4th Schedule, and

(ii) administrative procedures as required to fully implement the Constitution.

(b) to report twice a year to the President and Parliament on the progress on;

(i) the timely implementation of the Constitution; and

(ii) any impediments to the timely implementation of the Constitution,

(c) to work with the Chairperson of each Constitutional Commission and each Constitutional officer, to ensure that the letter and the spirit of the Constitution are represented,

(3) The Constitution Commission shall stand dissolved at the full implementation of this Constitution in accordance with Article 294.

Cultural and National Honours Commission

293 (1) The Cultural and National Honours Commission shall consist of-

(a) The Chairperson, and

(b) nine other members.

(2) Of the nine commissioners, two of them shall be named heroes and two named heroines.

(3) Functions of the Commission,

(i) identify, document, promote, develop. Preserve and protect the diverse cultures of Kenya;

(ii) promote knowledge understanding' appreciation' tolerance, co-operation and respect of each others customs, traditions, beliefs, languages and religions;

(iii) conduct civic education and involve the people in formation and implementation of linguistic and cultural development plans to ensure cultural sustainability;

- (iv) establish the criteria for determining what elements of culture remain useful and valuable and therefore codify to the fullest extent possible what contemporary Kenyan core cultures actually are and how they are evolving.
- (v) to establish the criteria for determining who are national heroes;
- (vi) to hold public hearings and receive submissions nominations of heroes and heroines for submission to Parliament;and,
- (vii) to submit to the President the approved names for conferment of honours; and

Health Service Commission.

293A (1) The health Service Commission shall consist of-

- (a) the Chairperson,
- (b) nine other members,

(2) of the nine members of the Commission, five members shall be health professionals.

(3) The functions of the commission are-

- (a) to register trained health workers,
- (b) subject to the provisions of this Constitution under devolution-
 - (i) to recruit and employ registered health workers,
 - (ii) to assign health workers employed by the Commission for service in any public hospital and other institutions;
 - (iii) to promote and transfer any such health workers;
 - (iv) to terminate the employment of any such health worker;
- (c) ensure planned health, human resources development, professional standards and ethics,
- (d) to prepare and disseminate information;
- (e) to conduct medical audit and professional research;
- (h) ensure viable technical management including procurement of services and supplies.

- (g) to oversee health care financing.
- (h) to perform any other functions conferred on the Commission by Parliament or an Act of Parliament.

CHAPTER EIGHTEEN

AMENDMENTS TO THE CONSTITUTION

Constitutional Amendments.

294. (1) Subject to the provisions of this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Chapter.
- (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in its second and third reading in each House by not less than two thirds majority of the total membership of that House it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:
- (3). Parliament shall publicize and facilitate discussion on a Bill for an Act to amend any provisions of the Constitution.

Amendments requiring referendum.

295A An amendment that seeks to make any change in-

- (a) the territory of Kenya.
- (b) the sovereignty of the people
- (c) the principles and values of the Republic.
- (d) the Bill of Rights.
- (e) the values and principles of devolution.
- (f) the rights of a citizen
- (g) the term of office of the President; and
- (i) the provisions of this Article

shall also require ratification by the People in a referendum before the Bill making provision for such amendment is presented to the President for assent.

Amendment by the People.

- 295 (1) One million citizens entitled to vote may by a popular initiative propose an amendment to this Constitution.
- (2) A popular initiative for an amendment of this

Constitution may be in the form of a general suggestion or a formulated draft bill.

- (3) Where a popular initiative for is in the form a general suggestion, the promoters of such popular initiative shall reduce it into a draft bill.
- (4) If the the draft bill is approved by the majority of counties, it shall be submitted to the National Assembly where each chamber by a vote of two-thirds majority shall debate and pass it, it shall be submitted to the people in a referendum.
- (5) if the people adopt the popular initiative, the Bill shall be deemed to have been duly passed and shall be presented to the President for his assent.

Certificate of compliance

296. (1) The second and third readings referred to in Article 294, shall be separated by ninety days.
- (2) A Bill for the amendment of the Constitution which has been passed in accordance with this Chapter, shall be assented to by the President only if –
- (a) it is accompanied by a certificate of the Speaker that the provision of this Chapter have been complied with in relation to it; and
 - (b) in the case of a Bill to amend the provisions to which Article 295A and 295 apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum.
- (2) Where, in the case of a Bill to which clause (2) of this Article applies, the President:-
- (a) refuses to assent to the Bill; or
 - (b) fails to assent to the Bill within thirty days after the Bill is submitted, the President shall be taken to have assented to the Bill and the Speaker shall cause a copy of the Bill to be laid before Parliament and the Bill shall, notwithstanding Article 294 (2) become law without the assent of the President.
- (4) Parliament shall enact a Referendum Act.

5. APPENDICES

APPENDIX I: MINORITY REPORT

1. **Hon. Peter Kangethe Nkoroi (Del. No. 278).**

He registered a minority position under Article Article 282 A “Staff of Commissions”.
He recommended that:

“The staff of the commissions should be appointed in consultation with the Public Service Commission (PSC) but be paid by the relevant commission”.

Explanatory note:

That it would be critical to ensure there is a system of standardization of the terms and conditions of employment of staff of constitutional commissions and criteria of ensuring meritocracy and professionalism is maintained.

APPENDIX II: FORMAL MOTIONS

<i>DATE</i>	<i>NAME</i>	<i>SUMMARY OF MOTION</i>	<i>COMMENT</i>
12th September, 2003	Hon. Paul Nakitare (Del. No. 392)	The Committee should establish and entrench a Cultural Expression Commission in the Constitution.	The Committee decided that the proposal properly fell within the mandate of the Committee on Culture.
12th September, 2003	Hon. Kiriro wa Ngugi (Convener) (Del. No. 320).	The Committee should create a new article under Chapter Eighteen of the Draft Bill on Constitutional Amendments providing for 'amendment by the people' vide the process called popular initiative.	The motion was carried and a new article i.e. 296A 'Amendment by the People' was created.
16h September 2004.	Hon. Kiriro wa Ngugi (Convener) (Del. No. 320).	The Committee should create a new article under Chapter Seventeen of the Draft Bill on Constitutional Commissions (Art. 282 A titled; "Staff of the Commissions"), providing that: 'A Constitutional Commission shall recruit such staff as it may require to discharge its functions'.	The motion was carried and a new article 282 A was created.
18th September 2003.	Hon. Musila Musembi.	The Committee should establish and entrench a National Archives Commission in the Constitution.	The motion was rejected for the reason that this was a matter that could adequately be catered for under an Act of Parliament.
18th September 2003	Hon. Francis Ng'ang'a (Del. No. 436).	"That Teachers Service Commission should be exempted from the general limitation of membership to between three and ten commissioners and instead be allowed to have twenty four commissioners as is the case	The motion was rejected for the reason that there was no correlation between efficiency and a large number of commissioners.

		currently with the Teachers Service Commission as established under an Act of Parliament”.	
19th September 2003	Hon. Hon. Pamela Mboya (Del. No. 473).	Moved a motion “that one of the commissioners to the Human Rights and Administrative Justice Commission should be a person having knowledge and experience in rights of the aged people”.	The motion was carried/passed. Consequently, one of the commissioners to the Human Rights and Administrative Justice Commission under article 288 (2) (d) (as per the Committee decision on the Draft Bill) should be a person having knowledge and experience in matters of the rights of the aged.
19th September, 2003.	Hon Winston Adhiambo Ogolla (Del. No. 603).	Moved a motion seeking formation of a Fisheries Commission to cater for exploitation of the fisheries resources in Lake Victoria and Exclusive Economic Zone (EEZ) in Indian Ocean.	The motion was lost/defeated for the reason that this was a matter that could adequately be addressed by the relevant Ministry.
29th January 2003.	Hon. Ann Okoth (Del. No. 474).	Moved a motion seeking formation of the Health Service Commission to cater for provision of health services and to help actualize the right of access to medical care as provided for in the Bill of Rights in the Draft Bill.	The motion was carried and a Health Service Commission was formed under article 293 B (as per the Committee’s decision on the Draft Bill.
19th September, 2003.	Hon. Kaitany Ernest Kiprotich (Del. No. 341).	Moved a motion seeking formation of the National Sports Commission to cater for and run the sports sector in the country.	The motion was lost/defeated since the committee felt that this was a matter that could sufficiently be addressed by the relevant ministry.

23rd September 2003	Hon. Gitu wa Kahengeri (Del. No. 316)	Moved a motion seeking formation of the Heroes and Heroines Commission to honour national heroes and heroines.	The motion was carried/passed. Consequently, the Committee established the Cultural and National Honours Commission under article 293 A (as per the Committee's decision on the Draft Bill) to cater for cultural issues, identify and honour national heroes and heroines.
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APPENDIX III : LIST OF COMMITTEE MEMBERS.

TECHNICAL WORKING GROUP K
Constitutional Commissions and Amendments
to the Constitution: Chapters Seventeen and Eighteen of the Draft Bill.

Convenor: Kiriro wa Ngugi

LIST OF COMMITTEE MEMBERS.

	NAME	DELAGATE NO.	ORGANIZATION
1	Hon. A. Ewaton	004	Rift Valley Province
2	Hon. Ajuoga Milka Aoko	514	Nyanza Province
3	Hon. Benson Mbai	098	Eastern Province
4	Hon. G.G. Gichuru	313	Central Province
5	Hon. J.B. Muturi	129	Eastern Province
6	Hon. Jane Mutunga	288	Eastern Province
7	Hon. Kamama Asman	038	Rift Valley Province
8	Kiriro wa Ngugi	320	Central Province
9	Hon. Kirugi M’Mukindia	103	Eastern Province
10	Hon. Leah Ndeke	276	Eastern Province
11	Hon. Midiwo Washington Jakoyo	102	Nyanza Province
12	Hon. Moody Awori	010	Western Province
13	Hon. Mungatana Danson	116	Coast Province
14	Hon. Newton Kulundu	078	Western Province
15	Hon. Patrick Muiruri	113	Central Province
16	Hon. Ruth Kibiti	511	Women Organization
17	Hon. Nur Ibrahim Abdi	256	North Eastern Province
18	Hon. Kimaiyo arap Sego	344	Rift Valley
19	Hon. Zeruiyah Otwani	437	Trade Union
20	Hon. Makau Mutua	584	Safina Party
21	Hon. Nkoroi Peter Keng’ethe	278	Eastern Province
22	Hon. Gichira Kibara	460	Civil Society
23	Hon. Thomas Nyabote Aburi	424	District Representative
24	Hon. Francis Ng’ang’a	436	Trade Union
25	Hon. Julius Sitienei	355	Rift Valley
26	Hon. John M. Mutiso	128	Eastern Province
26	Hon. John M. Kiniti	352	Rift Valley
27	Comm. Ruinga Raiji	567	CKRC
28	Comm. Keriako Tobiko	569	CKRC

**APPENDIX IV : AGENDA AND MINUTES OF THE PROCEEDINGS OF THE
TECHNICAL WORKING COMMITTEE 'K'.**

NATIONAL CONSTITUTIONAL CONFERENCE

19th, August 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, August 25, 2003 in Tent No. 11, Bomas of Kenya at 9.00 a.m.

AGENDA

1. Remarks by the Convenor.
 2. Matters Arising.
 3. General Debate.
 4. (i) Consideration of Articles 278 – 286
Constitutional Commission and Offices (Chapter 17) and
(ii) Articles 286 - 294
Amendment of the Constitution (Chapter 18)
 5. Any Other Business.
 6. Date of next Meeting.
-

RAPPORTEUR

Copies to:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. J.B. Muturi
3. Hon. Kamama Asman
4. Hon. Kimaiyo arap Sego
5. Hon. John Mutiso
6. Hon. Jane Mutunga
7. Hon. Leah Ndeke
8. Hon. John Kiniti
9. Hon. Dr. Simion Gachii
10. Hon. D. Mungatana
11. Hon. Ruth Kibiti
12. Hon. Thomas Merengo

13. Hon. G.G. Gichuru
14. Hon. Francis Ng'ang'
15. Hon. Julius Mworira
16. Hon. Kirugi M'Mukindia
17. Hon. Benson Mbai
18. Hon. Ole Ntutu
19. Hon. Sophia Lepuchurit
20. Hon. A. Ewaton
21. Hon. P. Muiruri
22. Hon. Midiwo W. Jakoyo
23. Hon. Ajuoga Milka Aoko
24. Hon. S.K. Raval
25. Hon. Patrick Kiage
26. Hon. Moody Awori
27. Hon. Newton Kulundu
28. Hon. Sultan Fadhil
29. Comm. Riunga Raiji
30. Comm. Keriako Tobiko

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIRST MEETING OF TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY, 19TH AUGUST, 2003 AT 3.00 P.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. J.B. Muturi
3. Hon. Kamama Asman
4. Hon. Kimaiyo arap Sego
5. Hon. John Mutiso
6. Hon. Jane Mutunga
7. Hon. Leah Ndeke
8. Hon. John Kiniti
9. Hon. Dr. G. G. Gichuru
11. Hon. D. M.ungatana
12. Hon. Ruth Kibiti
13. Hon. Thomas Nyabote Aburi
14. Hon. G.G. Gichuru

ABSENT:

1. Comm. Riunga Raiji
2. Hon. Francis Ng'ang'a
3. Hon. Julius Mworira
4. Hon. Kirugi M'Mukindia
5. Hon. Benson Mbai
6. Hon. Ole Ntutu
7. Hon. A. Ewaton
8. Hon. P. Muiruri
9. Hon. Midiwo W. Jakoyo
10. Hon. Ajuoga Milka Aoko
11. Hon. Moody Awori
12. Hon. Newton Kulundu

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Jonuba Bekah - NCC Secretariat

MIN. TWGK/CCAC/01: OPENING REMARKS BY THE CONVENOR

The Chairman called the meeting to order at 3.00 p.m. and informed members that they were assembled to familiarize themselves with the task ahead and to receive relevant materials.

MIN. TWGK/CCAC/02: PRESENTATION OF MATERIALS

Members were presented with the following materials.

- List of Members of the Technical Working Committee.
- The Guidelines for the Technical Working Committee.
- National Constitutional Conference Regulations.
- Extract of the Report of Plenary Proceedings on Constitutional Commissions and Amendments to the Constitution.
- Summary of the Issues arising from the General Debate on Constitutional Commissions and Amendments to the Constitution.
- Extract of the Annotated Version of the Draft Bill.
- Extract of the Draft Bill.

MIN. NO. TWGK/CCAC/03: COMMENTS FROM RAPPORTEUR.

1. Members were advised to use the library to refer to relevant literature on the Constitution Review Process.
2. Delegates were free to participate in any committee but were not allowed to vote in a Committee where they are not registered as members.
3. Members were advised to read widely on the chapters referred to the Committee to enable them participate effectively.
4. On the issue of verbatim reports, members were advised to purchase diskettes so that they could be issued with soft copies of the documents on a diskette.
5. On the method of discussion, the meeting agreed that they would debate paragraph after paragraph and article by article of the Main Report and Draft Bill respectively, and resolve on whether to adopt or amend at the end.

MIN. NO. TWGK/CCAC/04: ADJOURNMENT

The Convenor adjourned the meeting at 4.30 p.m.
Date of next meeting by notice.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 09, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, September 10, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - (i) Constitutional Commission and Offices (Chapter 17)
278, 279, 280, 281, 282, 283, 284, 285 and 286.
 - (ii) Amendments to the Constitution (Chapter 18)
286, 287, 288, 289, 290, 292, 292, 293 and 294
9. Consideration of Articles 278 - 294.
10. Any Other Business.
11. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SECOND MEETING OF TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY, 9TH SEPTEMBER, 2003 AT 10.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

Hon. Kiriro wa Ngugi - Convenor
Hon. Ruth Kibiti
Hon. Julius Mworira
Hon. Jane Mutunga
Hon. Leah Ndeke
Hon. Kamama Asman
Hon. Julius Sitienei
Hon. Danson Mungatana
Hon. John M. Kiniti
Hon. Kimaiyo arap Sego
Hon. Midiwo Jakoyo
Hon. Peter Kang'ethe
Hon. Benson Mbai
Hon. Nur Ibrahim Abdi
Hon. Thomas Nyabote Aburi
Hon. Justin Muturi
Hon. Dr. G. G. Gichuru
Hon. Ajuoga Milka Aoko
Hon. Zeruiyah Otwani

IN ATTENDANCE

Commissioner Riunga Raiji	-	Rapporteur
J. N. Bundi	-	NCC Secretariat
Jonuba Bekah	-	NCC Secretariat
Fredrick Oundo	-	NCC Secretariat

MIN. TWGK/CCAC/05: COMMUNICATION FROM THE CHAIR

The Committee assembled at 10.15 a.m. The Convenor welcomed the delegates to the meeting and informed them that the main business of the day would be to familiarize themselves with the rules.

MIN. TWGK/CCAC/06: RULES FOR THE WORKING GROUP

The Committee discussed the rules of the Working Group and agreed to follow them in order to have orderly and systematic debates.

The Committee also agreed that 1½ hour would be dedicated to general discussions on the Draft Report and Bill before specific consideration of paragraphs of the report and articles of the draft bill.

MIN. TWGK/CCAC/07: DOCUMENTS

The Secretariat explained the list of documents to be used by the Working Group and advised the delegates to consult them in case of further reference material.

MIN. NO. TWGK/CCAC/08: ADJOURNMENT

The Committee adjourned at 1.15 p.m. until Wednesday 10th September 2003 at 8.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 10th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - (i) **Constitutional Commission and Offices (Chapter 17)
278, 279, 280, 281, 282, 283, 284, 285 and 286.**
 - (ii) **Amendments to the Constitution (Chapter 18)
286, 287, 288, 289, 290, 292, 292, 293 and 294**
9. Consideration of **Articles 278 - 294.**
10. Any Other Business.
11. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE THIRD MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY, 10TH SEPTEMBER, 2003 AT 10.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ruth Kibiti
3. Hon. Julius Mworira
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. John M. Kiniti
7. Hon. Ajuoga Milka Aoko
8. Hon. Kimaiyo arap Sego
9. Hon. Dr. G.G. Gichuru
10. Hon. Zeruah Achayo Otwani
11. Hon. Nur Ibrahim Abdi
12. Hon. Thomas Nyabote Aburi
13. Hon. Peter Kang’ethe Nkoroi
14. Hon. Stephen ole Ntutu
15. Hon. Francis Ng’ang’a
16. Hon. Kamama Asman
17. Hon. Julius Sitienei
18. Hon. A. Ewaton
19. Hon. P. Muiruri

APOLOGIES

1. Comm. Keriako Tobiko.
2. Comm. Riunga Raiji.
3. Hon. J.B. Muturi
4. Hon. Kirugi M’Mukindia

ABSENT

1. Hon. Benson Mbai
2. Hon. Sophia Lepuchirit
3. Hon. Midiwo Washington Jakoyo
4. Hon. Thomas Merengo
5. Hon. S.K. Raval
6. Hon. Moody Awori
7. Hon. Newton Kulundu
8. Hon. Danson Mungatana
9. Hon. Patrick Kiage
10. Hon. John M. Mutiso

IN ATTENDANCE

1. J.N. Bundi - Clerk
2. Jonuba Bekah - NCC Secretariat
3. Fredrick Oundo - NCC Secretariat
4. Asha Boru - NCC Secretariat

MIN. TWGK/CCAC/09: COMMENCEMENT OF MEETING AND PRAYER

The Chair called the meeting to order at 2.35 p.m. and invited Hon. Ruth Kibiti to lead in prayers.

MIN. TWGK/CCAC/10: CONFIRMATION OF THE PREVIOUS MINUTES

The minutes of the previous meeting were unanimously confirmed by the members present and signed by the Convenor.

The minutes were confirmed subject to the following corrections:-

- (i) The names of Hons. Kiniti, Nyabote and Zeruah were misspelt as 'Hon. Kiriti', 'Hon. Nyaboti' and 'Hon. Zervah' respectively.
- (ii) The name of Commissioner Riunga Raiji was inadvertently omitted from the attendance list.
- (iii) The name of Hon. Benson Mbai appeared twice on the list while in fact this name ought to have been listed as absent.

MIN. TWGK/CCAC/11: GENERAL DEBATE

- (i) Discussion on General Criteria for Establishing Constitutional Commissions

Discussed:

- Whether there were too many commissions
- Whether there was duplicity of roles among the commissions
- Whether the commissions interfered with the work of government ministries
- Whether the proposed commissions should be sub-commissions under the Public Service Commission (where such commissions relate to public servants)

Resolved:

That the criteria for establishing Constitutional Commissions should be based on: -

- Crosscutting social and economic needs of the country.

NATIONAL CONSTITUTIONAL CONFERENCE

September 11th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FOURTH SITTING, TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY, 11TH SEPTEMBER, 2003 AT 9.30 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

Hon. Kiriro wa Ngugi - Convenor
Hon. Francis Ng'ang'a
Hon. Ruth Kibiti
Hon. Julius Mworira
Hon. Jane Mutunga
Hon. Leah Ndeke
Hon. Kamama Asman
Hon. John M. Kiniti
Hon. Julius Sitienei
Hon. Kimaiyo arap Sego
Hon. Dr. G.G. Gichuru
Hon. Midiwo Washington Jakoyo
Hon. Ajuoga Milka Aoko
Hon. Nur Ibrahim Abdi
Hon. Zeruah Achayo Otwani
Hon. Thomas Nyabote Aburi
Hon. Peter Kangethe Nkoroi
Hon. Justin Muturi
Hon. A. Ewaton

APOLOGIES

Commissioner Keriako Tobiko - Rapporteur

ABSENT

Hon. Ann Njogu
Hon. Benson Mbai
Hon. Kirugi M'Mukindia
Hon. Newton Kulundu
Hon. Danson Mungatana
Hon. Moody Awori

IN ATTENDANCE

Comm. Riunga Raiji - Rapporteur
J. N. Bundi - Clerk
Jonuba Bekah - NCC Secretariat

Fredrick Oundo - NCC Secretariat
Asha Boru - NCC Secretariat

MIN. TWGK/CCAC/13: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 9.30 a.m. and invited Hon. Thomas Nyabote Aburi to lead prayers.

MIN. TWGK/CCAC/14: ADOPTION OF THE AGENDA

It was confirmed that the agenda adopted the previous day was to run throughout the sitting of the Technical Committee.

MIN. TWGK/CCAC/15: CONFIRMATION OF THE PREVIOUS MINUTES

The confirmation of the minutes was deferred for the reason that the previous day's minutes were not in an appropriate format.

It was however agreed that the report on criteria for establishment of Constitutional Commissions discussed the previous day was accurate.

MIN. TWGK/CCAC/16: MATTER ARISING

There was no matter arising from the minutes of the previous day since they had not yet been confirmed.

MIN. TWGK/CCAC/17: GENERAL DEBATE

- (i) Continuation of Discussion on Criteria for Establishing of Constitutional Commissions

Discussed: -

- That some commissions have too many functions citing an example of the Electoral Commission.
- That the commissions under Chapter Eighteen cuts across other committees for example People Representation, Legislature and Judiciary.
- There were too many commissions.

Resolved:

- That provisions under Chapter Eighteen; Constitutional Commissions apply to all commissions established under this Chapter and elsewhere in the Draft Bill.

- That the scope of the committee was to deal with Constitutional Commissions to the extent of the provisions of Chapter Eighteen.

(ii) Security of Tenure

Discussed: -

- Relevance of security of tenure.
- Terms of Service.
- Mode of Appointment and Approval
- Mode of Dismissal.
- Financial Independence.

Resolved:

- Security of tenure was necessary.
- A maximum of two terms of five years each was in order.
- Mode of appointment by President and approval by the Parliament was not foolproof.
- Dismissal should be on the basis of the tribunal's recommendation.
- Financial autonomy is of essence.

(iii) Constitutional Offices/Officers

Discussed:-

- Constitutional Offices/officers in focus were the Attorney General, the Controller and Auditor General and the Commissioner for Income Tax
- Whether or not we should have one man/woman commissions/offices.
- Checks and balances for one man commissions/offices

Resolved:

- That there was checks and balances in the Draft Bill through:-
 - (a) Separation of powers and functions
 - (b) The establishment of the Director of Public Prosecutions Office.
 - (c) The establishment of the Office of the Ombudsman.
 - (d) The establishment of the Office of the Public Defender.

(iv) Should we have a Law Reform Commission or a Constitutional Commission?

Discussed:-

- Whether we should have a Law Reform Commission or a Constitutional Commission dealing with constitutional amendments.
- Whether we should rename the Law Reform Commission the Law and Constitutional Reform Commission
- The mandate of Law Reform Commission.
- The functions of the Constitutional Commission.

Resolved:

- We should have a constitutional commission distinct from the Law Reform Commission.
- The Law Reform Commission mandate should be on-going amendments to the Acts of Parliament (Statutory Laws)
- The mandate of a constitutional commission should be to implement and supervise the constitution. Therefore such a commission should be temporary.

(v) **Accountability of Constitutional Offices**

Discussed: -

- Appointment of commissioners by the President and approval by the Parliament does not guarantee independence of the commissioners especially where the President is a member of a party with a majority in Parliament.

Resolved:

- There are gaps in the context of accountability and checks and balances to the constitutional commissions.
- To call an expert to advice on constitutional offices and accountability.

vi) **Implementing Body**

Raised: -

- Which body is to implement the new constitution.
- The Executive should not be left to implement the new constitution.
- Whether we need a permanent or ad-hoc constitutional commission.
- Who is to be in charge of future Constitutional Amendments

Discussed: -

- The implementing body of changes and provisions of the new constitution
- The need for civic education before implementing the new constitution.
- The implementation and supervision of the new constitution.
- The possibility of renaming the “Constitution Commission”, “Constitution of Kenya Reform Commission”.

Resolved:

- That civic education is necessary before implementing the new constitution.
- The constitution being reviewed should be able to stand the test of time i.e. last for about 20 years before another review.
- We should have an ad-hoc constitution commission to implement the new constitution.
- The constitution was self-implementing and sustaining vide Article 2(3) of the Draft Bill.

MIN. TWGK/CCAC/18: GENERAL DEBATE ON THE CONSTITUTIONAL AMENDMENTS CHAPTER EIGHTEEN OF THE DRAFT BILL

(i) Entrenched Provisions and Ordinary Provisions

Discussed:-

- Why entrenched provisions require a referendum to amend.
- How to safeguard dictatorship by the Legislature as regards amendment of the constitution especially where a party has an overwhelming majority in Parliament.
- Whether the constitution should be too hard or too easy to amend.
- The necessity of the 90 days period separating the Second and Third reading of a Constitution amendment Bill in Parliament.
- Involvement of the two Houses in Constitutional Amendment.

Raised:-

- Whether we needed a referendum to enact constitutional amendments the same way we need a referendum to amend the constitution.
- Whether it was necessary to have a distinction between entrenched and non-entrenched provisions in the constitution.
- Whether the civil society should be involved in the process of a referendum.

Resolved:

- The distinction between entrenched and ordinary provisions is necessary to safeguard dictatorship by the Parliament.
- The enactment and amendment of the constitution through a referendum was cumbersome.
- The 90 days period separating the Second and Third Reading of the Bill to amend the constitution in Parliament was necessary to allow consensus building.
- Constitutional amendments requiring 75% majority votes in Parliament to amend do not require a referendum.
- The new constitution should be one for posterity and not one easily amended.

(ii) Role of Judiciary in Constitution Making

Discussed:-

- Whether pronouncements by the courts regarding constitutional provisions should be binding.
- The mandate of a Constitutional Court regarding constitutional amendments.

Resolved:

- That pronouncement by the courts/judiciary regarding the constitution should be binding.
- That the mandate of a Constitutional Court should only be to interpret and deal with constitutional matters.

(iii) The Role of the People in Constitutional Amendments

Raised:-

- Whether the “people” can initiate constitutional amendments.
- How is amendment by the people to be done?

Resolved:

- The “People” (common citizens) should be allowed to initiate amendments to the constitution.
- The “people” (common citizens) can initiate amendments to the constitution through representatives.
- Civil Societies should be allowed to amend the constitution.

MIN. NO. TWGK/CCAC/19: DATE OF NEXT MEETING

The next meeting will commence at 10.30 a.m. on Friday, 12th September 2003, in Tent No. 11, Bomas of Kenya.

MIN. NO. TWGK/CCAC/20: ADJOURNMENT

The meeting adjourned at 4.25 p.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 12th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FIFTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON FRIDAY, 12TH SEPTEMBER, 2003 AT 9:30 A.M. IN TENT NO. 11, BOMAS OF KENYA.

PRESENT

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ruth Kibiti
3. Hon. Julius Mworira
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. Kamama Asman
7. Hon. John M. Kiniti
8. Hon. Julius Sitienei
9. Hon. Kimaiyo arap Sego
10. Hon. Dr. G.G. Gichuru
11. Hon. Midiwo Washington Jakoyo
12. Hon. Ajuoga Milka Aoko
13. Hon. Nur Ibrahim Abdi
14. Hon. Zeruah Achayo Otwati
15. Hon. Thomas Nyabote Aburi
16. Hon. Peter Kang’ethe Nkoroi
17. Hon. Stephen Ole Ntutu
18. Hon. A. Ewaton

APOLOGIES

1. Commissioner Keriako Tobiko - Rapporteur
2. Hon. Justin Muturi

ABSENT

1. Hon. Ann Njogu
2. Hon. Benson Mbai
3. Hon. Kirugi M’Mukindia
4. Hon. Newton Kulundu
5. Hon. Danson Mungatana
6. Hon. Moody Awori
7. Hon. P. Muiruri
8. Hon. Salah Maalim Alio
9. Hon. Makau Mutua
10. Hon. Mwangi Kiunjuri

IN ATTENDANCE

- | | | |
|-----------------------|---|-----------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Jonuba Bekah | - | NCC Secretariat |
| 3. Fredrick Oundo | - | NCC Secretariat |
| 4. Asha Boru | - | NCC Secretariat |
| 5. Steven Mukaindo | - | NCC Secretariat |

MIN. TWGK/CCAC/21: COMMENCEMENT OF MEETING PRAYERS

The Chair called the meeting to order at 9:45 a.m. and invited Hon. Thomas Nyabote Aburi to lead prayers

MIN.TWGK/CCAC/22: PRESENTATION OF HON ELUID PAUL NAKITARE (NO. 392) ON THE ESTABLISHMENT OF A CULTURAL EXPRESSION AND PRESERVATION COMMISSION

Presented:

Hon. Nakitare (of Citizenship and Bill of Rights Committee) addressed the Committee on the need to establish a Cultural Expression and Preservation Commission. In doing so he laid out the functions, composition and appointment of the proposed commission.

The proposed functions of the Commission would include:

- Dealing with matters relating to the traditions of Kenya Communities;
- Monitoring and dealing with issues relating to payment of royalties to performing artists, the infringements of copyright laws, and patenting of indigenous creations, inventions and discoveries;
- Preventing the illicit expatriation of cultural properties as well as pursue their repatriation;
- Identifying and gazetiting sites of cultural and touristic significance;
- Identifying and registering traditional medical practitioners;
- Licensing music, dance, drama/play;
- Creating, supervising and maintaining cultural facilities; and,
- Proposing relevant legislations for enactment by Parliament.

The proposed Commission would consist of:

- a chair person appointed by the President;
- a traditional sage appointed by the President;
- a commissioner appointed by the Public Service Commission;
- a representative each from the performing arts, visual arts, museums and archives, tourism organizations, women organizations, youth organizations, the Attorney General's Chambers, and the sports Council;
- three representatives from religious organizations;
 - Director of intellectual property organisation;

- two representatives each from minority and majority tribes appointed by the President.

The term of the Commissioners would be five years subject to renewal only once. The Commissioners would only be entitled to sitting allowances but for the chairperson. The Public Service Commission would appoint the staff of the Commission.

Resolved:

It was unanimously decided that Hon Nakitare's proposal should be deferred until after the plenary discussion on Culture which would be held the following Monday, 15th September 2003.

MIN. TWGK/CCAC/23: PROCEDURE OF COMMITTEE'S BUSINESS

Resolved:

The Committee shall first consider the Commission Report and then proceed to the Draft bill.

MIN. TWGK/CCAC/24: PRESENTATION OF THE MAIN REPORT OF THE COMMISSION ON CONSTITUTIONAL COMMISSIONS

Commissioner Raiji took the Committee through the relevant parts of the Commission Report dealing with Constitutional Commissions: He emphasized the following main points:

- That in addition to the three organs of government, constitutional commissions are important institutions of implementing and enforcing the provisions of the Constitution;
- Constitutional Offices discharge important constitutional functions and are more or less treated like Constitutional Commissions;
- That in creating and designing Commissions, it was important to consider the general principles that would facilitate and guide their work, namely, independence, accessibility and accountability;
- That independence of commissions is critical in order to insulate them from manipulation. In this regard, commission ought to be independent in the manner of appointment and dismissal of their Commissioners;
- That the current Constitution establishes the Electoral Commission, the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission;
- That during collection of the views of Kenyans, it was clear that the integrity and independence of the existing Commissions was in question. In particular, the appointment process, credibility of appointees, and the independence and accountability of the Commissions was queried. The removal process in which the President is not bound by the recommendations of a tribunal

appointed to investigate the conduct of one or more commissioners was noted as not offering sufficient safeguard;

- That it was the view of Kenyans that commissions ought to be brought closer to the people, be made independent, have power to investigate, prosecute and enforce their recommendations, conduct public education and dissemination of information, be transparent in the appointment of commissioners and in the discharge of their functions;
- That it was also the view of Kenyans that the following new commissions ought to be established:
 - (i) the Commission for Human Rights and administrative of Justice to among other things investigate past human rights violations;
 - (ii) the Ombudsman;
 - (iii) the Ethics and Integrity Commission;
 - (iv) the Salaries and Remuneration Commission to among others things deal rationalization of salaries;
 - (v) the Gender Commission to address discrimination against women in such thing as citizenship;
 - (vi) the Disciplined Forces Complaints Commission to probe and investigate abuses by the disciplined forces.
- That constitutional commissions should deal with issues that cut across other Chapters.

MIN/TWGK/CCAC/25: CONFIRMATION OF THE PREVIOUS MINUTES.

The minutes were proposed for confirmation by Hon. Ruth Kibiti who was seconded by Hon. Kimaiyo arap Sego.

The minutes were confirmed as the true record while their format was adopted as the format to be used in subsequent minutes.

MIN.TWGK/CCAC/26: MATTERS ARISING

i) Reflection of attendance on the Minutes

Discussed:

- That members ought to respect and be committed to the work and proceedings of the Committee and as such ought to attend all Committee Meetings
- That any member who attends any one of the sessions ought to be marked present for the day
- That members ought to report to the committee before they can go make presentations to other committees.
- That the format of the Minutes ought to be consistent with those of other Committees.
- Those who do not attend meetings should not be allowed to re-open matters that have been concluded at previous meetings.
- That the members of the Committee have the right to participate in other Committees and as such, the rules of attendance ought not be too rigid.

Nevertheless, members ought to ensure that the Committee takes off before they can leave for other Committees.

Resolved:

- ❖ That members have a right to attend other Committee meetings
- ❖ That any member who attends any session will be marked as present for the whole day regardless of the time spent at the Committee meeting.
- ❖ That apologies would be deemed present for purposes of quorum
- ❖ That the time to visit other committees will be as indicated in the programme of the Conference. After such period, the committee shall consider its substantive business at the discretion of the Convenor.

ii) Language

Resolved:

The language used in minutes should be gender sensitive

iii) Mechanism for popular Constitutional amendment

Presented:

The Convenor presented the following procedure for the participation of the people:

- One Million citizens entitled to vote may propose an amendment to the Constitution;
- The popular initiative for an amendment of the constitution may be in the form of a general suggestion or a formulated Draft;
- If the proposal is approved by majority of the Counties, it shall be submitted to the National Assembly, where each Chamber, by a vote of two-thirds majority may accept it. If they reject it or the Chambers disagree, the proposal shall be submitted to the people in Referendum;
- If the people in a Referendum accept the popular initiative, then the National assembly shall adopt it.

Issues Raised:

- The One Million people ought to come from all regions
- The logistics of raising the one million people ought to be had in mind;
- The proposal ought not to assume that the model of devolution would be accepted; it ought to wait until the devolution proposal is accepted;
- The criteria is cumulative and every requirement must be fulfilled;
- That instead of requiring a general number of one Million, a figure ought to be fixed for every sub-national level in order to draw wide support for the amendment;
- That the procedure ought to distinguish between amendment of entrenched and non-entrenched provisions;
- That a consideration ought to be made of whether the popular amendment process would obviate the need for a referendum.

Resolved:

- That the proposal by the Convenor ought to be discussed at the appropriate place and time. That is, when the Committee will be considering the Draft Article by Article;

- That the members would then agree on the framework procedure and then pass their recommendations to the draft person for the technical wording.

MIN. TWGK/CCAC/27: POLICY EXTRACTS ON THE PRINCIPLES GOVERNING CONSTITUTIONAL COMMISSIONS

Resolved:

The following general principles ought to guide Constitutional Commissions:

- ❖ Accessibility
- ❖ Accountability
- ❖ Independence (Financial and Selection of members).

MIN. TWGK/CCAC/28: CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMISSION

- (i) The Constitutional Commissions ought to be created by the Constitution but the Details should be provided in an act of Parliament

Discussed:

- That the Draft has too many details;
- That after setting out the Commissions, the constitution ought to say something about their functions in order to ensure that sense is not lost in brevity;
- That it may be necessary to distinguish between specific functions and general functions of all commissions;
- That the specific functions of certain Commissions fall within the mandate of other Committees;
- That it may be necessary to have joint meetings with committees whose mandate touches on the establishment and functions of Constitutional commissions;
- That the broad functions of the Commission ought to be indicated.

Resolved:

- That the Constitutional Commissions ought to be created by the Constitution but the Details should be provided in an act of Parliament;
- That the constitution ought to provide the broad functions of these Commission;
- That the Committee ought to confine itself to the Commissions that are listed in Chapter Seventeen (17) of the Draft Bill.

b) Financial autonomy

(ii) Constitutional Commissions ought to be financially independent

Discussed:

- Commissions cannot be independent unless they are financially independent;
- Financial independence ensures that the Commissions are independent of the Executive and can run and control their functions;

- Financial independent envisages the preparation of the Budget by the Commission and its presentation to the National assembly for approval.

Resolved:

- That Constitutional Commissions shall be financially independent institutions answerable to Parliament.

c) Appointment of Commissioners

iii) Number of Commissioners in every Commission

Discussed:

- The number of Commissioners ought to be small to ensure efficiency, for example India has one electoral Commissioner;
- That the larger the number of commissioners, the more the likelihood of political manipulation;
- Whether there should be a relationship between the number of commissioners and nature and volume of work of the commission;
- That commissioners are policy makers and are not necessarily needed in large numbers; the officers are the ones that may be required in large numbers;
- That more commissioners may be needed per commission due to devolution and the need to represent specific interests;
- That the TSC ought to be given more commissioners due to the number of teachers it handles;
- The number of commissioners must be considered in the context of the need for efficiency and affordability and in this respect, the proposed maximum of ten commissioners is reasonable;
- That Parliament has been given too many powers in respect to constitutional commissions (appointment and approval of budget).

Resolved;

- That the discussion be revisited at the next meeting.

MIN. TWGK/CCAC/29: DATE OF NEXT MEETING

The date of the next meeting was tentatively set for Monday the 15th day of September 2003.

MIN. TWGK/CCAC/30: ADJOURNMENT

The meeting was adjourned at 4:00 p.m

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 15th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SIXTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON MONDAY, 15TH SEPTEMBER, 2003 AT 12.30 P.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ruth Kibiti
3. Hon. Julius Mworira
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. Kamama Asman
7. Hon. John M. Kiniti
8. Hon. Julius Sitienei
9. Hon. Kimaiyo arap Sego
10. Hon. Dr. G.G. Gichuru
11. Hon. Gichiira Kibara
12. Hon J.B. Muturi
13. Hon. Nur Ibrahim Abdi
14. Hon. Thomas Nyabote Aburi
15. Hon. Peter Kang’ethe Nkoro

APOLOGIES

1. Hon. Zeruah Achayo Otwani
2. Hon Francis Ng’ang’a

ABSENT

1. Hon. Ann Njogu
2. Hon. Benson Mbai
3. Hon. Kirugi M’Mukindia
4. Hon. Newton Kulundu
5. Hon. Danson Mungatana
6. Hon. Moody Awori
7. Hon. P. Muiruri
8. Hon. Salah Maalim Alio
9. Hon. Makau Mutua
10. Hon A. Ewaton
11. Hon. Ajuoga Milka Aoko
12. Hon. Midiwo Washington Jakoyo
13. Hon. Ole Ntutu Stephen K.

IN ATTENDANCE

- | | | |
|-------------------------|---|-----------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Comm. Keriako Tobiko | - | Rapporteur |
| 3. Jonuba Bekah | - | NCC Secretariat |
| 4. Fredrick Oundo | - | NCC Secretariat |
| 5. Asha Boru | - | NCC Secretariat |
| 6. Steven Mukaindo | - | NCC Secretariat |

MIN. TWGK/CCAC/31: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 12.20 P.M and invited Com.Riunga Raiji to lead prayers.

MIN. TWGK/CCAC/32: ADOPTION OF THE AGENDA

The Agenda was adopted and noted as the standard format agreed upon by the Committee.

MIN. TWGK/CCAC/33: COMMUNICATION FROM THE CHAIR

The Convenor welcomed Hon. Gichira Kibara, and other members to the Committee. Hon. Kibara was replacing Hon Paul Kiage who had resigned.

MIN. TWGK/CCAC/34: CONFIRMATION OF THE PREVIOUS MINUTES

The Minutes were proposed for confirmation by Hon. Hon. Kimaiyo arap Sego (No. 344), who was seconded by Hon. Jane Mwikali (No. 288)

The Minutes were confirmed subject to the following corrections:

- a. That documents introduced by delegates in Committee Meetings ought to be summarised rather than reproduced wholesale into the Minutes;
- b. That on Page 4 of the Minutes, the date at the second paragraph should read as the 15th September 2003;
- c. That Hon. Kimaiyo's name at page 6 ought to be spelt with an 'i' after the 'k'

MIN. TWGK/CCAC/35: MATTERS ARISING

Minutes of Wednesday the 10th day of September 2003

Noted:

That the above referenced Minutes had not been brought before the Committee for confirmation.

Resolved:

That the secretariat should avail the Minutes for confirmation at the next meeting.

MIN. TWGK/CCAC/36: **CONTINUATION OF THE CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMISSION (REF. TWGK/CCAC/28)**

- (iii) Number of Commissioners in every Commission (not less than 3, not more than 10)

Noted:

Discussion on this recommendation had been deferred at the previous meeting to allow further debate on the matter.

Raised:

- That the matter be deferred further to allow those delegates who were of the opinion that the number of commissioners ought to be increased, to make their representations;
- That the matter ought to be discussed as deferring it further would drag the Committee's work;
- That to build consensus, more time ought to be given to create opportunity for further comments by delegates.

Discussed:

- That a small commission allows facilitates personal attention of matters, helps competent Kenyans to serve in diverse areas, is cost effective and manageable;
- That huge commissions such as the TSC with 24 Commissioners were an unnecessary burden to the Government and were a haven for irrelevance and redundancy;

Resolved:

- That debate be deferred to the next meeting (Tuesday the 16th day of September 2003).
- (iv) Members of the Commission be appointed by the President subject to approval by Parliament through the relevant Committee.

Noted:

This recommendation had been approved earlier subject to expert advise on mechanisms to prevent abuse of power by Parliament.

- (v) Appointment of Commissioners ought to take into account the diversity of the Kenyan people including: socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disability and the disadvantaged.

Discussed:

- That the criterion of socio-economic status is broad and its meaning is fluid and it ought to be deleted;
- That the spirit of the recommendation is not to turn commissions into representative bodies;
 - That the disadvantage persons are not necessarily disabled and hence there is need to include both phrases.

Resolved:

- That the recommendation be retained.
- (vi) The staff of the commissions ought to be appointed in consultation with the Public Service Commission (PSC) but be paid by the relevant commission.

Discussed:

- That consultations of commissions with the PSC waters down their independence;
- That independence and autonomy of commissions envisages the power to hire, fire and pay salaries to their staff;
- That if the staff of commissions is subject to control by another authority, the operations of the former may be disabled or undermined by the latter's unilateral transfer or withdrawal of staff;
- That there ought to be a centre to ensure uniformity of the standard, terms and conditions of the staff of the constitutional commission;
- That a centre for unification of the terms and conditions of staff would go against the principle of decentralisation of power that runs through the Draft;
- That the proposed Salaries Commission would address the question of uniformity of terms and conditions of Government employees;
- That the PSC would be the most appropriate centre for such unification;
- That leaving individual commissions to hire staff and to determine their terms and conditions may undermine meritocracy, professionalism and equity of terms and conditions of staff across constitutional commissions.

Resolved:

- That commissions ought to have power to hire and fire their staff and to establish the terms and conditions of such staff.

Position of the Minority:

That it would be critical to ensure there is a system of standardisation of the terms and conditions of employment of staff of constitutional commissions and criteria of ensuring meritocracy and professionalism is maintained.

- (vii) That the composition of constitutional commissions should be representative of all sectors of society and regard ought to be had of the competence, integrity and objectivity of persons appointed to such positions.

Resolved:

That the criteria of representation, competence, and integrity should govern the composition of constitutional commissions.

- (viii) That the office of the commissioner shall not be compatible with any other office of profit, whether private or public and shall be a full time engagement. Commissioners shall comply with the leadership Code.

Noted:

- That part of the problem of public service in Kenya was the recommendation by the *Ndegwa Commission* that public servants could engage in business.

Discussed:

- That commissions shall be a full time engagement;
- That Kenya's were of the view that one man ought to have one job;
 - That the proposed restriction would ensure there was no conflict of interest in the discharge of functions;
 - That it was not possible to be an effective public officer while at the same time one is engaged in private practice;
 - That New Zealand and other countries have similar provisions in respect to their civil service;
 - That "holding of office" ought to be distinguished from having interest in a matter or business concern.

Resolved:

- That commissions shall be full time engagements;
 - That office of commissioner shall not be compatible with any other office of profit whether in the public or private practice.
- (ix) Appointments shall be for a term of 5 years renewable once and subject to an upper age limit of 65 years.

Noted:

- The Annotated Draft suggests a retirement age of 70 years;

- Article 196 proposed a retirement age of 65 years for all judicial officers including the lowest cadre of staff.

Discussed:

- That the rationale of the 70 years was influenced by the retirement age proposed for judges elsewhere in the Draft and was adopted to standardize upper age limit through out the Draft;
- That commission appointments are designed to tap those persons with vast experience in the relevant are of the commission such persons are likely to be towards the end of their careers;
- That advanced age portends the risk of non-pro-active commissions;
- That there are varied views on the matter one among them being the call by the youth to have lower retirement ages in order to allow more persons to get jobs;
- That there is need to tap experience and also to blend it with youthfulness;
- That the retirement age of the staff of the commissions would be a matter of contract between the staff and the respective commission.

Resolved:

- That the appointment shall be for a term of 5 years renewable only one;
- That the retirement age shall be 65 years.

Remark:

- The motion proposing the retention of 70 years as the retirement age for the President was negated by the committee by resolution and instead reverted to the 65 years proposed in the draft.

(x) Dismissal of Commissioners

Noted:

- The Draft Bill at Article 284 proposes a tribunal constituted by the President while the Commission Report proposes a Parliamentary Committee.

Discussed:

- That a parliamentary process would be open to political rather than meritorious consideration and thus likely to demean the integrity and independence of commission;
- That generally, the Executive arm of Government has a responsibility to respond to allegations of malpractice in respect of commissions or commissioners;
- That it would be necessary to provide a mechanism for citizens to prod the disciplinary process into action; and as such, the President should not be the exclusive person who may set the dismissal process in motion;
- That bearing in mind the constitutional functions of commissions, it would be imperative to strike a balance between a parliamentary process and an “ executive process”;
- That the dismissal process ought to have a mechanism to deal with frivolous allegations (a threshold ought to be set).

NATIONAL CONSTITUTIONAL CONFERENCE

September 17th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SEVENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY, 17TH SEPTEMBER, 2003 AT 9.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Julius Mworira
6. Hon. Leah Ndeke
7. Hon. Ruth Kibiti
8. Hon. Kimaiyo arap Sego
9. Hon. Thomas Nyabote Aburi
10. Hon. Francis Ng’ang’a
11. Hon. Julius Sitienei
12. Hon. Gichira Kibara
13. Hon. John M. Kiniti
14. Hon. Nur Ibrahim Abdi

IN ATTENDANCE

- | | | |
|--------------------------------|---|-----------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Commissioner Keriako Tobiko | - | Rapporteur |
| 3. Jonuba Bekah | - | NCC Secretariat |
| 4. Fredrick Oundo | - | NCC Secretariat |

MIN. TWGK/CCAC/39: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 9.50 a.m. and invited Hon. Thomas Nyabote Aburi to lead prayers.

MIN. TWGK/CCAC/40: COMMUNICATION FROM THE CHAIR

The Convenor announced that the ad-hoc Committee on Culture had become a fully-fledged Committee of the Conference. He invited those interested to become members to channel their names through the Chair for onward passage to the Rapporteur General.

MIN. TWGK/CCAC/41: CONFIRMATION OF PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. Thomas Nyabote Aburi who was seconded by Hon. Ruth Kibiti.

The minutes were confirmed subject to the following corrections:-

- (i) The agenda circulated was for a meeting to be held on Tuesday 16th September 2003 instead of Wednesday 17th September 2003.
- (ii) Hon. Gichira's name ought to be spelt with a single "i" after "h".
- (iii) Hon. Francis Ng'ang'a ought to be marked as present rather than absent with apology.
- (iv) On page 8 of the minutes under the sub-title "Discussed" the second line of the second paragraph ought to read " in the relevant area".
- (v) On page 8 of the minutes under sub-title "Discussed", the second line of the third paragraph ought to read as "commissioners" rather than "commission".
- (vi) On page 9 of the minutes under the sub-title "Remarks", the third sentence ought to read the "The motion carried was to retain 65 years proposed in the Draft".
- (vii) On page 2, under minute 34, the word "Hon" is repeated.

MIN. TWGK/CCAC/42: MATTERS ARISING

- (i) Recommendation (iii) of the Committee; Numbers of Commissioners in every Commission (not less than 3, not more than 10)

Noted:

This resolution had been deferred to give opportunity for further debate.

Discussed:

That there may be special commissions, which may require more than ten commissioners as proposed.

- That the Teachers Service Commission due to its volume of work, the delicacy of its mandate (management of teachers), the disciplinary function, the successful decentralization of services as envisaged in the Draft, and other social dynamics (population growth) may require to be treated as an exception to this rule.
- That there is need to distinguish between existing commissions and those proposed to be creation. In order to move forward, the committee ought not to be held back by the current dispensation.

- There is need to bear in mind that commissioners would be policy making agents rather than administrators.

Resolved:

- The recommendation be retained,
 - The committee, if convinced may adopt exceptions to this general policy during the discussions on specific commissions.
- (ii) Recommendation (v); Appointment of commissioners ought to take into account the diversity of the Kenyan people including:
- Socio-economic status, race, ethnicity, gender, religious faith, age, occupation.
 - Learning persons with disability and the disadvantaged.

Discussed:

- That disadvantaged persons includes marginalized groups and the disabled. Thus the word “disadvantaged” is sufficient.
- That disadvantaged persons are not necessary disabled and hence there is need to include both phrases. “disadvantaged” and “disabled”.

Resolved:

- The recommendation be retained with both phrases
- (iii) That there were as many members present as were absent.

Discussed;

- There is concern that so many members were absent.

Resolved:

- That quorum is sufficient for the committee business;
- That there may be necessity for a committee whip.

MIN. NO. TWGK/CCAC/43: ADJOURNMENT

The meeting adjourned up to the following day.

SIGNED:

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(CONVENOR)

DATE:

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NATIONAL CONSTITUTIONAL CONFERENCE

September 18, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE EIGHTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY 18TH SEPTEMBER, 2003 AT 9.30 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

2. Hon. Kiriro wa Ngugi - Convenor
3. Hon. Ajuoga Milka Aoko
4. Hon. Benson Mbai
5. Hon G .G. Gichuru
6. Hon. J. B Muturi
7. Hon. Jane Mutunga
8. Hon. Julius Mworira
9. Hon. Kamama Asman
10. Hon. Leah Ndeke
11. Hon. Midiwo Washington Jakoyo
12. Hon. Danson Mungatana
13. Hon. Ole Ntutu Stephen K
14. Hon. Ruth Kibiti
15. Hon. Nur Ibrahim Abdi
16. Hon. Kimaiyo arap Sego
17. Hon. Nkoroi Peter Kange'the
18. Hon. Gichira Kibara
19. Hon. Thomas Nyabote Aburi
20. Hon. Francis Nga'ng'a
21. Hon. Julius Sitienei
22. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Comm. Keriako Tobiko - Rapporteur
3. Jonuba Bekah - NCC Secretariat.
4. Fredrick Oundo - NCC Secretariat
5. Asha Boru - NCC Secreteriate

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Kirugi M'Mukindia
4. Hon. Newton Kulundu
5. Hon. P. Muiruri
6. Hon. Salah Maalim Alio

7. Hon. Makau Mutua

APOLOGIES

1. Hon. Zeruiah Otwani

MIN. TWGK/CCAC/47: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 9.30 a.m. and invited Hon. Nur Ibrahim Abdi to lead in prayers.

MIN. TWGK/CCAC/48: COMMUNICATION FROM THE CHAIR

The Convenor announced that the Privileges Discipline and Welfare Committee requests that any delegate wishing to contribute to the funeral expenses for the late Dr. Crispin Odhiambo Mbai, make their contributions to the deputy secretary mobilization office.

- He also informed delegates that he had been invited to the Technical Committee on Devolution and therefore Hon. Kimaiyo arap Sego would take over chairing for the morning session.

MIN. TWGK/CCAC/49: CONFIRMATION OF PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. Francis Nga'ng'a who was seconded by Hon. Nur Ibrahim Abdi.

The Minutes were confirmed subject to the following correction: -

- Deletion of the letter u= at pg.12.

MIN TWGK/CCAC/50: MATTERS ARISING

There were no matters arising.

**MIN TWGK/CCAC/51: CONFIRMATION OF PREVIOUSLY DEFERRED
MINUTES OF WEDNESDAY 10TH SEPT 2003**

The minutes were proposed for confirmation by Hon. Peter Kange' the who was seconded by Hon. Kimaiyo arap Sego

**MIN. TWGK/CCAC/52: PRESENATATION BY DIRECTOR OF NATIONAL
ARCHIVES (MUSILA MUSEMBI)**

Presented:

For the National Archives to execute its functions effectively, it must be empowered by elevating it to a Constitutional Commission. Reasons given in support of elevating the National Archives were as follows:

- The National Archives acquires, preserves and protects records of the Country
- Transfer of records from certain government ministries is not done effectively due to some government officers destroying certain crucial records
- The rights and privileges of Kenyan citizens are embedded in the records of the national archives
- Auditing of government ministries departments in the area of records will be done with more security.

Discussed:

- The National Archives was not deemed to be of the nature that would require its entrenchment in the Constitution when the CKRC was considering and collecting views.
- The National Archives is centered in the national and not regional level and therefore does not fit the criteria of being a constitutional commission
- Article 47 of the draft bill gives the public mechanism for access to information but not storage and retrieval mechanisms
- There should be a National Archives Commission to recall information from other countries
- If entrenched, the National Archives Commission should be established under the criteria for establishing commissions earlier agreed upon by the committee
- Municipal legislation should be strengthened with a view of giving the Director of National Archives more authority
- The National Archives should be a Constitutional office rather than a Constitutional commission.
- Concern that the National Archives does not have Security of tenure
- There should be a legal requirement that all government departments deposit their documents to the National Archives.

Resolved:

That the office of the National Archives should not be elevated to a constitutional commission.

MIN. TWGK/CCAC/53: CONTINUATION OF RECOMMENDATIONS OF THE COMMISSIONS.

The commissions laid out in the draft bill were set out as follows:

- i. Citizenship and Registration board (Article 68)
- ii. Electoral Commission (Article 83)
- iii. Parliamentary Service Commission (Article 141)
- iv. Judicial Service Commission (Article 204)
- v. Commission on Local Government Finance (Article 225)
- vi. National Land Commission (Article 237)
- vii. National Environmental Management Commission (Article 240)
- viii. Economic and Social Council (Article 257)
- ix. Public Service Commission (Article 259)
- x. National Security Council (Article 272)
- xi. Human Rights and Administrative Justice Commission (Article 288)
- xii. Ethics and Integrity Commission (Article 289)
- xiii. Salaries and Remuneration Commission (Article 290)
- xiv. Teachers Service Commission (Article 291)
- xv. Constitution Commission (Article 292)

Noted:

That the last five Commissions listed above are special commissions established under Chapter 17 of the draft bill whereas the first ten are established elsewhere in the draft bill.

Constitutional Offices laid out in the draft bill are as follows:

- i. Attorney General (Article 208)
- ii. Director of Public Prosecutions (Article 209)
- iii. Public Defender (Article 210)
- iv. Governor of Central Bank of Kenya (Article 251)
- v. Controller of budget (Article 253)
- vi. Auditor General (Article 254)
- vii. Commissioner of Kenya Police Service (Article 266)
- viii. Director of Kenya Correctional Services (Article 269)

Noted:

- That there are no Constitutional offices established in chapter 17, rather they are established in their respective chapters.
- That the principles governing constitutional commissions also apply to constitutional offices

MIN.TWGK/CCAC/54: COMMISSION FOR HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE

Background:

- It is a composite commission i.e. it is constituted of three commissions i.e.
 - i) Peoples protector
 - ii) Human rights commissioner
 - iii) Gender commissioner
- Article 288(1) sets out the composition of the commission
- Article 288(2) sets out the qualifications of the commissioners.

Discussed (composite nature with particular reference to the gender commission):

- The gender commission should be delinked from this commission so as to ensure that gender issues are mainstreamed.
- Women's' issues within the Kenya Human rights commission have not been isolated in the past. Linking the two commissions subsumes the issue of gender.
- Gender Commission Bill proposed in Parliament attempting to concretise the importance of gender issues. If this bill is passed, the gender commission should be established as a Commission on its own
- Having a separate gender office might bring about marginalisation of the gender commissioner.
- There should be a gender commission made up of three women and two men.
- The gender commission should have commissioners at the national level but staffers at the lower level.
- There is no need of delinking the gender commission as Affirmative action already caters for disadvantaged groups.

Resolved:

- i) That the composite nature of the Human rights and Administrative justice Commission be dismantled and establish the Gender Commission as a separate commission.
- ii) In dismantling the composite nature of the commission, the committee recommends the establishment of three separate commissions that is; the Commission for human rights, the ombudsman and the Gender Commission, with each commission having a maximum of 3 commissioners. The mandate of the gender Commission shall be as set out in the annotated version of the draft bill.

MIN. TWGK/CCAC/55: HOW COMMISSIONERS ARE IDENTIFIED AND RECOMMEND FOR APPOINTMENT

Noted:

- That there are advertisements through the National assembly
- That applications be made to specific committees in Parliament

- That bearing in mind that there is a proposal for a second house of parliament, the applications should be made to a committee comprising of both houses.

**MIN. TWGK/CCAC/56: PRESENTATION BY HON. FRANCIS NG'ANG'A
ON THE TEACHERS SERVICE COMMISSION**

Background:

- The Kenya National Union of teachers was formed in 1957 so as to seek for one single employer and give teachers similar terms and conditions of work
- The Teachers Service Commission came into being through an Act of Parliament in 1967
- In 1967 there were 2,539 teachers with only 5 commissioners
- In 1988 there was an increase of commissioners to 14 due to an increase in teachers
- In 2002 the number of commissioners increased to 24
- That currently the population of teachers' stands at 244,000 and the Kenya National union of teachers is seeking to recruit another 60,000 teachers.
- That the student population in five years is envisaged to be 13 million,

Presented:

- That the Teachers Service Commission should be entrenched in the constitution as a constitutional commission.
- That on the issue of appointment the TSC should be exempted from the requirement of a minimum of three commissioners and a maximum of ten.
- That there needs to be a board of commissioners within the TSC to carry out interviews and look into disciplinary cases.

Discussed:

- That the draft bill makes provision for the TSC but it is not justified in the report due to special historical circumstance.
- That the magnitude and uniqueness of the responsibility teachers have should be recognized.
- Teachers should be answerable to only one body in terms of issues such as inspection and salaries.
- There should be total autonomy of the TSC through the constitution.
- The category of teachers who are left out of the entire process of the TSC should be catered for
- That there should be introduction of current information technology within the TSC
- Disciplinary cases should be handled by a separate body within the TSC
- That the TSC was established by an Act of Parliament and can easily be dissolved through an Act of Parliament

Resolved:

The issue of establishing the TSC as a constitutional commission was temporarily deferred so as to allow the Chairman of the NCC, Prof. Yash Pal Ghai to make his contribution.

MIN.TWGK/CCAC/57: PRESENTATION BY PROF.YASH PAL GHAI.

He made proposed two amendments:

- 1) In relation to Chapter 18 on amendments to the Constitution, he said that certain articles of the Constitution are specially entrenched and would need two thirds of approval by the legislature and a referendum in order to be amended. He proposed that the term of office of the president, which is restricted to two terms, should be specially entrenched.
- 2) With regard to the appointment of special constitutional office holders, he proposed the setting up of a special Constitutional office holders committee to look into applications and make decisions on the appointment of constitutional office holders. He explained that this would allow for representation of a wide scope of interest groups and furthermore it provides for better safeguards within the appointment process.

Resolved :

- The discussion regarding entrenchment of the President's term of office be deferred until the discussion on Chapter eighteen (amendments to the constitution)
- With regard to the establishment of a Constitutional office holders Committee, it was resolved to seek another entity that will identify and recommend issues to the appointing authority.

MIN. TWGK/CCAC/58: CONTINUATION OF TSC DISCUSSION

Resolved:

The resolution with regard to the establishment of the Teachers Service Commission as a Constitutional Commission was deferred to the next meeting due to lack of quorum.

MIN. TWGK/CCAC/59: DATE OF THE NEXT MEETING

The date of the next meeting was set as Friday the 19th day of September 2003.

MIN.TWGK/CCAC/60: ADJOURNMENT

The meeting adjourned at 4:50 p. m.

SIGNED.....
(CONVENOR)

DATE.....

NATIONAL CONSTITUTIONAL CONFERENCE

September 19th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE NINTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON FRIDAY, 19TH SEPTEMBER, 2003 AT 9.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. Benson Mbai
4. Hon. G.G. Gichuru
5. Hon. J.B. Muturi
6. Hon. Jane Mutunga
7. Hon. Kamama Asman
8. Hon. Leah Ndeke
9. Hon. Ruth Kibiti
10. Hon. Nur Ibrahim Abdi
11. Hon. Kimaiyo arap Sego
12. Hon. Nkoroi Peter Kang’ethe
13. Hon. Gichira Kibara
14. Hon. Thomas Nyabote Aburi
15. Hon. Francis Ng’ang’a
16. Hon. Julius Sitienei
17. Hon. John M. Kiniti

IN ATTENDANCE

- | | | |
|--------------------------------|---|-----------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Commissioner Keriako Tobiko | - | Rapporteur |
| 3. Fredrick Oundo | - | NCC Secretariat |
| 4. Rosemary Mwanza | - | NCC Secretariat |
| 5. Asha Boru | - | NCC Secretariat |

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Kirugi M’Mukindia
4. Hon. Midiwo Washington Jakoyo
5. Hon. Moody Awori
6. Hon. Mungatana Danson
7. Hon. Ole Ntutu Stephen K.
8. Hon. P. Muiruri
9. Hon. Salah Maalim Alio

10. Hon. Makau Mutua

APOLOGIES

1. Hon. Zeruiah Otwani.

MIN. TWGK/CCAC/61: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 9.20 a.m. and invited Hon. Pamela Mboya to lead prayers.

MIN. TWGK/CCAC/62: COMMUNICATION FROM THE CHAIR

The Convenor announced that the Catholics had a requiem mass for the departed Cardinal Maurice Otunga and that for that reason some delegates would have to be excused at some point of the meeting to attend.

MIN. TWGK/CCAC/63: CONFIRMATION OF PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. Thomas Nyabote Aburi who was seconded by Hon. Julius Sitienei.

The minutes were confirmed subject to the following corrections: -

- (viii) On page 4 of the minutes under the title “continuation of recommendations of the Commission”, “The Commissions laid out in the Draft Bill were set out as follows”: Roman (i) ought to read “Citizenship Registration Board (Art.28)” but not “Citizenship Legislation Board (Section.68)”. Roman (iv) ought to read, “Judicial Service Commission (Article 204)” but not “Teachers Service Commission (Article 204)”.
- (ix) On page 4 of the minutes, ‘constitutional offices laid out in the draft Bill are as follows’: -

“The Governor of Central Bank of Kenya (Article 251), but not “Director of Central Bank of Kenya (Article 251).
- (x) On page 5, of the minutes under sub-title “Resolved” (ii), ought to read: -
“In dismantling the composite nature of the commission, committee recommends the establishment of three separate commissions that is the Commission for Human Rights, the Ombudsman and the Gender Commission, with each commission having a maximum of 3 commissioners. The mandate of the Gender Commission shall be as set out in the Annotated version of the Draft Bill”.

- (xi) On page 7 of the minutes the first bullet, the sentence should read “Teachers are answerable to only “One” body in terms of issues such as inspection and salaries but not “answerable to “on” body in terms ...”.
- (xii) On page 7 of the minutes [under MIN. TWGK/CCAC/57:Presentation by Prof. Ghai], “Resolved” no.1 was amended to read: -

“The discussion regarding the President’s term of office be deferred until the discussion on chapter eighteen [amendment to the Constitution]”.

But not:

The discussion regarding the President’s term of service be deferred until delegates were provided relevant reading materials on the issue.

MIN. TWGK/CCAC/65: MATTERS ARISING

(I) Reading materials

Noted:

That the discussion on the presentation by the Chairman Prof.Yash Pal Ghai on the entrenchment of the Presidents term in the Constitution had been deferred to allow the members be supplied with reading materials on experience in other countries.

Raised:

- Whether the chair should rule that the secretariat provide the reading materials promised by the Chairman, Prof. Ghai.
- Whether the reading materials in question were only relevant to the drafts people.
- Whether it was resolved the previous day that the chair was to facilitate the provision of reading materials promised by Prof. Ghai.

Resolved:

- That the resolution (“Resolved”) on page 7 of the previous day minutes (MIN. TWGK/CCAC/57) purporting that the discussion on Prof. Ghai’s presentation had been deferred pending the supply of reading materials had since been amended to read that the discussion was deferred until the discussion on chapter eighteen of the Draft Bill on amendments to the Constitution.
- That reading materials were not a preserve of a given class of people.

MIN. TWGK/CCAC/65:

**CONTINUATION OF THE DISCUSSION ON
ESTABLISHMENT OF TEACHERS SERVICE
COMMISSION (Ref. MIN. TWK/CCAC/57)**

- i. Whether the Teachers Service Commission should be made a Constitutional Commission.

Discussed:

The need for Teachers Service Commission to be made a full and independent constitutional commission (from the previous day's discussion).

- The maximum number of membership of the Teachers Service Commissioners.
- The membership of the Teachers Service Commission.

Resolved:

- Teachers Service Commission should be made a Constitutional Commission.
- Teachers Service Commission should have a maximum of ten commissioners.
- Its membership to include Primary, Secondary and Teachers Training Colleges teachers.

MIN. TWGK/CCAC/66: PRESENTATIONS.

Hon Pamela Mboya (Del. No. 473)

Discussed:

- The need for inclusion of the elderly people agenda in the Human Rights issues.
- The need for representation of the elderly in the Human Rights Commission.
- The oppression and marginalization of the elderly.
- The poor support and care system for the elderly.

Raised:

- The need for amendments of Article 288(c) (1) by including a sub-article to provide that one of the commissioners to the Human Rights Commission should be a person having knowledge of the elderly people issues.

Resolved:

- That the elderly are catered for in the Commission for Human Rights vide Article 36(4) of the Draft Bill.
- That one of the Commissioners to the Human Rights Commission should be a person with relevant knowledge on human rights issues of the elderly.

Hon. Winstone Adhiambo Ogolla (Del. No. 603):

Fisheries Commission

Proposed:

- The establishment of the Fisheries Commission to address the plight of fishermen in Lake Victoria and to develop, protect and exploit Kenya's Exclusive Economic Zone (EEZ) in Indian Ocean.

Resolved:

- That the presenter should liaise with the proponents for the Agricultural Commission to make their case stronger and come later to argue their case.

Hon. Anne Okoth (Del. No. 474):

Health Services Commission

Proposed:

- The formation of the Health Services Commission.

Background:

- There are similar commissions in Uganda, Botswana and the United Kingdom.

Raised:

- The need for Health Services Commission to cater for the development of Health Workers, enhancement of research and health services delivery.

Discussed:

- The operational relationship between such a commission and the Ministry of Health.
- The status in terms of superiority between the proposed Health Services Commission and the Ministry of Health.
- The budgetary allocation to the proposed commission in the light of the Ministry of Health.
- The likelihood of duplicity of roles with those of the Ministry of Health.

Emerged:

- It emerged that public health workers were preparing to make a presentation on the need for formation of Public Health Workers Constitutional Commission.

Resolved:

- That the presenter should liaise with the representatives of the Public Health Workers with a view of consolidating their presentation for purposes of strengthening their case.

Hon. Kaitany Ernest Kiprotich (Del. No. 341)

Sports Commission

Proposed:

- The enactment of the Sports Commission in the Constitution.

Discussed:

- The neglect of sports department in the country.
- The benefits of sporting activities to the country.
- The mismanagement of sports facilities.
- The need for recognition of sports heroes and achievers.
- The need for a sports policy.
- The subordination of sports matters to gender issues in the Ministry of Gender and Sports.

Resolved:

- The presenter was requested to come back so as to have adequate time to indepthly and exhaustively discuss the need for enactment of the sports commission in the constitution.

MIN. TWGK/CCAC/67: CONTINUATION OF DISCUSSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE COMMISSION, COMPOSITE NATURE

(i) Reaffirmation

- The members reaffirmed their resolution to curve out the Gender Commission from the Human Rights and Administrative Justice Commission.
- The members also reaffirmed their resolution that the Gender Commission should have only three commissioners, at least a third of who shall be women.

(ii) **The Human Rights Commission and the Ombudsman**

Revisited:

- The split of the Human Rights and Administrative Justice into three commissions i.e. the Gender Commission, the Human Rights Commission and the Peoples Protector/ Ombudsman.

Proposed:

- That the People's Protector should be a constitutional office just like the Public Defender.
- That the Human Rights Commission and the People's Protector/Ombudsman should be a single commission.

Raised:

- Concern for designated constitutional offices for particular groups/ classes of people.

NATIONAL CONSTITUTIONAL CONFERENCE

September 22nd, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON MONDAY, 22ND SEPTEMBER, 2003 AT 10.30 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. Benson Mbai
4. Hon. G.G. Gichuru
5. Hon. J.B. Muturi
6. Hon. Jane Mutunga
7. Hon. Kamama Asman
8. Hon. Leah Ndeke
9. Hon. Ruth Kibiti
10. Hon. Kimaiyo arap Segoo
11. Hon. Nkoroi Peter Kangethe
12. Hon. Thomas Nyabote Aburi
13. Hon. Francis Ng’ang’a
14. Hon. Julius Sitienei
15. Hon. John M. Kiniti
16. Hon. Danson Mungatana
17. Hon. Julius Mworira

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Kirugi M’Mukindia
4. Hon. Midiwo Washington Jakoyo
5. Hon. Moody Awori
6. Hon. Ole Ntutu Stephen K.
7. Hon. P. Muiruri
8. Hon. Salah Maalim Alio
9. Hon. Makau Mutua
10. Hon. Nur Ibrahim Abdi
11. Hon. Gichira Kibara

ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Fredrick Oundo - NCC Secretariat

3. Jonuba Bekah - NCC Secretariat
4. Asha Boru - NCC Secretariat

AP0LOGIES

1. Comm. Keriako Tobiko - Rapporteur
2. Hon. Zeruiah Otwani

MIN. TWGK/CCAC/70: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 10.30 a.m. and invited Hon. Ajuoga Milka Aoko to lead prayers.

MIN. TWGK/CCAC/71: COMMUNICATION FROM THE CHAIR

The Convenor announced that the Rapporteur General would like to have:-

- ii. A list of committee members who have never attended the committee's sittings.
- iii. A list of delegates who are not members of the committee but regularly attend.
- iv. Names of the delegates who wish to go to the Cultural Committee.

The Convenor observed that the Committee had made tremendous progress and was in a position to finish the discussions under Volume One of the Main Report as soon as possible. He stated that the next thing the Committee would do, would be to give a chance to anyone with a presentation to make before the Committee finally embark on the Draft Bill Chapters Seventeen and Eighteen article by article.

MIN. TWGK/CCCAC/72: MOTION OF ADJOURNMENT

Hon. Ruth Kibiti moved a motion of adjournment at 10.45 a.m. seeking adjournment of the meeting for tea break and to accord the members time to read through their minutes.

The Committee adjourned at 10.45 a.m. for tea break.

MIN. TWGK/CCCAC/73: CONFIRMATION OF PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. Ruth Kibiti who was seconded by Hon. Kimaiyo arap Segoo.

MIN. TWGK/CCCAC/75: CONTINUATION OF THE CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMISSION (REF. TWGK/CCAC/28)

- (e) The Ethics and Integrity Commission

Noted:

- The Ethics and Integrity Commission’s Code as set out in the 5th Schedule to the Draft Bill belongs to a different committee.
- Article 289 of the Draft Bill, the “Ethics and Integrity Commission” falls within the mandate of this technical Working Committee.
- Discussing the Ethics and Integrity Commission would amount to duplicity of roles.

Resolved:

- That the Leadership and Integrity Code of Conduct as at 5th Schedule should left to the relevant committee to avoid duplicity.
- The commissions overlapping to other groups should be dealt with at the harmonization stage.

(f) The Salaries and Remuneration Commission

Mandate of the Commission

- To set salaries, allowances and benefits of all constitutional office holders and members of constitutional commissions.
- To set salaries, allowances and benefits of Members of Parliament.
- To set salaries, allowances and benefits of all public servants as well as employees of parastatals.
- To set pensions of constitutional office holders.
- To harmonize the terms of service and salaries (of the groups of people set above)

Raised:

- Whether profit driven parastatals should be subjected to the same harmonization in terms of salaries, allowances and benefits.
- That the genesis of the recommendations to establish the Salaries and Remuneration Commission was mainly as a reaction by the public to the issue of Members of Parliament endorsing recommendations to increase their salaries and improve their terms of service.
- Who pays and regulates salaries, allowances and benefits of commissioners to Salaries and Remuneration Commission?
- The need to invite experts from Parliament, Public Service Commission, Directorate of Personnel Management, Deloitte and Touche and PriceWaterhouse Coopers to give expert advice on the issue of salaries and remuneration.
- The fear of entrusting Parliament with the process of setting or approving salaries of the constitutional commissions.

NATIONAL CONSTITUTIONAL CONFERENCE

September 23rd, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE ELEVENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY, 23RD SEPTEMBER, 2003 AT 9.45 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. J.B. Muturi
5. Hon. Jane Mutunga
6. Hon. Julius Mworira
7. Hon. Kamama Asman
8. Hon. Leah Ndeke
9. Hon. Midiwo Washington Jakoyo
10. Hon. Ruth Kibiti
11. Hon. Kimaiyo arap Sego
12. Hon. Nkoroi Peter Kangethe
13. Hon. Thomas Nyabote Aburi
14. Hon. Francis Ng’ang’a
15. Hon. Julius Sitienei
16. Hon. John M. Kiniti
17. Hon. Nur Ibrahim Abdi

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Benson Mbai
4. Hon. Kirugi M’Mukindia
5. Hon. Moody Awori
6. Hon. Ole Ntutu Stephen K.
7. Hon. P. Muiruri
8. Hon. Salah Maalim Alio
9. Hon. Makau Mutua
10. Hon. Gichira Kibara
11. Hon. Danson Mungatana
12. Hon. Newton Kulundu

ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Fredrick Oundo - NCC Secretariat

- | | | |
|-----------------|---|-----------------|
| 3. Jonuba Bekah | - | NCC Secretariat |
| 4. Asha Boru | - | NCC Secretariat |

APOLOGIES

- | | | |
|------------------------|---|------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Hon. Zeruiah Otwani | | |

MIN. TWGK/CCAC/78: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 10.30 a.m. and invited Hon. Ruth Kibiti to lead prayers.

MIN. TWGK/CCAC/79: COMMUNICATION FROM THE CHAIR

The Convenor announced that the Committee was to have presentations from the Health, Heroes and Sports sectors.

He said that after the presentations, the next business would be to formally look at the articles of the Draft Bill.

MIN. TWGK/CCCAC/80: PRESENTATIONS

- (I) *Hon. Nkorori Peter Kang'ethe (Del. No. 278)*

THE HEALTH SERVICES COMMISSION

Background

- Health is an important sector of the country.
- Health status in the country is deteriorating.
- The rampant mismanagement of health sector and funds.
- The health policy in the country has not worked out.
- There are similar commissions in Uganda, United Kingdom and the United States that has managed to contain pandemics like HIV/AIDs.
- The socio-economic needs of Kenya dictate the need for such a commission.
- That there was no likelihood of clash of functions with the Ministry of Health.
- That health issues would be integral in the process of devolution.
- The objective of the commission is to ensure that Kenyans have, quality and efficient health care.
- Such a commission should be able to curb brain drain by the doctors.
- Such a commission will harmonize the health profession, implement policies and regulate standards of health care.
- To address unfair distribution/staffing of doctors across the country caused by political interferences.

- Any possible conflict with the Ministry of Health in terms of budgetary allocations shall be dealt with through checks and balances in Parliament and the people.

Raised:

- Whether the issue of health should be managed through the Health Ministry or Commission.
- Who is to manage the private health sector.
- The fear of duplicity of roles with the Ministry of Health.
- The fear that a separate Public Health Commission would disable the Public Service Commission.
- Whether the establishment of a Health Service Commission was among the views given by Kenyans.
- The fear that commissions do not necessarily mean efficiency and transparency.
- The neglect of the environmental health.
- The need for fair distribution of doctors across the country.
- The need for quality training of doctors.
- The need for special consideration of the health of the disadvantaged groups.

Discussed:

- The need for health sector being free from political interference.
- The need for medical professionals being answerable to fellow professionals.

Resolved:

- That the Health Service Commission came up at the Plenary and that it was legitimately before this committee.
- Functions of the proposed Public Health Commission as being: -
 - i. Employment of health personnel
 - ii. Approval and discipline of the professionals.
 - iii. Registration of professionals.
 - iv. Evaluation and preservation of facilities standards.
 - v. Formulation of budget.
 - vi. Management of emerging diseases.
 - vii. Ensuring effective distribution of effective health care to the people.
- The need for accountability of the health sector in addition to audit and inspection.
- The need for divorcing public health from politics.
- The role and effectiveness of management boards in the health sector.

Distinguished:

- The broad functions of the proposed Public Health Services Commission is enhancement of professionalism and service delivery whereas the Ministry of Health is to deal with infrastructural and regulatory roles in addition to international relations.

Emerged:

- That the Bill of Rights recognizes every person's right to access health care.
Resolved:
- The Committee resolved to form the Public Health Service Commission.

(ii) *Hon. Gitu wa Kahengeri (Del. No. 316)*

THE HEROES AND HEROINE COMMISSION

Background

- Page 124 (a) sub-section (c) of Volume One of the Main Reports, says that the Constitution shall salute all those who fought for Kenya's freedom.
- The preamble to the Draft Bill also recognizes the role of freedom fighters.
- That heroes and heroines are not only restricted to Mau Mau war veterans.
- That freedom fighters also goes beyond pre-independence struggle to the recent struggle for democracy and respect for human rights.
- There is total neglect of freedom fighters.
 - The Constitution of the United States (Preamble) honours its heroes.

Proposed:

- Formation of the Heroes Commission to cater for Kenya's freedom and democracy fighters.
- Composition of the Heroes Commission should be the Chairman, Vice-Chairman, a government representative and two journalists.
- That the Heroes Commission should have its secretariat and its funds should come from the Consolidated Fund.
- That the functions of the Heroes Commission should be: -
 - a. To establish who are Kenyan heroes.
 - b. To find ways and means of honouring heroes.
 - c. To fund writing of books and production of films in honour of heroes.
 - d. To maintain Kenya's heroes cemeteries.
 - e. To build monuments in honour of the heroes.
 - f. To establish heroes centres.
 - g. To take care of known graves of Kenyan heroes.
 - h. To enhance heroism in Kenya.

Raised:

- It was raised by a delegate that the journalists should be replaced with researchers in the composition of the Heroes Commission.
- The current Constitution is silent on the issue of heroes.
- That the definition of heroes should not only be left to politicians.
- The question on what is to be done to the living heroes and war veterans before the implementation of the constitution.

Suggested:

- Whether the proposed Heroes Commission could be joined with the proposed Sports Commission.

Resolved:

- Formation of the Heroes Commission as an independent Constitutional Commission.
- That the Heroes Commission among its functions, shall be to define who is a hero, war veterans, and participation in the awards of national honours.
- That the question as to what should be done to the living heroes and war veterans immediately before the enactment of the new Constitution is a transitional question to be recommended or forwarded to the relevant committee. i.e. Technical Working Committee on Transitional and Consequential Arrangements.

(iii) Hon. Ernest Kiprotich Kaitany (Del. No. 341)

NATIONAL SPORTS COMMISSION

(Ref. TWGK/CCAC/66) Continuation of Discussion
on formation of the National Sports Commission

Proposed:

- Formation of National Sports Commission.

Discussed:

- Neglect of sports in the country.
- Benefits of sports in the country.
- The need for recognition of sports heroes and achievers.
- The need for a sports policy.
- The political interference in sports matters.

Raised:

- The fear that the establishment of the Sports Commission could interfere with the Ministry dealing with Culture, Gender and Sports.

Suggested:

- To recommend to the Transitional and Consequential arrangements Committee to recommend an immediate enactment of the National Sport Commission Act.
- Fusing of the National Sports Commission with the Heroes Commission.
- Fusing of the National Sports Commission with the proposed Youth Commission.

Deferment:

- The Committee was hit by lack of quorum occasioning adjournment of the motion to the next day, Wednesday, September 24, 2003.

MIN. NO. TWGK/CCAC/81: QUORUM

Hon. Justin B. Muturi informed the Chair of lack of quorum hence occasioning adjournment of the meeting.

MIN. NO. TWGK/CCAC/82: DATE OF NEXT MEETING

The date of the next meeting was set for Wednesday, September 24, 2003.

MIN. NO. TWGK/CCAC/83: ADJOURNMENT

The meeting adjourned at 3.50 p.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 24th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - iii. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWELVETH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 24TH SEPTEMBER, 2003 AT 11:45 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon G .G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Julius Mworio
6. Hon. Leah Ndeke
7. Hon. Ole Ntutu Stephen K
8. Hon. Ruth Kibiti
9. Hon. Nur Ibrahim Abdi
10. Hon. Kimaiyo arap Sego
11. Hon. Nkoroi Peter Kange’the
12. Hon. Thomas Nyabote Aburi
13. Hon. Francis Nga’ng’a
14. Hon. Julius Sitienei
15. Hon. John M. Kiniti
16. Hon. Zeruah Otwani

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Jonuba Bekah - NCC Secretariat
3. Asha Boru - NCC Secretariat
4. Fredrick Oundo - NCC Secretariat

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Benson Mbai
4. Hon. J. B. Muturi
5. Hon. Kamama Asman
6. Hon. Midiwo Washington Jakoyo
7. Hon. Moody Awori
8. Hon. Danson Mungatana
9. Hon. Kirugi M’Mukindia
10. Hon. Newton Kulundu
11. Hon. P. Muiruri
12. Hon. Salah Maalim Alio

13. Hon. Makau Mutua

APOLOGIES

Comm. Keriako Tobiko - Rapporteur

MIN. TWGK/CCAC/84: COMMENCEMENT OF MEETING AND PRAYERS

The chair called the meeting to order at 11:55 a.m. and invited Comm. Riunga Raiji to lead prayers.

MIN. TWGK/CCAC/85: COMMUNICATION FROM THE CHAIR

- a. The chair requested the delegates to ensure that they fill in the form they had received from the Secretariat
- b. He gave members a brief outline of what had transpired during the Convenor's meeting and said that the main issue of concern was that they might be running a risk of forming a government run by Commissions. It was therefore decided that any further presentations on the establishment of commissions be deferred until they seek expert advice.
- c. The expert invited to advise the committee on the architecture of governance with respect to commissions was Dr. Githu Muigai who would grace the committee with his presence the following day, Thursday 25th September, 2003
- d. He informed the delegates that they would begin considering article by article and standing them part of the bill with a target of finalising by Friday 26th September 2003
- e. The chair requested that they confirm the minutes of Monday 22nd September 2003

**MIN. TWGK/CCAC/86: CONFIRMATION OF MINUTES OF MONDAY
22ND SEPTEMBER 2003**

The minutes were proposed for confirmation by Hon. Thomas Nyabote Aburi who was seconded by Hon. Nur Ibrahim Abdi.

The minutes were confirmed subject to the following corrections:-

- Ethics and Integrity Commission, p. 3, bullet one under resolved should read The Leadership and Integrity Code of Conduct (Schedule five) should be left to the relevant commission to avoid duplicity of roles and not That the Ethics and Integrity Commission should be left to the relevant committee to avoid duplicity of roles

- MIN. TWGK/CCAC/71 Should read Communication from the Chair and not Communication form the chair

MIN. TWGK/CCAC/87: CONFIRMATION OF PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. Thomas Nyabote Aburi who was seconded by Hon. Francis Nga'ng'a

The minutes were confirmed subject to the following corrections: -

- That Hon. Nkoroi Peter Kang'ethe's name at pg. 1 should be spelt correctly
- Under the Heroes and Heroine Commission, under sub-heading "background", bullet one should read Page 125 (a) sub-section (c) of Volume one of the Main report and not page 124

MIN. TWGK/CCAC/88: REQUEST TO INVITE HEAD OF POLICE

Hon. Thomas Nyabote Aburi requested the Chair to invite Hon. Kin'gori Mwangi to present his case for the Police Service Commission.

Resolved:

- Not all commissions are formed under chapter seventeen.
- The Police Service Commission does not fall under the mandate of the technical committee on Constitutional Commissions.
- If a Police Service Commission is established in the Committee on Defence and National Security then its functions the principles provided for in Chapter seventeen (Article 278).

MIN. TWGK/CCAC/89: CONSIDERATION OF ARTICLES: CHAPTER SEVENTEEN

ARTICLE 278

The question was put that Article 278 be amended to read:

"The principles provided for in this Chapter apply to all constitutional commissions except where specific provision is made to the contrary in the constitution"

Resolved:

Article 278 stands part of the bill as amended.

ARTICLE 279

Article 279(1)

Raised:

- The word “people” at Article 279(1a) should be replaced with the words ‘men and women’ so as read “ to protect the sovereignty of men and women”.
- The word ‘people’ encompasses men and women
- The explanation of the word ‘people’ should be put in the appendix for definition of terms
- The definition of the word ‘people’ should be referred to the committee on culture

Resolved:

Article 279(1a), (1b) and (1c) stands part of the bill without amendment.

Article 279(2a) & (2b)

Resolved:

That Article 279(2a) & (2b) stand part of the bill without amendment.

Article 279(3)

Raised:

- The words ‘where appropriate’ in the second line of the sub-article (3) should be deleted.
- Sub-article (3) should be amended to read: “A constitutional Commission shall where appropriate, establish branches at devolution units as established elsewhere in the Constitution”.
- Constitutional Commissions should offer their services free of charge so as to enhance enjoyment of services by all categories of people
- Whether government as a member of the public would be entitled to seek services of a commission
- That the use of the word ‘people’ rather than ‘ public’ encompasses a wide range of people who may not necessarily fit in the realm of the dignity of people of the country.

Proposed:

That Article be sub-divided into parts (a) & (b) to read as follows:-

- (3). A Constitutional commission shall where appropriate:
- a) establish branches using its own staff at all levels of devolved sphere of government
 - b) offer their services to the public free of charge

Resolved:

That Article 279(3) stands part of the bill as amended

MIN. TWGK/CCAC/90: QUORUM

Hon. Nur Ibrahim Abdi informed the chair of the lack of quorum

MIN. TWGK/CCAC/91: DATE OF NEXT MEETING

The date of the next meeting was set for Thursday 25th September 2003

MIN. TWGK/CCAC/92: ADJOURNMENT

The meeting adjourned at 1.10 p.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 25th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - iv. Constitutional Commission and Offices (Chapter 17)
 - v. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - vi. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE THIRTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY 25TH SEPTEMBER, 2003 AT 10.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon G .G. Gichuru
4. Hon. J. B. Muturi
5. Hon. Jane Mutunga
6. Hon. Julius Mworira
7. Hon. John Mutiso
8. Hon. Kamama Asman
9. Hon. Leah Ndeke
10. Hon. Midiwo Washington Jakoyo
11. Hon. Danson Mungatana
12. Hon. Ole Ntutu Stephen K
13. Hon. Ruth Kibiti
14. Hon. Nur Ibrahim Abdi
15. Hon. Kimaiyo arap Sego
16. Hon. Nkoroi Peter Kange'the
17. Hon. Thomas Nyabote Aburi
18. Hon. Francis Nga'ng'a
19. Hon. Julius Sitienei
20. Hon. John M. Kiniti
21. Hon. Zeruiah Otwani

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Jonuba Bekah - NCC Secretariat
3. Asha Boru - NCC Secretariat
4. Fredrick Oundo - NCC Secretariat

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Benson Mbai
4. Hon. Gichira Kibara
5. Hon. Kirugi M'Mukindia
6. Hon. Moody Awori
7. Hon. Newton Kulundu

8. Hon. P. Muiruri
9. Hon. Salah Maalim Alio
10. Hon. Makau Mutua

APOLOGIES

1. Comm. Riunga Raiji - Rapporteur.

MIN. TWGK/CCAC/93: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 10: 15 a.m. and invited Hon. Ruth Kibiti to lead prayers.

MIN. TWGK/CCAC/94: COMMUNICATION FROM THE CHAIR

- He informed the delegates that the Deputy Director Human Resources, Directorate of Personnel Management (DPM), was invited to address the issue of possible loss of financial autonomy by establishment of the Salaries and Remuneration Commission.
- He said that Dr. Githu who was earlier invited to talk on how Constitutional Commissions fit into the architecture of the draft bill would not be available due to another engagement at the technical committee on the executive. His talk was rescheduled for November 2003 when the Committee reconvenes.

MIN. TWGK/CCAC/95: PRESENTATION (DPM) HON. JOAB OKAKA MANYALA

Point of debate: Whether the Salaries and Remuneration Commission encroach on commissions' financial independence.

Presented:

- Every year parastatal bodies must prepare their expenditure estimates and submit them to the office of the President
- Majority of these bodies draw funds from the ex-chequer
- The formation of a Salaries Review Body is to ensure that people receive salaries commensurate to their expenditure and qualifications
- Whether the Salaries and Remuneration Commission should be a regulatory body to harmonise salaries or a determining body to set salaries
- Terms and conditions of employment encompass more than the issue of salaries, the Salaries and Remuneration Commission will only deal with salaries rather than terms and conditions.
- Bodies with the ability to pay higher salaries will be allowed to do so as long as they do not affect the consumer and the ex-chequer

- The classification of parastatals will be removed
- Concern over the duplicity of roles between the Salaries and Remuneration Commission and the Public Service Commission
- The Regulatory role of the Salaries and Remuneration Commission will enable different Commissions to maintain their financial autonomy

MIN. TWGK/CCAC/96: CONSIDERATION OF ARTICLE 290: SALARIES AND REMUNERATION COMMISSION

Article 290

Raised:

- Who is to determine the Salaries of the Commissioners to the Salaries and Remuneration Commission
- Article 290(1)(c) should retain the Public Service Commission representative to the Salaries and Remuneration Commission, since the former is a stakeholder.
- Article 290(1)(e) should read: “one nominee from an umbrella body representing employers”
- Article 290(1)(e) should have representation of Trade Unions
- Representation appears to be very elitist and there need to be representation of ‘ordinary people’ such as farmers and pastrolists.

Proposed:

Article 290(1) should read: -

“The Salaries and Remuneration Commission shall consist of:-

g) one representative from the informal sector

h) one representative from the farmers

i) one representative from Treasury”.

The Convenor put the question that Article 290 (1)(a) through to Article 290(1)(i) stand part of the bill as amended and Article 290(3) be deleted as the Leadership and Integrity Code is the mandate of another committee

Resolved:

- That Article 290(1)(c) be deferred until after the presentation from representatives of the Public Service Commission
- Article 290 (3), stand deleted.
- Article 290 stands part of the bill as amended (save sub-article (1) (c)).

MIN. TWGK/CCAC/97: CONFIRMATION OF THE PREVIOUS MINUTES

The minutes were proposed for confirmation by Hon. John M. Kiniti who was seconded by Hon. Thomas Nyabote Aburi.

The minutes were confirmed subject to the following corrections:

- Under MIN. 88, resolved, bullet three should read: “If a Police Service Commission is established in the Committee on Defence and National Security then the principles provided for in Chapter Seventeen (Article 278) apply”.
- Under MIN. 87, bullet two it should read: Page 125(i) paragraph c of Volume one of the Main Report.
- Hon. Francis Ng’ang’a’s name is spelt incorrectly

MIN. TWGK/CCAC/98: CONTINUATION OF CONSIDERATION OF ARTICLES

ARTICLE 280

Proposed: Article 280 (1a), (1b) and (1c) should stand part of the bill.

Resolved:

Article 280 (1a), (1b) and (1c) stand part of the bill without amendment

ARTICLE 281

Article 281(1)

Raised:

- That the phrase “...at least one-third of whom shall be women” should be replaced by “...and shall be subjected to the principles 'of affirmative action”.
- The concept of affirmative action is temporary but the use of specific words such as women is permanent.
- How would the one-third aspect of composition of women fit into the composition of the Salaries and Remuneration Commission?

The question was put that Article 281(1) should read:

A Constitutional Commission shall consist of not less than three and not more than ten members and shall be subjected to the principles of affirmative action.

Resolved:

Article 281(1) stands part of the bill as amended.

Article 281(2)

Raised:

- Concern over how members of a constitutional commission are identified and recommended
- Whether there should always be a distinction between the chair person and other commissioners in terms of independence of Commissions
- The process of recommendation and identification can be created in Article 289(2)(g)

Proposed:

i) That article 281(2) be broken and down to read:

Members of a Constitutional Commission shall be

- a. Identified and recommended as provided for under Article 289(2g)
- b. appointed by the President
- c. approved by Parliament

ii) That a new Article 281(5) be added and read:

Members of a Commission at their first meeting elect their Chairman amongst themselves.

Resolved:

- Article 281(2) stands part of the bill as amended
- Article 281(5) a new article stands as part of the bill.

MIN. TWGK/CCAC/99: PUBLIC SERVICE COMMISSION PRESENTATION
(CHAIRMAN, MR. ABDULLAHI M. H. SHARAWE)

Background:

- Colonial government established three different civil services with three different terms and conditions organized on racial terms
- In 1956 a move was made to abolish the three different services
- The Public Service Commission was formed in 1965
- Before the commission was formed, the executive handled commissions through ad hoc committees
- From 1967 different commissions were formed for e.g. the *Ndegwa Commission*
- The Government formed the Kipkulei Commission to ensure the principle of equal pay for equal work is upheld
- Kipkulei Commission looked at the whole public sector and established a need for the government to form a permanent Pay Review Board
- The Public Service Commission has never been responsible for terms and conditions

- The historical perspective of the Public Service Commission gives justification for it being part of the composition of the Salaries and Remuneration Commission

Discussed:

- Whether the Pay Review Board and the Salaries and Remuneration Commission will perform the same functions
- Whether one commissioner should sit in more than one commission
- The commissions are not separate as such as there will be dynamic movement between commissions

Resolved:

- That the Pay Review Board will be a body functioning within the Salaries and Remuneration Commission; it is not to be a permanent body.

MIN. TWGK/CCAC/100: RESOLUTION ON DEFERRED ARTICLE 290 (1) (c)

Resolved:

That article 290 (1)(c) stands part of the bill without amendment

MIN. TWGK/CCAC/101: DATE OF NEXT MEETING

The date of the next meeting was set for Friday the 26th day of September 2003.

MIN. TWGK/CCAC/102: ADJOURNMENT

The meeting was adjourned at 4:00 p.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

September 26th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Friday, September 26, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
Articles: 281, 282, 283, 284, 285 , 287, 288, 289,
292, 293 and 294
9. Any Other Business.
10. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FOURTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON FRIDAY 26TH SEPTEMBER, 2003 AT 10.30 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon G .G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Kamama Asman
6. Hon. Leah Ndeke
7. Hon. Ruth Kibiti
8. Hon. Nur Ibrahim Abdi
9. Hon. Kimaiyo arap Sego
10. Hon. Nkoroi Peter Kange'the
11. Hon. Thomas Nyabote Aburi
12. Hon. Julius Sitienei
13. Hon. John M. Kiniti
14. Hon. Zeruah Otwani

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Jonuba Bekah - NCC Secretariat
3. Fredrick Oundo - NCC Secretariat
4. Asha Boru - NCC Secretariat

ABSENT

1. Hon. A. Ewaton
2. Hon. Anne Njogu
3. Hon. Benson Mbai
4. Hon. J.B Muturi
5. Hon. Julius Mworira
6. Hon. Gichira Kibara
7. Hon. Kirugi M'Mukindia
8. Hon. Midiwo W. Jakoyo
9. Hon. Moody Awori
10. Hon. Danson Mungatana
11. Hon. Newton Kulundu
12. Hon. Ole Ntutu Stephen K.
13. Hon. P. Muiruri
14. Hon. Salah Maalim Alio

15. Hon. Makau Mutua

APOLOGIES

1. Comm. Keriako Tobiko
2. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/103: COMMENCEMENT OF MEETING AND PRAYERS

The Chair called the meeting to order at 10:40 a.m. and invited Hon. Thomas Nyabote Aburi to lead prayers.

MIN. TWGK/CCAC/104: COMMUNICATION FROM THE CHAIR

- He informed the delegates that they should resolve to congratulate Hon. Moody Awori on his appointment as the Vice President. His proposal was seconded by Hon. Kimaiyo Arap Sego
- He asked the secretariat to prepare a list of all articles that the committee had stood part of the bill so far

MIN. TWGK/CCAC/105: CONFIRMATION OF MINUTES

The minutes were proposed for confirmation by Hon. Nur Ibrahim Abdi who was seconded by Hon. John M. Kiniti.

The minutes were confirmed subject to the following corrections:

- Hon. Salah Maalim Alio should not appear on the attendance list since he had become a member of the Committee on Bill of Rights
- Pg. 3 bullet no. 2 should read: 'to their experience'

MIN. TWGK/CCAC/106: MATTERS ARISING

The informal sector needs to be properly identified, as there are several Categories of the informal sector

MIN. TWGK/CCAC/107: MANDATE OF THE ECK

Hon. John M. Kiniti enquired about a motion he had moved earlier to expand the mandate of the Electoral Commission so that once various units are proposed, the ECK can draw boundaries.

Resolved:

- That the ECK is not within the mandate of the committee except with regard to principles as set out in Article 278.

- That the boundaries commission is the mandate of a different committee
- Hon. Kiniti was advised to present his motion to the relevant committee

MIN.TWGK/CCAC/108: CONTINUATION OF CONSIDERATION OF ARTICLES

Article 281(3)

It was proposed that there should be a new Art. 281(3a), which should read: “A member of a Constitutional Commission shall have qualifications relevant to the functions of that commission to which he or she is appointed”.

Resolved:

- ❖ That Art. 281(3a) stands part of the bill as amended and Art. 281(3b) to (3d) stand part of the bill as newly re-arranged therefore previous (3a) becomes (3b), (3b) becomes (3c) and (3c) becomes (3d). Previous article (3d) which read: “.....*shall comply with the Leadership and Integrity Code of Conduct*”, is deleted.

Article 281(4) reads;

“A member of a Constitutional commission is not liable to an action or a suit for a matter or anything done in good faith in the performance of a function of office as a member.”

Resolved:

- ❖ That Art. 281(4) stands part of the bill without amendment

MIN. TWGK/CCAC/109: MOTION OF ADJOURNMENT

Hon. John M. Kiniti moved a motion of adjournment so as to allow delegates attend plenary meeting.

MIN. TWGK/CCAC/110: DATE OF NEXT MEETING

The date of the next meeting was tentatively set for Monday the 17th day of November 2003

MIN. TWGK/CCAC/111: ADJOURNMENT

The meeting was adjourned at 11:10 a.m

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

January 13th, 2004

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Tuesday, January 13, 2004 in Tent No. 11, Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Specific Debate on:
Articles: 282, 283, 284, 285, 286, 287, 288, 289,
291, 292, 293, 294, 295, and 296
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FIFTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY 13TH JANUARY, 2004 AT 12.10 P.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
3. Hon. E. Ewaton
4. Hon. Benson Mbai
5. Hon. Ajuoga Milka Aoko
6. Hon. G.G. Gichuru
7. Hon. J.B. Muturi
8. Hon. Jane Mutunga
9. Hon. Kamama Asman
10. Hon. Midiwo Washington Jakoyo
11. Hon. Ruth Kibiti
12. Hon. Kimaiyo arap Sego
13. Hon. Nkoroi Peter Kang’ethe
14. Hon. Francis Ng’ang’a
15. Hon. Julius Sitienei
16. Hon. Zeruiyah Otwani
17. Hon. Gichira Kibara

IN ATTENDANCE

1. Comm. Riungu Raiji - Rapporteur
2. Comm. Keriako Tobiko - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsperson
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Moody Awori
3. Hon. Kirugi M’Mukindia
4. Hon. Benson Mbai
5. Hon. Danson Mungatana
6. Hon. Newton Kulundu
7. Hon. P. Muiruri
8. Hon. Makau Mutua
9. Hon. Thomas Nyabote Aburi
10. Hon. John M. Kiniti

11. Hon. John M. Mutiso

APOLOGIES

Hon. Nur Ibrahim Abdi

MIN. TWGK/CCAC/112: COMMENCEMENT OF MEETING AND PRAYERS.

The meeting was called to order at 12.10 p.m. The Convenor welcomed the delegates back to Bomas III and invited Hon. Ruth Kibiti to lead prayers.

MIN. TWGK/CCAC/113: COMMUNICATION FROM THE CHAIR

The Convenor reminded the delegates that having discussed the report, they would discuss the remaining articles and dispose them off without delay. He also requested them to go through the Rapporteur General’s Report and the Committee’s Interim Report.

Hon. Ruth Kibiti proposed a motion that the Committee adjourns until 2.30 p.m. to allow delegates time to go through the Rapporteur General’s Report and the Committee’s Report.

Hon. Peter Kang’ethe moved an amendment to the above motion that the Committee adjourns until tomorrow, Wednesday, 14th January 2004 so that the delegates could get ample time to study the two reports.

The motion was agreed to.

MIN. TWGK/CCAC/114: ADJOURNMENT

The meeting was adjourned at 12.30 p.m. until 9.30 a.m. Wednesday, January 14, 2004.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 14, 2004

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, January 14, 2004 in Tent No. 11, Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. **Specific Debate on:**
Articles: 282, 283, 284, 285, 286, 287, 288, 289,
291, 292, 293, 294, 295, and 296
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SIXTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 14TH JANUARY, 2004 AT 9.45 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
3. Hon. Ajuoga Milka Aoko
4. Hon. G.G. Gichuru
5. Hon. J.B. Muturi
6. Hon. Jane Mutunga
7. Hon. Kamama Asman
8. Hon. Leah Ndeke
9. Hon. Midiwo Washington Jakoyo
10. Hon. Ruth Kibiti
11. Hon. Kimaiyo arap Sego
12. Hon. Nkoroi Peter Kang’ethe
13. Hon. Francis Ng’ang’a
14. Hon. Julius Sitienei
15. Hon. Zeruiyah Otwani
16. Hon. Gichira Kibara
17. Hon. Thomas Nyabote Aburi
18. Hon. John M. Kiriti
19. Hon. John M. Mutiso

IN ATTENDANCE

1. Comm. Riungu Rajji - Rapporteur
2. Comm. Keriako Tobiko - Rapporteur
3. Mrs. Esther Kamau - Clerk, National Assembly
4. Mr. Fredrick Oundo - NCC Secretariat
5. Mrs. Sahara D. Ibrahim - NCC Secretariat
6. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Moody Awori
2. Hon. Kirugi M’Mukindia
3. Hon. Benson Mbai
4. Hon. Danson Mungatana
5. Hon. Newton Kulundu
6. Hon. P. Muiruri
7. Hon. Makau Mutua

MIN. TWGK/CCAC/115: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.45 a.m. with Hon. Jane Mutunga leading prayers.

MIN. TWGK/CCAC/116: COMMUNICATION FROM THE CHAIR

The Chair introduced the new staff to the Committee, i.e.

- | | | | |
|------|-------------------------|---|--------------------------|
| i. | Mrs. Esther Kamau | - | Clerk, National Assembly |
| ii. | Mrs. Sahara D. Ibrahim | - | Programme Assistant |
| iii. | Mr. Lawrence Kamugisha- | | Draftsperson. |

MIN. TWGK/CCAC/117: CONFIRMATION OF MINUTES

The minutes of the fourteenth sitting held on 26th September 2003 were proposed for confirmation by Hon. Kimaiyo arap Sego and was seconded by Hon. Nkoroi Peter Kang'ethe.

The minutes were confirmed subject to the following corrections:

- (i) MIN TWGK/CCAC/108: Continuation of consideration of articles at page 3, a new sub-article (Art. 281(5)) was stood into the Bill to read:-
 - i. "members of a Constitutional Commission shall at the first sitting of the Commission appoint a chairperson from amongst themselves".

Hon. Francis Ng'ang'a proposed the minutes of the fifteenth sitting, 13th January 2004, for confirmation.

MIN. TWGK/CCAC/118: MATTERS ARISING

An error was discovered at page 126 of the Committee's Interim Report i.e. it was erroneously recorded that Article 281 (3)(d) which read; "shall comply with the leadership and integrity code of conduct" was deleted. The error was corrected with the effect that Article 281 sub-article (3)(d) stand part of the Bill without amendment (as it were).

Another error was discovered at page 23 and consequently at page 131 (the Draftsman Report) of the Committee's Interim Report i.e. Article 281 (2) "The chairperson and other members of a Constitutional Commission shall be ..." The error was corrected with the effect that Article 281, sub-article (2) reads: -

"The members of a Constitutional Commission shall be ..."

MIN. TWGK/CCAC/119: SPECIFIC ARTICLE DELIBERATIONS (ARTICLE 282)

Article 282.

Proposed that a new sub-article be introduced i.e.:-

Staff of the Commissions

Art. 282 A: ***Constitutional Commissions shall recruit such staff as they may require for the discharge of their functions.***

Resolved:- Article 282 (A) stand part of the Bill as newly created.

Proposed: Article 282 (1) (a), (b) and (c) stand part of the Bill without amendment.

Resolved: Article 282 (1) (d) be adopted with amendment i.e.:-

282(1)(d) ***“may award compensation and/or a fine”***.

Resolved: Article 282 (1)(d) stand part of the Bill as amended.

Proposed: Article 282(2) be adopted without amendment.

Resolved: Article 282(2) stand part of the Bill without amendment.

Proposed: Article 282 (3) be adopted with amendment i.e.:-

282 (3) ***“Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing and signed by an official of the Constitutional Commission”***.

MIN. TWGK/CCAC/120: SPECIFIC ARTICLE DELIBERATIONS (ARTICLE 283)

Proposed: Article 283 “ Proceedings of Commissions”, be adopted without amendment i.e.:-

283 ***“The proceedings of a Constitutional Commissions are valid even where there is a vacancy in membership”***.

Resolved: Article 283 stand part of the Bill as amended.

MIN. TWGK/CCAC/121: ADJOURNMENT

The meeting was adjourned at 11.00 a.m. until 9.30 a.m. Thursday, January 15, 2004.

SIGNED:

.....

(CONVENOR)

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

September 15th, 2003

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, September 15, 2003 in Tent No. 11, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. General Discussion on the Report and the Draft Bill.
8. Specific Debate on:
 - i. Constitutional Commission and Offices (Chapter 17)
 - ii. 278, 279, 280, 281, 282, 283, 284, 285 and 286.
9. Amendments to the Constitution (Chapter 18)
 - i. 286, 287, 288, 289, 290, 292, 292, 293 and 294
10. Consideration of Articles 278 - 294.
11. Any Other Business.
12. Date of the Next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SEVENTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY 15TH JANUARY, 2004 AT 9.45 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. 1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. J.B. Muturi
5. Hon. Jane Mutunga
6. Hon. Kamama Asman
7. Hon. Leah Ndeke
8. Hon. Midiwo Washington Jakoyo
9. Hon. Ruth Kibiti
10. Hon. Kimaiyo arap Sego
11. Hon. Nkoroi Peter Kang’ethe
12. Hon. Francis Ng’ang’a
13. Hon. Julius Sitienei
14. Hon. Zeruiyah Otwani
15. Hon. Gichira Kibara
16. Hon. Thomas Nyabote Aburi
17. Hon. John M. Kiniti
18. Hon. John M. Mutiso
19. Hon. Nur Ibrahim Abdi
20. Hon. Benson Mbai
21. Hon. Danson Mungatana

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Comm. Keriako Tobiko - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsman
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Moody Awori
2. Hon. Kirugi M’Mukindia
3. Hon. Newton Kulundu
4. Hon. P. Muiruri

5. Hon. Makau Mutua
8. Hon. A. Ewaton

MIN. TWGK/CCAC/122: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.45 a.m. with Hon. Milka Aoko leading prayers.

MIN. TWGK/CCAC/123: CONFIRMATION OF MINUTES

The minutes of the fifteenth sitting 14th September 2003 were proposed for confirmation by Hon. Ruth Kibiti and was seconded by Hon. Julius Sitenei.

MIN. TWGK/CCAC/124: MATTERS ARISING

Corrections to be made on the new sub-Article 282 (A) by deleting the word “it” immediately before the word may and substituting it with the word “they”.

**MIN. TWGK/CCAC/125: SPECIFIC ARTICLE DELIBERATIONS ON
ARTICLE 284(1)**

Article 284(1)

That a new sub-article (i) be inserted as follows:-

Proposed amendment

That a new sub-article 284(i) be inserted as follows: -

“A member of a constitutional commission shall be removed from office only for:-

- 1. Inability to perform the functions of his or her office arising from infirmity of body or mind,*
- 2. Misconduct; or*
- 3. Incompetence.*

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

That 284(1) be renumbered as 284(2)

Amendment passed.

Article 284(3): A new sub-article be inserted as follows:-

That President shall appoint the tribunal with such terms as approved by Parliament.

Article 284(4) shall read as follows: -

The tribunal shall consist of the chairperson and four other members appointed by the President from among persons;

(a) who hold or have held office as judge in Kenya of the Superior Courts of record or

(b) who are qualified to be appointed as High Court Judges, or

(c) who are advocates of not less than fifteen years standing.

Article 284(3) be renumbered as 284(5) and the word “*may*” immediately after the word President be deleted and substituted thereof with the word “*shall*”.

Article 284(4) be renumbered as 284(6) and read as follows:-

The President, shall effect the decision of the tribunal within thirty (30) days.

Question of amendment proposed, put and agreed to.

Article 284 agreed as amended as part of the Bill.

Debate interrupted at 11.30 a.m.

Resumption of debate at 12.35.

Article 285(1) agreed to as in the Bill.

Article 285(2)

Proposed amendment

That the words “to the relevant parliamentary committee” be deleted.

Question of amendment proposed, put and agreed to.

Article 285(2) agreed to as amended as part of the Bill.

Article 285(3) and (4) agreed to as in the Bill.

Article 285(5): New sub-article proposed as follows:-

“The office of the Auditor-General shall audit and submit public reports every six months”.

Question of amendment proposed, put and agreed to.

Proposed amendment

Article 285(5) be renumbered as 285(6) and the words “the constitutional commission and relevant parliamentary committees” be deleted and substituted thereof with the words “and to parliament”.

Article 285 agreed to as amended as part of the Bill.

MIN. TWGK/CCAC/126: ADJOURNMENT

The meeting was adjourned at 1.10 p.m. until 2.30 p.m.

AFTERNOON SESSION

The Committee resumed debate at 2.30.

MIN. TWGK/CCAC/127: SPECIFIC ARTICLE DELIBERATIONS ON ARTICLE 286

Article 286(1) agreed to.

Article 286(2) agreed to.

Article 286(3) agreed to.

Article 286(4) agreed to.

New sub-article 286(5) be inserted as follows:-

386(5): A person entitled to lodge or complaint under article 73(1) may refer a part or all the reports of a commission to the high court.

Article 287(1)

287(a) **agreed.**

287(b) new sub-clause be inserted as:-

(b) “The Gender Commission” and after sub-article (f) add sub-articles (g) “The Health Service Commission”. (h) “The Heroes and Heroines Commission”.

Question of amendment proposed, put and agreed to.

Article 287 agreed as amended as part of the Bill.

Article 288(1)(a) agreed to.

Article 288(1)(b) agreed to.

Article 288(1)(c) agreed to.

Article 288(1)(d) amendment proposed that the word “Gender” be deleted and substituted with the words “minority rights”.

Question of amendment proposed, put and agreed to.

Article 288(2)(a),(b)and (c) agreed to.

New sub-article (d) proposed as follows:-

That (d) one shall have knowledge and experience in matters relating to the aged.

Article 288(3)(a)(i) agreed to.

Article 288(3)(a)(ii) deleted and the others renumbered.

Article 288(3)(b) agreed to.

Article 288(3)(c) be deleted and inserted to the new article 289(a) on “Gender Commission”.

Article 288(3)(d) be renumbered as 288(3)(c).

Question of amendment proposed, put and agreed to.

Article 288 agreed to as amended as part of the Bill.

Article 289 to read as follows:-

(1) The Gender Commission shall consist of:-

- a. the Chairperson; and
- b. four other members

(2) The functions of the Gender Commissions are to:-

- (a) promote gender equality and equity, co-ordinate and facilitate mainstreaming in national development and to advise the Government on any of those matters:

- (b) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints;
- (c) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development;
- (d) formulate programmes and advise in the establishment and strengthening of institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and to access to natural resources;
- (e) plan, supervise and co-ordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues;
- (f) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions;
- (g) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution; and
- (h) act as the Government's chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.

Question of amendment proposed, put and agreed to.

Article 289(2)(a) agreed to as amended as part of the Bill.

Article 289(2)(b) amendment proposed that the word "Parliament" be deleted and substituted thereof with the words "Ethics and Integrity Commission."

Article 285(2) agreed to as amended.

Question of amendment proposed, put and agreed to.

Article 289(2)(c) proposed amendment that the word "conduct" be inserted after the words "code of" and the words immediately after it be deleted.

Question of amendment proposed, put and agreed to.

Article 289(2)(d) agreed to as part of the Bill.

MIN. TWGK/CCAC/128: ADJOURNMENT

The meeting was adjourned at 4.00 p.m. until Friday, 16th January, 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 16, 2004

**TECHNICAL WORKING COMMITTEE K ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Friday, January 16, 2004 in Tent No. 11, Bomas of Kenya at 9.15 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Specific Debate on:
Articles: 289, 291, 292, 293, 294, 295, and 296
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation – Convener

Signed

Date.....

MINUTES OF THE EIGHTEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON FRIDAY 16TH JANUARY, 2004 AT 10.30 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. J.B. Muturi
4. Hon. G.G. Gichuru
5. Hon. Jane Mutunga
6. Hon. Kamama Asman
7. Hon. Leah Ndeke
8. Hon. Ruth Kibiti
9. Hon. Kimaiyo arap Segoo
10. Hon. Nkoro Peter Kang’ethe
11. Hon. Francis Ng’ang’a
12. Hon. Julius Sitienei
13. Hon. Zeruiyah Otwani
14. Hon. Thomas Nyabote Aburi
15. Hon. John M. Kiniti
16. Hon. John M. Mutiso
17. Hon. Nur Ibrahim Abdi
18. Hon. Benson Mbai

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Mr. Lawrence Kamugisha - Legal Draftsman
3. Mrs. Esther Kamau - Clerk, National Assembly
4. Mr. Fredrick Oundo - NCC Secretariat
5. Mrs. Sahara D. Ibrahim - NCC Secretariat
6. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Moody Awori
2. Hon. Kirugi M’Mukindia
3. Hon. Newton Kulundu
4. Hon. P. Muiruri
5. Hon. Makau Mutua
6. Hon. A. Ewaton
7. Hon. Danson Mungatana
8. Hon. Midiwo Washington Jakoyo

APOLOGIES

1. Comm. Keriako Tobiko - Rapporteur

2. Hon. Gichira Kibara

MIN. TWGK/CCAC/129: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.30 a.m. by Commissioner Riunga Raiji with Hon. Ruth Kibiti leading prayers.

MIN. TWGK/CCAC/130: COMMUNICATION FROM THE CHAIR

Commissioner Raiji informed the Committee that the Convenor, Hon. Kiriro wa Ngugi had gone to attend a court case and would therefore be absent in the morning session.

The Committee therefore elected Hon. Kimaiyo arap Sego as the temporary Convenor.

Business commenced with Hon. Kimaiyo in the Chair.

MIN. TWGK/CCAC/131: CONFIRMATION OF MINUTES

The minutes of the seventeenth sitting, 15th January, 2004 were proposed for confirmation by Hon. Francis Ng'ang'a and was seconded by Hon. Thomas Nyabote Aburi subject to corrections noted be as indicated below.

MIN. TWGK/CCAC/132: MATTERS ARISING

- (i) An omission was noted on the attendance list that Hon Benson Mbai and Hon. Danson Mungatana were listed as absent but were actually present.
- (ii). It was also noted that some names had been misspelled.
- (iii). Article 287(g) should read as “the Health Service Commission” and not the “Health Commission”.
- (iv). Article 288(3)(c) had been deleted as part of Article 288(3) and transferred to the new article 289A.

MIN. TWGK/CCAC/133: SPECIFIC ARTICLE DELIBERATIONS ON

Article 289(2)(e)

Proposed amendment

That, article 289(2)(e) be deleted.

Question of amendment proposed, put and agreed to.

Article 289(2)(e) deleted as part of the Bill.

Article 289(2)(f)

Proposed amendment

That, article 289(2)(f) be deleted.

Debate arising.

Question of amendment proposed, put and agreed to.

Article 289(2)(f) deleted as part of the Bill.

MIN. TWGK/CCAC/134: ADJOURNMENT

The meeting was adjourned at 12.00 noon until Monday, 19th January 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 19, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, January 19, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Specific Debate on:
Articles: 289, 291, 292, 293, 294, 295, and 296
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation--(Convenor)

Signed

Date.....

MINUTES OF THE NINETEENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON MONDAY 19TH JANUARY, 2004 AT 10.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. J.B. Muturi
3. Hon. Benson Mbai
4. Hon. G.G. Gichuru
5. Hon. Jane Mutunga
6. Hon. Kamama Asman
7. Hon. Leah Ndeke
8. Hon. Midiwo Washington Jakoyo
9. Hon. Ruth Kibiti
10. Hon. Nur Ibrahim Abdi
11. Hon. Kimaiyo arap Sego
12. Hon. Zeruiyah Otwani
13. Hon. Nkoroi Peter Kang’ethe
14. Hon. Gichira Kibara
15. Hon. Julius Sitienei
16. Hon. Thomas Nyabote Aburi
17. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Comm. Riunga Raiji - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsman
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Moody Awori
2. Hon. Kirugi M’Mukindia
3. Hon. Newton Kulundu
4. Hon. P. Muiruri
5. Hon. Makau Mutua
6. Hon. A. Ewaton
7. Hon. Danson Mungatana
8. Hon. Ajuoga Milka Aoko
9. Hon. John M. Mutiso

APOLOGIES

1. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/135: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.00 a.m. with Hon. Nkoroi Peter Kang'ethe leading prayers.

MIN. TWGK/CCAC/136: COMMUNICATION FROM THE CHAIR

The Convenor, Hon. Kiriro wa Ngugi thanked Hon. Kimaiyo arap Segoo for presiding over the business on Friday, 16th January, 2004.

MIN. TWGK/CCAC/137: CONFIRMATION OF MINUTES

The minutes of the eighteenth sitting 16th January 2004 were proposed for confirmation by Hon. Zeruiyah Otmani and was seconded by Hon. Nur Ibrahim Abdi.

MIN. TWGK/CCAC/138: SPECIFIC ARTICLE DELIBERATIONS ON

Article 289(2)(g)

Proposed amendment

That, article 289(2)(g) be deleted.

Question of amendment proposed, put and agreed to.

Article 289(2)(g) deleted as part of the Bill.

Proposed amendment

That, article 281(2)(a) in the Interim Report be amended by deleting the words "as provided for under article 289(2)(g)" which appear after the word "parliament".

Question of amendment proposed, put and agreed to.

Article 281(2)(a) agreed to as amended as part of the Bill.

Article 289(2)(h) be renamed as 289(2)(e).

Question of amendment proposed, put and agreed to.

Proposed amendment

That, in article 289(2)(i): the words “including issuing guidelines to public bodies formed by an act of parliament” immediately after the word “corruption” in article to 289(2)(i) and that article 289(2)(i) be renamed article 289(2)(f).

Question of amendment proposed, put and agreed to.

Article 289(2)(j) deleted
Article 289(2)(k) deleted
Article 289(2)(l) deleted
Article 289(2)(m) deleted

Question of amendment that the articles be deleted proposed, put and agreed to.

Article 289(2) agreed as amended as part of the Bill.

Article 289(3)

Proposed Amendment,

That, article 289(3) be deleted.

Question of amendment proposed, put and agreed to.

Article 289(3) deleted.

Article 289(4)

Article 289(4)(a) agreed to.

Article 289(4)(b) agreed to.

Article 289(4)(c)

Amendment proposed

That, sub-articles 289(4)(c) and 289(4)(d) be deleted.

Question of amendment, that the sub-articles be deleted proposed, put and agreed to.

Article 289(4) as amended stands as part of the Bill.

MIN. TWGK/CCAC/139: SPECIFIC ARTICLE DELIBERATIONS ON

TEACHERS SERVICE COMMISSION

Article 291(1)(a) agreed to.

Article 291(1)(b)

Amendment proposed

That, the word “*six*” appearing in the article 291(b) be deleted and substituted thereof with the word “*nine*”.

Question of amendment proposed, put and agreed to.

Article 291(1)(b) as amended stands as part of the Bill.

MIN. TWGK/CCAC/140: ADJOURNMENT

The meeting was adjourned at five minutes past One O’clock until 2.30 p.m.

AFTERNOON SESSION

The meeting was called to order at 2.50 p.m.

MIN. TWGK/CCAC/141: SPECIFIC ARTICLE DELIBERATIONS ON

Article 291(2)(a)

Amendment proposed

That, the words “*in consultation with the Public Service Commission, to recruit and employ registered teachers*” in article 291(2)(a) be deleted and substituted with the words “*to register trained teachers*”.

Question of amendment proposed, put and agreed to

Article 291(a) as amended stands part of the Bill.

Article 291(2)

Proposed Amendment

That, article 291(2)(b) reads as follows:-

291(2)(b) subject to provisions under devolution.

1. to recruit and employ registered teachers;
2. to assign teachers employed by the commission for service in any public schools and other institutions;
3. to promote and transfer any such teacher;

4. to terminate the employment of any such teacher; and
5. to do anything which is incidental or conducive to the exercise of its powers under paragraphs (i) to (v).

Question of amendment proposed, put and agreed to.

Article 291(2)(b) as amended stands part of the Bill.

Article 291(3) agreed to.

**MIN. TWGK/CCAC/142: SPECIFIC ARTICLE DELIBERATIONS ON
CONSTITUTION COMMISSION**

Article 292

Amendment proposed

That, the subtitle, should read as the “*Constitution Implementation Commission*” instead of the “*Constitution Commission*”.

Question of amendment proposed, put and agreed to.

**MIN. TWGK/CCAC/143: SPECIFIC ARTICLE DELIBERATIONS ON
CONSTITUTION IMPLEMENTATION
COMMISSION.**

Article 292 *deferred.*

**MIN. TWGK/CCAC/144: SPECIFIC ARTICLE DELIBERATIONS ON
CONSTITUTIONAL OFFICES**

Article 293

Amendment proposed

That, article 293 be deleted.

Question of amendment proposed, put and agreed to.

Article 293 deleted as part of the Bill.

MIN. TWGK/CCAC/145: ADJOURNMENT

The meeting was adjourned at 4.10p.m. Until Tuesday, 20th January 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 20, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Tuesday, January 20, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Specific Debate on:
Articles: 292, 294, 295, and 296
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation--(Convenor)

Signed

Date.....

MINUTES OF THE TWENTIETH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY 20TH JANUARY 2004 AT 9.40 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. Benson Mbai
4. Hon. G.G. Gichuru
5. Hon. J.B. Muturi
5. Hon. Jane Mutunga
6. Hon. Kamama Asman
7. Hon. Leah Ndeke
8. Hon. Midiwo Washington Jakoyo
9. Hon. Ruth Kibiti
10. Hon. Nur Ibrahim Abdi
11. Hon. Kimaiyo arap Sego
12. Hon. Zeruiyah Otwani
13. Hon. Nkoroi Peter Kang’ethe
14. Hon. Gichira Kibara
15. Hon. Thomas Nyabote Aburi
16. Hon. Julius Sitienei
17. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Comm. Riunga Raiji - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsman
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
2. Hon. P. Muiruri
3. Hon. Makau Mutua
4. Hon. A. Ewaton
5. Hon. Danson Mungatana

6. Hon. John M. Mutiso
7. Hon. Davis Nakitare

APOLOGIES

1. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/146: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.40 a.m. with Hon. Thomas Nyabote Aburi leading prayers.

MIN. TWGK/CCAC/147: COMMUNICATION FROM THE CHAIR

The Convenor, Hon. Kiriro wa Ngugi reminded delegates about the traffic arrangements in Bomas, security within Bomas and the importance of identification badges.

MIN. TWGK/CCAC/148: CONFIRMATION OF MINUTES

The minutes of the nineteenth sitting 19th January 2004 were proposed for confirmation by Hon. Julius Sitienei and was seconded by Hon. Thomas Nyabote Aburi.

MIN. TWGK/CCAC/149: SPECIFIC ARTICLE DELIBERATIONS ON

Article 290(3) (Revisited)

Amendment proposed

That, article 290(3) be transferred to article 289, where it shall become article 289(4).

Question of amendment proposed, put and agreed to.

Article 289(4) stand as part of the Bill.

MIN. TWGK/CCAC/150: NEW SUB-ARTICLE 289(5)

New sub-article 289(5) proposed as follows:

289(5): The Commission shall make the register of assets and liabilities of public officers available for inspection by any citizen in the manner prescribed by an act of Parliament.

Question of amendment proposed, put and agreed to.

Article 289(5) as amended stands part of the Bill.

MIN. TWGK/CCAC/151: DELIBERATIONS ON ARTICLE 292

CONSTITUTION IMPLEMENTATION COMMISSION

Article 292(1)(b)

Amendment proposed

That, the word “four” appearing in article 292(1)(b) be deleted and substituted thereof with the word “nine”.

Question of amendment proposed, put and agreed to.

Article 292(2) as amended stands part of the Bill.

Amendment proposed

That, Sub-article 292(2)(a), (b), (c), and (d) be deleted and substituted thereof with the following:-

292(2): The functions of the implementation commission are to:-

- (a) monitor, facilitate and oversee the development of:-
 - a. legislation required under the 4th schedule; and
 - b. administrative procedures as required to fully implement the constitution.
- (b) to report twice a year to the President and Parliament on:-
 - (i) the progress on implementation of the constitution; and
 - (ii) any impediments to the timely implementation of the constitution;
- (c) to work with the Chairperson of each constitutional commission and each constitutional officer, to ensure that the letter and the spirit of the constitution are respected.

Question of amendment proposed, put and agreed to.

Article 292(2) as amended stands part of the Bill.

Article 292(4)

Amendment proposed, that, sub-article 292(4) be deleted and substituted thereof with a new sub-article 292(3) as follows:-

“Constitution Implementation commission shall stand dissolved at the full implementation of the constitution as determined by parliament in accordance with article 295”.

MIN. TWGK/CCAC/152

Interruption of business at 11.30 a.m.

Resumption of debate at 11.55 a.m.

**MIN. TWGK/CCAC/153: SPECIFIC ARTICLE DELIBERATIONS ON
CHAPTER EIGHTEEN:**

CONSTITUTIONAL AMENDMENTS

Article 294(1)

Amendment proposed

That, the word “article” appearing after the word “this” be deleted and substituted thereof with the word “Chapter”.

Question of amendment proposed, put and agreed to.

Article 294(2) agreed to.

New sub-article 294(3) proposed as follows:-

294(3): Parliament shall publish and facilitate discussion on a bill for an act to amend any provisions to the constitution.

Question of amendment proposed, put and agreed to.

New article 294(3) stands part of the Bill.

Article 294(3)

Amendment proposed

That, sub-article 294(3) in the draft bill be renamed sub-article 295A which shall read as follows:-

AMENDMENTS REQUIRING A REFERENDUM

Article 295 A

Amendment that seeks to make any change in:-

- i. the territory of Kenya

- ii. the sovereignty of the people
- iii. the principles and values of the republic
- iv. the Bill of rights
- v. the values and principles of devolution
- vi. the term of office of the President and
- vii. the provisions of this Article

shall also require ratification by the people in a referendum before the Bill making provision for such amendment is presented to the President for assent.

Question of amendment proposed, put and agreed to.

Article 294 as amended stands part of the Bill.

MIN. TWGK/CCAC/154: ADJOURNMENT

The meeting was adjourned at 12.50 p.m. until 2.30 p.m.

AFTERNOON SESSION

The meeting was called to order at 2.30 p.m.

MIN. TWGK/CCAC/155: DEBATE ON ARTICLE 295

AMENDMENT BY THE PEOPLE

Article 295

Amendment proposed

That, article 295 be deleted and substituted thereof with a new article as follows:-

Amendment by the People

Article 295

- a. One million citizens entitled to vote may propose an amendment to the constitution.
- b. The popular initiative for an amendment of the constitution may be in the form of a general suggestion or a formulated draft.
- c. If the formulated draft is approved by majority of the counties, it shall be submitted to the National Assembly where each Chamber, by a vote of two-thirds majority may accept it. If they reject it or the chambers disagree, the bill shall be submitted to the people in referendum.

- d. If the people in a referendum accept the popular initiative via a simple majority of all registered voters, then the bill shall be assented by the President.

Question of amendment proposed, put and agreed to

Article 295 as amended stands part of the Bill.

MIN. TWGK/CCAC/156: DEBATE ON ARTICLE 296

CERTIFICATE OF COMPLIANCE

Article 296

Amendment proposed

That, the words Article 295 should read as Article 294(2).

Question of amendment proposed, put and agreed to.

Article 296(2)(a) agreed to.

Article 296(b) be re-drafted as follows:-

(b). in the case of a bill to amend the provisions to which Article 295A and 295 apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum.

Question of amendment proposed, put and agreed to.

Article 296(2) as amended stands part of the Bill.

Article 296(3) agreed to.

Article 296 as amended stands part of the Bill.

MIN. TWGK/CCAC/157: ADJOURNMENT

The meeting was adjourned at 4.00p.m. until Wednesday, 21st January 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 21, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, January 21, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Specific Debate on:
Motions for Formation of New Commissions
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation

Signed
(Convenor)

Date.....

MINUTES OF THE TWENTY FIRST MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 21ST 2004 AT 10.20 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. A. Ewaton
4. Hon. G.G. Gichuru
5. Hon. Jane Mutunga
6. Hon. Kamama Asman
7. Hon. Leah Ndeke
8. Hon. Midiwo Washington Jakoyo
9. Hon. Ruth Kibiti
10. Hon. Nur Ibrahim Abdi
6. Hon. Kimaiyo arap Sego
7. Hon. Zeruiyah Otwani
8. Hon. Nkoroi Peter Kang’ethe
9. Hon. Gichira Kibara
10. Hon. Thomas Nyabote Aburi
11. Hon. Julius Sitienei
12. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Riunga Raiji - Rapporteur
2. Mr. Lawrence Kamugisha - Legal Draftsman
3. Mrs. Esther Kamau - Clerk, National Assembly
4. Mr. Fredrick Oundo - NCC Secretariat
5. Mrs. Sahara D. Ibrahim - NCC Secretariat
6. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare
9. Hon. J.B. Muturi

APOLOGIES

1. Comm. Keriako Tobiko - Rapporteur
2. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/158: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.20 a.m. with the Convenor, Hon. Kiriro wa Ngugi leading prayers.

MIN. TWGK/CCAC/159: COMMUNICATION FROM THE CHAIR

The Convenor, Hon. Kiriro wa Ngugi told the members that they will mainly discuss functions of Health Services Commission and Heroes and Heroines Commission.

MIN. TWGK/CCAC/160: CONFIRMATION OF MINUTES

The minutes of the twentieth sitting, 20th January, 2004 were proposed for confirmation by Hon. Gichira Kibara and was seconded by Hon. John M. Kiniti subject to the following corrections:-

- c. MIN.TWGK/CCAC/150: Proposed Amendment, Sub-article 292 should read Sub-article 292(2).
- d. MIN.TWGK/CCAC/154: Amendment by Parliament should read Amendment by the People.

MIN. TWGK/CCAC/161: MATTERS ARISING

Article 296(4) (Newly created) was proposed.

A sub-article was created to read as: -

296(4) Parliament shall enact a referendum Act.

Question of amendment proposed, put and agreed to.

296(4) as amended stands part of the Bill.

MIN. TWGK/CCAC/162: PROPOSED MOTIONS

Hon. John M. Kiniti presented his motion on giving the Electoral Commission functions of reviewing the boundaries.

It was agreed that the Electoral Commission was not the domain of the Committee. The Committee resolved that the Convenor presents the proposal to the convenors' meeting as a cross cutting issue.

MIN. TWGK/CCAC/163: MOTION ON ESTABLISHMENT OF THE CULTURE COMMISSION

The motion was not debated as it was agreed that it belongs to the Committee on Culture.

MIN. TWGK/CCAC/164: MOTION ON ESTABLISHMENT OF THE HEROES AND HEROINES COMMISSION

A motion for establishment of the Heroes and Heroines Commission as Article 293 as follows: -

Motion made and question proposed

That, Article 293(1): Heroes and Heroines Commission shall consist of: -

1. The Chairperson
2. Six other Commissioners
3. Of the six Commissioners, two shall be heroes and two shall be heroines.

Article 293(2): Functions of the Commission

- (a).to establish criteria for determining heroes and heroines
- (b). to hold public hearings and receive submissions and nominations for heroes and heroines submission to parliament.
- (c). to submit to the President approved names for conferment of honours.
- (d). perform any other functions conferred to it by parliament or an act of parliament.

Debate arising.

Question put and agreed to.

Article 293 as amended stands part of the Bill.

MIN. TWGK/CCAC/165: MOTION ON ESTABLISHMENT OF THE HEALTH SERVICE COMMISSION

A motion for establishment of the Health Service Commission was deferred to tomorrow, the 22nd January 2004.

MIN. TWGK/CCAC/166: ADJOURNMENT

The meeting was adjourned at 5.00 p.m. until Thursday, 22nd January, 2004 at 9.30 a.m.

SIGNED:

.....

(CONVENOR)

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

January 22, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Thursday, January 22, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Motions for Formation of New Commissions
8. Any Other Business.
1. Date of the Next Meeting.

Approved for circulation--(Convenor)

Signed

Date.....

MINUTES OF THE TWENTY SECOND MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY 22ND 2004 AT 9.40 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. Midiwo Washington Jakoyo
7. Hon. Ruth Kibiti
8. Hon. Nur Ibrahim Abdi
9. Hon. Kimaiyo arap Sego
10. Hon. Zeruiyah Otwani
11. Hon. Nkoroi Peter Kang’ethe
12. Hon. Gichira Kibara
13. Hon. Thomas Nyabote Aburi
14. Hon. Julius Sitienei
15. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Mr. Lawrence Kamugisha - Legal Draftsman
3. Mrs. Esther Kamau - Clerk, National Assembly
4. Mr. Fredrick Oundo - NCC Secretariat
5. Mrs. Sahara D. Ibrahim - NCC Secretariat
6. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare
9. Hon. J.B. Muturi
10. Hon. A. Ewaton

APOLOGIES

1. Comm. Riunga Raiji - Rapporteur
2. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/167: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.40 a.m. with Hon. Thomas Nyabote Aburi leading prayers.

MIN. TWGK/CCAC/168: COMMUNICATION FROM THE CHAIR

The Convenor, Hon. Kiriro wa Ngugi informed the Committee, that the Media Liaison was seeking skills in media reporting and requested that whoever had such skills could inform the chair.

He also alerted the Committee on the presence of the Director of Medical Services to give expert advice during the ongoing debate on the establishment of the Health Service Commission.

MIN. TWGK/CCAC/169: CONFIRMATION OF MINUTES

The minutes of the twenty first sitting, 21st January 2004 were proposed for confirmation by Hon. Thomas Nyabote and was seconded by Hon. Julius Sitienei.

MIN. TWGK/CCAC/170: ESTABLISHMENT OF HEALTH SERVICE COMMISSION

Motion made and question proposed that the Health Service Commission is established as follows:-

1. The Health Service Commission shall consist of:-
 2. Chairperson.
 3. Nine other members.
 4. Of the nine, five shall be health professionals.

Functions:-

- (1) Advice the government on matters of technical policy.
- (2) Prepare and disseminate information.

(Debate interrupted to be continued tomorrow)

MIN. TWGK/CCAC/171: PROPOSAL FOR THE ESTABLISHMENT OF SPORTS SERVICE COMMISSION

- (1) The National Sports Commission shall consists of:-

- a. Chairperson
 - b. Not less than ten members
- (2) The Chairperson and the other members of the Commission shall be appointed by the President with the approval of the National Assembly.
 - (3) The Commission shall elect a Vice-Chairperson from among its members.
 - (4) A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has held or is qualified to hold office as a sports administrator.
 - (5) At the time of initial appointment of commissioners they shall be appointed for a period of three years.

Functions:-

- (1) to advice and give guidance to the Government or any other body on sports values.
- (2) to promote, develop, identify, present and protect sports of different dimensions.
- (3) to promote investment in Kenya's sports industry.
- (4) to promote unity and international relationship through sports.
- (5) to identify, develop and maintain national sports facilities.
- (6) to establish the National Sports Institute.
- (7) to train and develop elite athletes and teams.
- (8) to develop sports policy.
- (9) to formulate and implement as science and technology based on current scientific technology and methods on sports.
- (10) to cater for people with disabilities.
- (11) to carry out any other activity related to sports activities.

Debate arising.

Question put and negatived.

Interruption of business at 11.05 a.m.

Resumption of debate at 12.00 noon

MIN. TWGK/CCAC/172: PROPOSAL FOR THE ESTABLISHMENT OF FISHERIES SERVICE COMMISSION

Formation of the Fisheries Service Commission was deferred.

MIN. TWGK/CCAC/173: ADJOURNMENT

The meeting was adjourned at 1.35 p.m. until Friday, 23rd January 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 23, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Friday, January 23, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Motions for Formation of New Commissions
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation--(Convenor)

Signed

Date.....

MINUTES OF THE TWENTY THIRD MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON FRIDAY 23RD JANUARY, 2004 AT 10.10 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. Ruth Kibiti
7. Hon. Nur Ibrahim Abdi
8. Hon. Kimaiyo arap Sego
9. Hon. Zeruiyah Otwani
10. Hon. Nkoroi Peter Kang’ethe
11. Hon. Gichira Kibara
12. Hon. Thomas Nyabote Aburi
13. Hon. Julius Sitienei
14. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Comm. Raiji Riunga - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsman
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare
9. Hon. J.B. Muturi
10. Hon. A. Ewaton

11. Hon. Midiwo Washington Jakoyo

APOLOGIES

1. Hon. Francis Ng'ang'a

MIN. TWGK/CCAC/174: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.10 a.m. with Hon. Winston Ogola Adhiambo leading prayers.

MIN. TWGK/CCAC/175: CONFIRMATION OF MINUTES

The minutes of the twenty first sitting 21st January 2004 were proposed for confirmation by Hon. Thomas Nyabote and was seconded by Hon. John Kiniti.

MIN. TWGK/CCAC/176: MATTERS ARISING

The delegates requested to be supplied with copies of the draft constitutions that the Rapporteur General had referred to in the media, and which were said to be in circulation in other committees.

MIN. TWGK/CCAC/177: DELIBERATIONS ON THE PROPOSALS FOR THE ESTABLISHMENT OF THE FISHERIES COMMISSION

Motion for the establishment of the Fisheries Commission made and question proposed.

Debate arising.

Question put and negatived.

MIN. TWGK/CCAC/178: CONTINUATION OF DEBATE ON THE ESTABLISHMENT OF THE HEALTH SERVICE COMMISSION

The Health Service Commission shall consist of:-

1. Chairperson.
2. Nine other members.
3. Of the nine, five shall be health professionals.

Functions:-

1. To ensure planned health human resource development professional standards and ethics.
2. Ensure registration of all health sector professionals.
3. Advise the government on matters of technical policy.
4. Prepare and disseminate information.

- 5. Ensure viable technical management including procurement of equipment and supplies.
- 6. Medical audit and operational research.

(Debate interrupted to be continued)

MIN. TWGK/CCAC/179: ADJOURNMENT

The meeting was adjourned at 12.20 p.m. until Monday, 26th January 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 27, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Monday, January 26, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. **Deliberation on the Health Service Commission**
8. **Harmonization and Consideration of Cross-cutting issues**
9. Any Other Business.
10. Date of the Next Meeting.

Approved for circulation--(Convenor).

Signed

Date.....

MINUTES OF THE TWENTY FOURTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY 27TH, JANUARY 2004 AT 9.55 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Kamama Asman
6. Hon. Leah Ndeke
7. Hon. Ruth Kibiti
8. Hon. Nur Ibrahim Abdi
9. Hon. Kimaiyo arap Sego
10. Hon. Zeruiyah Otwani
11. Hon. Nkoroi Peter Kang’ethe
12. Hon. Gichira Kibara
13. Hon. Thomas Nyabote Aburi
14. Hon. Julius Sitienei
15. Hon. John M. Kiniti

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Mr. Lawrence Kamugisha - Legal Draftsman
3. Mrs. Esther Kamau - Clerk, National Assembly
4. Mr. Fredrick Oundo - NCC Secretariat
5. Mrs. Sahara D. Ibrahim - NCC Secretariat
6. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare
9. Hon. J.B. Muturi
10. Hon. A. Ewaton
11. Hon. Midiwo Washington Jakoyo

12. Hon. Francis Ng'ang'a

APOLOGIES

1. Comm. Riunga Raiji - Rapporteur

MIN. TWGK/CCAC/180: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.55 a.m. with Hon. Thomas Nyabote Aburi leading prayers.

MIN. TWGK/CCAC/181: CONFIRMATION OF MINUTES

The minutes of the twenty third sitting, 23rd January, 2004 were proposed for confirmation by Hon. Zeruiyah Otwani and was seconded by Hon. Nkoroi Peter Kang'ethe.

MIN. TWGK/CCAC/182: DELIBERATIONS ON THE PROPOSALS FOR THE ESTABLISHMENT OF THE HEALTH SERVICE COMMISSION

(i) **Resumption of debate on the functions of the Health Service Commission**

Motion for establishment of the Office of the Director General of Health as a constitutional office.

Debate arising.

Motion withdrawn.

(ii) **Continuation of Debate on the Establishment of the Health Service Commission**

Article 293(A)

(1) The Health Service Commission shall consist of:-

1. Chairperson.
2. Nine other members.
3. Of the nine, five shall be health professionals.

(3) Functions: -

- To ensure planned health human resource development professional standards and ethics.
- Ensure registration of all health sector professionals.
- Advise the government on matters of technical policy.

- Prepare and disseminate information.
- Ensure viable technical management including procurement of equipment and supplies.
- Medical audit and operational research.
- Oversee Health Care financing.

Motion made and question put.

Debate arising.

Question put and agreed to.

MIN. TWGK/CCAC/183: ADJOURNMENT

The meeting was adjourned at 12.30 p.m. until Wednesday, 28th January 2004 at 9.30 a.m.

SIGNED:
 (CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 28, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, January 28, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. **Harmonization and Consideration of Cross-cutting issues**
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation--(Convenor)

Signed

Date.....

MINUTES OF THE TWENTY FIFTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 28TH, JANUARY 2004 AT 10.00 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Ajuoga Milka Aoko
2. Hon. G.G. Gichuru
3. Hon. Jane Mutunga
4. Hon. Leah Ndeke
5. Hon. Ruth Kibiti
6. Hon. Nur Ibrahim Abdi
7. Hon. Kimaiyo arap Sego
8. Hon. Zeruiyah Otwani
9. Hon. Nkoroi Peter Kang’ethe
10. Hon. Gichira Kibara
11. Hon. Thomas Nyabote Aburi
12. Hon. Francis Ng’ang’a
13. Hon. John M. Kiniti

IN ATTENDANCE

- | | | |
|---------------------------|---|--------------------------|
| 1. Comm. Riunga Raiji | - | Rapporteur |
| 2. Mr. Lawrence Kamugisha | - | Legal Draftsman |
| 3. Mrs. Esther Kamau | - | Clerk, National Assembly |
| 4. Mr. Fredrick Oundo | - | NCC Secretariat |
| 5. Mrs. Sahara D. Ibrahim | - | NCC Secretariat |
| 6. Mrs. Asha Boru | - | NCC Secretariat |

ABSENT

- | | | |
|-----------------------------------|---|------------|
| 1. 1. Comm. Keriako Tobiko | - | Rapporteur |
| 2. Hon. Kirugi M’Mukindia | | |
| 3. Hon. Newton Kulundu | | |
| 4. Hon. P. Muiruri | | |
| 5. Hon. Makau Mutua | | |
| 6. Hon. Danson Mungatana | | |
| 7. Hon. John M. Mutiso | | |
| 8. Hon. Benson Mbai | | |
| 9. Hon. Davis Nakitare | | |
| 10. Hon. J.B. Muturi | | |
| 11. Hon. A. Ewaton | | |
| 12. Hon. Midiwo Washington Jakoyo | | |
| 13. Hon. Kamama Asman | | |

14. Hon. Julius Sitienei

APOLOGIES

1. Hon. Kiriro wa Ngugi - Convenor

MIN. TWGK/CCAC/184: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.00 a.m. with Hon. Ruth Kibiti leading prayers and Hon. Kimaiyo arap Sego in the Chair.

MIN. TWGK/CCAC/185: CONFIRMATION OF MINUTES

The minutes of the twenty fourth sitting, 28th January, 2004 were proposed for confirmation by Hon. Thomas Nyabote Aburi and was seconded by Hon. Ruth Kibiti.

MIN. TWGK/CCAC/186: MATTERS ARISING

The legal draftsman presented to the Committee the re-drafted proposal for the Health Service Commission as follows:-

- (1) The Health Service Commission shall consist of:-
 1. the Chairperson; and
 2. nine other members
- (2) Of the nine members of the Commission, five members shall be health professional.
- (3) The functions of the Commission are:-
 - a. to register trained health workers;
 - b. subject to the provisions of this Constitution under devolution:-
 - b. to assign health workers employed by the Commission for service in any public hospital and other institutions;
 - c. to promote and transfer any such health workers;
 - d. to terminate the employment of any such health worker;
 - c. to ensure planned health, human resource development, professional standards and ethics;
 - d. to prepare and disseminate information

- e. to conduct medical audit and professional research;
- f. to ensure viable technical management including procurement of equipment and supplies;
- g. to oversee healthcare financing and
- h. to perform any other functions conferred on the Commission by Parliament or an Act of Parliament.

The Committee adopted the proposal.

MIN. TWGK/CCAC/187: ADJOURNMENT

The Acting Convenor (Hon. Kimaiyo arap Sego) adjourned the meeting at 10.54 to allow the Secretariat complete the compilation of Chapters Seventeen and Eighteen of the Draft Constitution as adopted by the Technical Working Group “K”.

The Committee resumes tomorrow, Thursday, 29th January, 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

January 29, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Thursday, January 29, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. **Harmonization and Consideration of Cross-cutting issues**
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation - (Convenor)

Signed

Date.....

MINUTES OF THE TWENTY SIXTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON THURSDAY 29TH, JANUARY 2004 AT 10.50 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Jane Mutunga
5. Hon. Leah Ndeke
6. Hon. Ruth Kibiti
7. Hon. Nur Ibrahim Abdi
8. Hon. Kimaiyo arap Sego
9. Hon. Zeruiyah Otwani
10. Hon. Nkoroi Peter Kang’ethe
11. Hon. J.B. Muturi
12. Hon. Thomas Nyabote Aburi
13. Hon. Francis Ng’ang’a
14. Hon. John M. Kiniti
15. Hon. Julius Sitienei
16. Hon. Kamama Asman

IN ATTENDANCE

1. Comm. Keriako Tobiko - Rapporteur
2. Comm. Riunga Raiji - Rapporteur
3. Mr. Lawrence Kamugisha - Legal Draftsman
4. Mrs. Esther Kamau - Clerk, National Assembly
5. Mr. Fredrick Oundo - NCC Secretariat
6. Mrs. Sahara D. Ibrahim - NCC Secretariat
7. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare
9. Hon. A. Ewaton

10. Hon. Midiwo Washington Jakoyo
11. Hon. Gichira Kibara

MIN. TWGK/CCAC/188: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.50 a.m. with Hon. Ruth Kibiti leading prayers.

MIN. TWGK/CCAC/189: COMMUNICATION FROM THE CHAIR

The Convenor informed the Committee that the Rapportuer General had requested the Committee to prepare the General Principles on the Establishment of Commissions.

MIN. TWGK/CCAC/190: CONFIRMATION OF MINUTES

The minutes of the twenty fourth sitting, 29th January, 2004 were proposed for confirmation by Hon. Francis Ng'ang'a and was seconded by Hon. John Kiniti.

MIN. TWGK/CCAC/191: MOTION FOR ESTABLISHING THE GENERAL PRINCIPLES FOR ESTABLISHMENT OF COMMISSIONS

Motion that the following shall be the general principles for establishment of commissions;

1. A Constitutional Commission may not replace, duplicate or impinge on the functions of other constitutional institutions such as the Executive arm of Government ministries, the Judiciary and or legislatures at all levels of Governments.
2. The fundamental rationale underpinning the establishment of a constitutional commission must be clearly articulated and in particular:-
 - (i) Proper justification why the intended functions of the commission cannot otherwise be performed by the traditional Executive, Judiciary and Legislature arms of democratic government must be made.
 - (ii) A clear thematic distinction of functions allocated to a constitutional commission must be made vis-à-vis functions of Executive Government.
 - (iii) Clear justification must be established why a constitutional commission cannot otherwise exist and function just as effectively under a Parliamentary Statute.
3. The General Principles on objects, independence, composition, staffing, powers, proceedings, removal from office, funding and accountability as stipulated at Chapter Seventeen apply to ALL Constitutional Commissions in the entire document and any deviations must be expressly stated and

their rationale explained and justified in the Report by the Committee allowing such deviation.

MIN. TWGK/CCAC/192: ADOPTION OF CHAPTERS 17 AND 18

The Committee adopted the chapters with the following amendments:-

Article 281(3) (d): by adding the words “safe ex-officio members” after the words “shall not”.

Article 288(3)(c) be amended by deleting “c” and renumbering (d) as (c).

Article 290(i)

Amendment proposed that the word “representative” wherever it appears in article 290(i) be deleted and substituted thereof with the words “ex-officio member”.

Question of amendment proposed, put and agreed to.

Article 290(2) should read as follows:-

Article 290(2)

The functions of the Salaries and Remunerations Commission are:-

- (a) to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including:-
 - (i) the President, Vice-President, the Prime Minister, the Deputy Prime Minister, the Ministers and Deputy Ministers.
 - (ii) Members of Parliament
 - (iii) The Attorney General, Judges, the Director of Public Prosecutions, the Auditor-General and the Members of Constitutional Commission.
- (b) Regulate the harmonization of salaries and remuneration of all public officers including employees of parastatals.

Article 292 should read “Constitution Commission” and not “Constitution Implementation Commission”.

Article 293(A) should read as follows:-

- a. The Health Service Commission shall consist of:-
 - 2. the Chairperson; and

- 3. nine other members
- (2) Of the nine members of the Commission, five members shall be health professional.
- (3) The functions of the Commission are:-
 - (i). to register trained health workers;
 - (ii). subject to the provisions of this Constitution under devolution:-
 - a. to assign health workers employed by the Commission for service in any public hospital and other institutions;
 - b. to promote and transfer any such health workers;
 - c. to terminate the employment of any such health worker;
 - (iii). to ensure planned health, human resource development, professional standards and ethics;
 - (iv). to prepare and disseminate information
 - (v). to conduct medical audit and professional research;
 - (vii). to ensure viable technical management including procurement of equipment and supplies;
 - (viii). to oversee healthcare financing and
 - (ix).to perform any other functions conferred on the Commission by Parliament or an Act of Parliament.

MIN. TWGK/CCAC/193: ADJOURNMENT

The meeting adjourned at 12.30 p.m. until Friday, January 30, 2004 at 9.30 a.m.

SIGNED:
 (CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

February 17, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Tuesday, February 17, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Any Other Business.
8. Date of the Next Meeting.

Approved for circulation - (Convenor)

Signed

Date.....

MINUTES OF THE TWENTY SEVENTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY 17TH FEBRUARY 2004 AT 10.20 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

1. Hon. Ajuoga Milka Aoko
2. Hon. G.G. Gichuru
3. Hon. Jane Mutunga
4. Hon. Leah Ndeke
5. Hon. Ruth Kibiti
6. Hon. Nur Ibrahim Abdi
7. Hon. Kimaiyo arap Sego
8. Hon. Zeruiyah Otwani
9. Hon. Nkoroi Peter Kang’ethe
10. Hon. Thomas Nyabote Aburi
11. Hon. Francis Ng’ang’a
12. Hon. John M. Kiniti
13. Hon. Julius Sitienei

IN ATTENDANCE

- | | | |
|---------------------------|---|--------------------------|
| 1. Comm. Keriako Tobiko | - | Rapporteur |
| 2. Comm. Riunga Raiji | - | Rapporteur |
| 3. Mr. Lawrence Kamugisha | - | Legal Draftsman |
| 4. Mrs. Esther Kamau | - | Clerk, National Assembly |
| 5. Mr. Fredrick Oundo | - | NCC Secretariat |
| 6. Mrs. Sahara D. Ibrahim | - | NCC Secretariat |
| 7. Mrs. Asha Boru | - | NCC Secretariat |

ABSENT WITH APOLOGY

Hon. Kiriro wa Ngugi - Convenor

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. Benson Mbai
8. Hon. Davis Nakitare

- 9. Hon. A. Ewaton
- 10. Hon. Midiwo Washington Jakoyo
- 11. Hon. Gichira Kibara
- 12. Hon. J.B. Muturi
- 13. Hon. Kamama Asman

MIN. TWGK/CCAC/194: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.20 a.m. with Hon. Ruth Kibiti leading prayers.

MIN. TWGK/CCAC/195: CONFIRMATION OF MINUTES

The minutes of the twenty fourth sitting, 29th January, 2004 were proposed for confirmation by Hon. Thomas Nyabote and was seconded by Hon. Nur Ibrahim Abdi.

MIN. TWGK/CCAC/196: COMMUNICATION FROM THE CHAIR

The meeting was called to order with Hon. Kimaiyo arap Sego on the Chair. He informed the Committee members that Commissioner Keriako Tobiko would brief them on the way forward following the Mombasa retreat.

Commissioner Tobiko informed members that they were required to look at the circulated copies of the Zero Draft, the Report of the Issues/Comments arising from the presentation of the Committee Report and the attempted annotation by the Convenor to incorporate the comments.

MIN. TWGK/CCAC/197: MATTERS ARISING

Hon. Thomas Nyabote wondered whether the motion under Min. 191 had been properly put and approved by the Committee.

MIN. TWGK/CCAC/198: ADJOURNMENT

Hon. Nkoroï proposed that the Committee adjourn until afternoon in order to give members sufficient time to go through the documents.

However, Hon. Ruth Kibiti proposed that the Committee reconvenes tomorrow. She was seconded by Hon. Thomas Nyabote.

The meeting therefore adjourned at 10.55 a.m. until Wednesday, February 18, 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

February 18, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, February 18, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Debate on the Zero Draft, the Report of the Issues/Comments arising from the presentation of the Committee Report and the attempted annotation by the Convenor to incorporate the Comments.
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation

Signed
(Convenor)

Date.....

MINUTES OF THE TWENTY EIGHTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 18TH FEBRUARY 2004 AT 9.50 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present:-

- | | | |
|-------------------------------|---|----------|
| 1.Hon. Kiriro wa Ngugi | - | Convenor |
| 2.Hon. Ajuoga Milka Aoko | | |
| 3.Hon. G.G. Gichuru | | |
| 4.Hon. Leah Ndeke | | |
| 5.Hon. Ruth Kibiti | | |
| 6.Hon. Nur Ibrahim Abdi | | |
| 7.Hon. Kimaiyo arap Segoo | | |
| 8.Hon. Zeruiyah Otmani | | |
| 9.Hon. Nkoroi Peter Kang’ethe | | |
| 10.Hon. Thomas Nyabote Aburi | | |
| 11.Hon. Francis Ng’ang’a | | |
| 12.Hon. John M. Kiniti | | |
| 13.Hon. Julius Sitienei | | |
| 14.Hon. Gichira Kibara | | |
| 15.Hon. J.B. Muturi | | |
| 16.Hon. Kamama Asman | | |
| 17.Hon. Benson Mbai | | |

IN ATTENDANCE

- | | | |
|---------------------------|---|--------------------------|
| 1. Comm. Keriako Tobiko | - | Rapporteur |
| 2. Comm. Riunga Raiji | - | Rapporteur |
| 3. Mr. Lawrence Kamugisha | - | Legal Draftsman |
| 4. Mrs. Esther Kamau | - | Clerk, National Assembly |
| 5. Mr. Fredrick Oundo | - | NCC Secretariat |
| 6. Mrs. Sahara D. Ibrahim | - | NCC Secretariat |
| 7. Mrs. Asha Boru | - | NCC Secretariat |

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. A. Ewaton

8. Hon. Midiwo Washington Jakoyo
9. Hon. Jane Mutunga

MIN. TWGK/CCAC/199: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 9.50 a.m. with Hon. Hon. Milka Aoko Ajuoga leading prayers.

MIN. TWGK/CCAC/200: CONFIRMATION OF MINUTES

The minutes of the twenty eighth sitting, 17th February, 2004 were proposed for confirmation by Hon. John Kiniti and was seconded by Hon. Julius Sitienei.

MIN. TWGK/CCAC/201: COMMUNICATION FROM THE CHAIR

The Convenor informed the Committee that there would be a meeting of Welfare and Privileges Committee at 1.00 p.m.

He also informed the Committee that the Zero Draft would evolve to Draft 1 in the next seven days and that changes were expected. He asked members to be prepared for changes.

MIN. TWGK/CCAC/202: MATTERS ARISING

Hon. Gichira Kibara was recorded absent while he was present.

MIN. TWGK/CCAC/203: CONSIDERATION OF THE ATTEMPTED ANNOTATED DOCUMENT ON CHAPTERS SEVENTEEN AND EIGHTEEN

Article 278(1) agreed to.

Article 278(2)

Amendment proposed that sub-article (2) be introduced as follows:-

“the principles applicable to all commissions in terms of this chapter with the necessary modifications and adaptations shall be applicable to holders of constitutional offices.”

Question of amendment proposed, put and agreed to.

Article 281(1)

Amendment proposed that the words “and shall be subject to principles of affirmative action”, appearing after the word “members” be deleted.

Question of amendment proposed, put and agreed to.

Article 281(2)

Amendment proposed that article 281(2) be amended by deleting the words “chairperson and the other” appearing after the word “the”.

Question of amendment proposed, put and agreed to.

Article 281(3)

Amendment proposed that the word “shall” appearing after the word “commission” be deleted.

Question of amendment proposed, put and agreed to.

Further amendment

That a new sub-article (3)(a) be introduced as follows:- “may either be full time or part time”.

Question of amendment proposed, put and agreed to.

Article 282

Amendment proposed that a new sub-article 282(1) be introduced as follows: “(1) A constitutional Commission may in addition to the functions conferred by this constitution perform such other functions as parliament may by law prescribe”.

Question of amendment proposed, put and agreed to.

Article 282(2)(b)

Amendment proposed that the words “of the High Court” appearing immediately after the word “powers” be deleted.

Question of amendment proposed, put and agreed to.

Article 283(2)

Amendment proposed that a new sub-article 283(2) be introduced as follows:

282 (2): A commission shall regulate its own proceedings.

Article 284(1)

Amendment proposed that a new sub-article 284(1)(e) be introduced as follows:-

(e) bankruptcy.

Question of amendment proposed, put and agreed to.

Article 284(4)(a)

Amendment proposed that the words “the chairperson” be inserted before the word “shall”.

Question of amendment proposed, put and agreed to.

Article 284(4)(b)

Amendment proposed that the words “at least two” be added before the word “persons”.

Question of amendment proposed, put and agreed to.

Article 284(4)(c)

Amendment proposed that sub-article 284(4)(c) be deleted.

Question of amendment proposed, put and agreed to.

Article 282(4)(c) deleted.

Article 287(b)

Amendment proposed that the words “the Heroes and Heroines” be deleted and substituted thereof with the words “Cultural and National Honours Commission”.

Question of amendment proposed, put and agreed to.

Article 290(2)(b)

Amendment proposed that the words “officers of devolved government and” be inserted immediately after the word “including”.

Question of amendment proposed, put and agreed to.

Article 293A

Amendment proposed that the heading should read as Cultural and National Honours Commission and that it be re-organized as follows:-

Article 293A

- (1) The Cultural and National Honours Commission shall consist of:-
 1. The Chairperson, and
 2. Nine other members.

- (2) Of the nine members
 - (a) two of them shall be named heroes and two shall be named heroines

- i. The functions of the Commission are:-
 1. identify, document, promote, develop, preserve and protect the diverse cultures of Kenya.
 2. promote knowledge understanding, appreciation, tolerance, cooperation and respect of each other customs, traditions, beliefs, languages and religions;
 3. conduct civic education and involve the people in formation and implementation of linguistic and cultural development plans to ensure cultural sustainability.
 4. establish the criteria for determining what elements of culture remain useful and valuable and therefore codify to the fullest extent possible what contemporary Kenyan core cultures actually are and how they are evolving.
 5. to establish the criteria for determining who are national heroes and heroines;
 6. to hold public hearings and receive submissions, nominations of heroes and heroines for submission to parliament;
 7. to submit to the President the approved names for conferment of honours and
 8. to perform any other functions conferred on the Commissions by parliament or an Act of Parliament.

Question of amendment proposed, put and agreed to.

Article 294A(f) be inserted as follows:-

(f) the rights of a citizen

Question of amendment proposed, put and agreed to.

MIN. TWGK/CCAC/204: ADJOURNMENT

The meeting adjourned at 12.20 p.m. until Thursday, February 19, 2004 at 9.30 a.m.

SIGNED:

.....

(CONVENOR)

DATE:

.....

NATIONAL CONSTITUTIONAL CONFERENCE

February 24, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Tuesday, February 24, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Confirmation and Adoption of Committee’s Plenary Report.
8. Any Other Business.
9. Date of the Next Meeting.

Approved for circulation -(Convenor)

Signed

Date.....

MINUTES OF THE TWENTY NINTH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON TUESDAY 24TH FEBRUARY 2004 AT 10.55 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Ajuoga Milka Aoko
2. Hon. G.G. Gichuru
3. Hon. Leah Ndeke
4. Hon. Ruth Kibiti
5. Hon. Nur Ibrahim Abdi
6. Hon. Kimaiyo arap Sego
7. Hon. Zeruiyah Otwani
12. Hon. Thomas Nyabote Aburi
13. Hon. Francis Ng’ang’a
14. Hon. John M. Kiniti
15. Hon. Julius Sitienei
16. Hon. Gichira Kibara
17. Hon. Kamama Asman
14. Hon. Jane Mutunga

IN ATTENDANCE

- | | | | |
|----|------------------------|---|--------------------------|
| 1. | Comm. Keriako Tobiko | - | Rapporteur |
| 2. | Com. Riunga Raiji | - | Rapporteur |
| 3. | Mrs. Esther Kamau | - | Clerk, National Assembly |
| 4. | Mr. Fredrick Oundo | - | NCC Secretariat |
| 5. | Mrs. Sahara D. Ibrahim | - | NCC Secretariat |
| 6. | Mrs. Asha Boru | - | NCC Secretariat |

ABSENT WITH APOLOGY

Hon. Kiriro wa Ngugi - Convenor

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. A. Ewaton
8. Hon. Midiwo Washington Jakoyo

- 9. Hon. J.B. Muturi
- 10. Hon. Benson Mbai
- 11. Hon.Nkoroi Peter Kang'ethe

MIN. TWGK/CCAC/205: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.55 a.m. with Hon. Zeruiya Otwani leading prayers.

Hon Kimaiyo Arap Sego was elected temporary Convenor.

MIN. TWGK/CCAC/206: CONFIRMATION OF MINUTES

The minutes of the twenty eighth sitting 18th February 2004 were proposed for confirmation by Hon. Nur Ibrahim Abdi and was seconded by Hon. John Kiniti.

MIN. TWGK/CCAC/207: CONFIRMATION AND ADOPTION OF COMMITTEE'S PLENARY REPORT.

The committee confirmed and adopted the report of the Technical working Group "K" that would be presented in the plenary.

MIN. TWGK/CCAC/208: REPORT OF THE CONSENSUS BUILDING GROUP

The committee dismissed the report by the consensus group in as far as the formation of commissions is concerned.

MIN. TWGK/CCAC/209: ADJOURNMENT

The meeting adjourned at 12.55 p.m. until Wednesday, February 24, 2004 at 9.30 a.m.

SIGNED:
(CONVENOR)

DATE:

NATIONAL CONSTITUTIONAL CONFERENCE

February 26, 2004

**TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL
COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION**

The Convenor presents his compliments to Members of the Technical Working Committee K and has the honour to inform them that a sitting of the Committee will be held on Wednesday, February 25, 2004 in Tent No. 11, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers.
2. Apologies.
3. Adoption of Agenda.
4. Communication from the Convenor.
5. Confirmation of the Previous Minutes.
6. Matters Arising.
7. Any Other Business.
8. Date of the Next Meeting.

Approved for circulation -(Convenor)

Signed

Date.....

MINUTES OF THE THIRTIETH MEETING OF THE TECHNICAL WORKING COMMITTEE “K” ON CONSTITUTIONAL COMMISSIONS AND AMENDMENTS TO THE CONSTITUTION HELD ON WEDNESDAY 26TH FEBRUARY 2004 AT 10.50 A.M. IN TENT NO. 11, BOMAS OF KENYA

PRESENT: The following Members of the Committee were present: -

1. Hon. Kiriro wa Ngugi - Convenor
2. Hon. Ajuoga Milka Aoko
3. Hon. G.G. Gichuru
4. Hon. Leah Ndeke
5. Hon. Ruth Kibiti
6. Hon. Nur Ibrahim Abdi
7. Hon. Kimaiyo arap Sego
8. Hon. Zeruiyah Otwani
9. Hon. Thomas Nyabote Aburi
10. Hon. Francis Ng’ang’a
11. Hon. John M. Kiniti
12. Hon. Julius Sitienei
13. Hon. Gichira Kibara
14. Hon. Kamama Asman
15. Hon. Jane Mutunga

IN ATTENDANCE

1. Mrs. Esther Kamau - Clerk Assistant, National Assembly
2. Mr. Fredrick Oundo - NCC Secretariat
3. Mrs. Sahara D. Ibrahim - NCC Secretariat
4. Mrs. Asha Boru - NCC Secretariat

ABSENT

1. Hon. Kirugi M’Mukindia
2. Hon. Newton Kulundu
3. Hon. P. Muiruri
4. Hon. Makau Mutua
5. Hon. Danson Mungatana
6. Hon. John M. Mutiso
7. Hon. A. Ewaton
8. Hon. J.B. Muturi
9. Hon. Nkoroi Peter Kang’ethe
11. Hon. Midiwo Washington Jakoyo
12. Hon. J.B. Muturi
13. Hon. Benson Mbai
14. Hon. Nkoroi Peter Kang’ethe

MIN. TWGK/CCAC/210: COMMENCEMENT OF MEETING AND PRAYERS

The meeting was called to order at 10.50 a.m. with Hon. Zeruiya Otwani leading prayers.

MIN. TWGK/CCAC/211: CONFIRMATION OF MINUTES

The minutes of the twenty-ninth sitting 25th February 2004 were proposed for confirmation by Hon. Nur Ibrahim Abdi and seconded by Hon. John Kiniti and were confirmed by the members present

MIN. TWGK/CCAC/212: ADJOURNMENT

The Committee having fully completed its work, discharged and exhausted its mandate, adjourned its business indefinitely until any need arises and in order to allow the members to move on with another stage of the Conference, that is the Plenary stage.

SIGNED:
(CONVENOR)

DATE:

APPENDIX V: COMMITTEE’S RECOMMENDATIONS ON THE DRAFT BILL.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
<p align="center"><u>CHAPTER SEVENTEEN</u></p> <p align="center">278</p>	<p align="center"><u>CONSTITUTIONAL COMMISSIONS & CONSTITUTIONAL OFFICES.</u></p> <p>Principles applicable to all commissions.</p> <p>The principles provided for in this Chapter apply to all constitutional commissions.</p>	<p align="center"><u>CONSTITUTIONAL COMMISSIONS & CONSTITUTIONAL OFFICES</u></p> <p>Principles applicable to all commissions.</p> <p><u>(1)</u> The principles provided for in this Chapter apply to all constitutional commissions, except where specific provision is made to the contrary in this Constitution.</p> <p><u>(2)</u> <i>The principles applicable to all commissions in terms of this Chapter with the necessary modifications and adaptations shall be applicable to holders of constitutional offices.</i></p>	<p align="center">NONE</p>	<p>-Principles enshrined herein to govern all Constitutional Commissions including those established elsewhere in the Draft Bill.</p>
<p align="center">279</p>	<p>Objects and independence of commissions</p> <p>(1) The objectives of constitutional</p>	<p>Objects and independence of commissions</p> <p>(1) The objectives of</p>	<p align="center">NONE</p>	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>commissions established by this Constitution are to:</p> <ul style="list-style-type: none"> (a) protect the sovereignty of the people, (b) secure the observance by all organs of government of democratic principles and values, and (c) ensure the maintenance of constitutionality. <p>(2) In the performance of their functions, constitutional commissions are subject-</p> <ul style="list-style-type: none"> (a) only to the Constitution and not to the direction or control of any other person or authority, and (b) shall be impartial and perform their functions without fear or favour or prejudice. 	<p>constitutional commissions established by this Constitution are to:</p> <ul style="list-style-type: none"> (a) protect the sovereignty of the people, (b) secure the observance by all organs of government of democratic principles and values, and (c) ensure the maintenance of constitutionality. <p>(2) In the performance of their functions, constitutional commissions are subject-</p> <ul style="list-style-type: none"> (a) only to the Constitution and not to the direction or control of any other person or authority, and (b) shall be impartial and perform their functions without fear or favour or prejudice. 		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	(3) A Constitutional Commission shall where appropriate, establish branches at the provincial and district level, and offer their services free of charge	(3) A Constitutional Commission shall where appropriate; (a) establish branches <i>using its own staff</i> at all devolved spheres of the government; and (b) offer services <i>to the public</i> free of charge.		-Constitutional Commissions to use their own staff in establishing branches to lower levels.
280	Incorporation (1) A Constitutional Commission is a body corporate and shall- (a) have perpetual succession and a common seal, (b) (b) in its corporate name be capable of suing and being sued; and (c) subject to this Constitution be capable of performing such other functions as a body corporate may perform.	Incorporation (1) A Constitutional Commission is a body corporate and shall- (a) have perpetual succession and a common seal, (b) in its corporate name be capable of suing and being sued; and (c) subject to this Constitution be capable of performing such other functions as a body corporate may perform.	NONE	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Two</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
<p>281</p>	<p>Composition of Commissions (1) A Constitutional Commission shall consist of not less than three and not more than ten members at least one-third of whom shall be women. (2) The chairperson and the other members of a Constitutional Commission shall be appointed by the President with the approval of Parliament (3) A member of a constitutional commission- (a) holds office for a term of five years, and is eligible for re-appointment for only one further term; (b) retires from office on attaining the age of sixty-five years; (c) shall not hold any other office</p>	<p>Composition of Commissions (1) A Constitutional Commission shall consist of not less than three and not more than ten members. (2) <i>The members of a Constitutional Commission shall be;</i> (a) <i>identified and recommended in a manner prescribed by an Act of Parliament;</i> (b) <i>appointed by the President; and</i> (c) <i>approved by Parliament.</i> (3) A member of a Constitutional Commission; (a) <i>may either be full time or part time,</i> (b) <i>have qualifications relevant to the</i></p>	<p>NONE</p>	<p>-The phrases, “Affirmative Action” and “at least a third of whom shall be women” were left out under this article and chapter in general in order to avoid repetitions since throughout the entire Draft Bill, they are recognized as general principles i.e. all elective and appointive offices must comply with this two principles. -Parliament was given a larger</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>of profit or emolument or any other employment whether public or private, directly or indirectly; and</p> <p>(d) shall comply with the Leadership and Integrity Code of Conduct.</p> <p>(4) A member of a constitutional commission is not liable to an action or a suit for a matter or anything done in good faith in the performance of a function of office as a member</p>	<p><i>functions of the Constitutional Commission to which he or she is appointed;</i></p> <p>(c) hold office for a term of five years, and is eligible for re-appointment for only one further term;</p> <p>(d) retire from office on attaining the age of sixty-five years;</p> <p>(e) shall not save for <i>ex-officio and part time</i> member, hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and</p> <p>(f) shall comply with the Leadership and Integrity Code of Conduct.</p> <p>(4) A member of a constitutional commission is not liable to an action or a suit for a matter or anything done in good faith in the performance of a function of office as a member,</p>		<p>stake in appointments in order to curb political appointments by the executive.</p> <p>-Term of office and retirement age was based on the idea of affording other people especially the youths a chance to hold such offices.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
		<i>(5) members of a constitutional commission shall at the first sitting of the commission appoint a chairperson from amongst themselves.</i>		
282 A.	New	Staff of Commissions <i>A Constitutional Commission shall recruit such staff as it may require for the discharge of its functions.</i>	Hon. Nkoroi Peter Kang'ethe (Del. No. 278). <i>“The staff of the commissions should be appointed in consultation with the Public Service Commission (PSC) but be paid by the relevant commission”.</i>	-Each commission shall independently recruit its own staff as part of the principle of independence of commissions.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
282	<p>General functions of Commissions</p> <p>(1) A Constitutional Commission shall seek to educate the public on its role, purpose and functions and</p> <p>(a) may conduct investigations, on its own initiative or on complaint made by a member of the public;</p> <p>(b) has the powers of the High Court to issue summons, compel attendance to give evidence or produce documents for the purposes of its investigations;</p> <p>(c) has the powers necessary for conciliation, mediation and negotiation with the aim of reaching an amicable settlement;</p> <p>(d) may award compensation; and</p> <p>(e) may commit a person, or an organization to the High Court for contempt.</p>	<p>General functions of Commissions</p> <p><i><u>(1)</u> A Constitutional Commission may in addition to the functions conferred by this Constitution perform such other functions as parliament may by law prescribe.</i></p> <p>(2) A Constitutional Commission shall seek to educate the public on its role, purpose and functions and; -</p> <p>(a) may conduct investigations, on its own initiative or on complaint made by a member of the public;</p> <p>(b) has the powers to issue summons, compel attendance to give evidence or produce documents for the purposes of its investigations;</p> <p>(c) has the powers necessary for conciliation, mediation and negotiation with the aim of reaching an amicable settlement;</p>	NONE	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Two</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(2) Complaints may be lodged directly by an aggrieved individual, or a member of the individual’s family or by an interested person or an organization.</p> <p>(3) Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing by an official of the Constitutional Commission.</p>	<p>(d) may award compensation <i>and/or impose a fine</i>; and</p> <p>(e) may commit a person, or an organization to the High Court for contempt.</p> <p>(3) Complaints may be lodged directly by an aggrieved individual or a member of the individual’s family <i>or any other person entitled to lodge a complaint under Article 73(1)</i>.</p> <p>(4) Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing <i>and signed</i> by an official of the Constitutional Commission.</p>		<p>-The wider scope of people entitled to lodge a complaint was thought necessary since it was a departure from the current situation where the scope of locus standi is rather restrictive.</p> <p>-An oral complaint was thought necessary in order to deviate from the restrictive requirement of a formal written complaint.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
283	<p>Proceedings of Commissions</p> <p>The proceedings of a Constitutional Commission are valid although there is a vacancy in its membership.</p>	<p>Proceedings of Commissions</p> <p><i>(1)</i> The proceedings of a Constitutional Commission are valid <i>even where</i> there is a vacancy in its membership.</p> <p><i>(2) A Constitutional commission shall regulate its own proceedings.</i></p>	NONE	
284	<p>Removal from office</p> <p>(1) Where the President considers that a member of a constitutional commission should be removed from office, the President shall appoint a tribunal to investigate the matter, and report on the facts to the President with the recommendations whether or not the member should be removed.</p> <p>(2) The tribunal shall consist of the chairperson and four other members appointed by the President from among persons,</p>	<p>Removal from office</p> <p>(1) <i>A member of a Constitutional Commission may be removed from office only for –</i></p> <p><i>(a) inability to perform the functions of his or her office arising from infirmity of body or mind;</i></p> <p><i>(b) misconduct; or</i></p> <p><i>(c) incompetence-</i></p> <p><i>(d) bankruptcy</i></p>	NONE	-To curb politically instigated impeachment of commissioners from office.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Two</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(a) who hold or have held office as judge of the superior courts of record, or</p> <p>(b) who are qualified to be appointed as High Court judges, or</p> <p>(c) who are advocates of not less than fifteen years standing.</p> <p>(3) Where reference is made to a tribunal for the removal from office of a member, the President may suspend that member from the performance of the functions of office as a member.</p> <p>(4) The President may revoke a suspension under clause (3), but shall remove the member from office where the tribunal recommends removal.</p>	<p>(2) Where the President considers that a member of a constitutional commission should be removed from office, the President shall appoint a tribunal to investigate the matter, and report on the facts to Parliament with the recommendations whether or not the member should be removed.</p> <p>(3) <i>The tribunal shall be appointed by the President with the approval of Parliament on such terms as may be imposed by Parliament.</i></p> <p>(4) The tribunal shall consist of the Chairperson and four other members appointed by the President from among persons-</p> <p>(a) <i>the chairperson</i> shall have held office <i>in Kenya</i> as judge of the superior courts of record;</p> <p>(b) <i>at least two</i> person qualified to be</p>		<p>-The President's appointments to the tribunal have to be approved by Parliament so as to ensure impartiality and independence of such tribunals.</p> <p>-The word "Kenya" was added under this sub-clause so as to</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
		<p>appointed as High Court judges; or</p> <p>(5) Where reference is made to a tribunal for the removal from office of a member, the President <i>shall</i> suspend that member from the performance of the-functions of office as a member.</p> <p>(6) <i>The President shall effect the decisions of the tribunal within thirty days.</i></p>		<p>ensure that we depart from the reliance of foreign judges or appointment of foreigners to the tribunals at the expense of Kenyans.</p> <p>-A member to of a commission under investigation shall remain suspended pending the outcome of the investigations.</p> <p>-The President is bound to effect the decisions of the tribunal within thirty days.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
285	<p>Funds of the Commissions</p> <p>(1) The funds of a Constitutional Commission include -</p> <p>(a) moneys voted by Parliament for the purposes of the commission; and</p> <p>(b) any other moneys received by the commission in the performance of its functions.</p> <p>(2) A Constitutional Commission shall submit its estimates of revenue and expenditure to the relevant Parliamentary Committee for approval by Parliament.</p> <p>(3) The administrative expenses of a Constitutional Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the commission are a charge on the Consolidated Fund.</p> <p>(4) Within three months after the end of the financial year, a constitutional commission shall submit its books and records of</p>	<p>Funds of the Commissions</p> <p>(1) The funds of a Constitutional Commission include-</p> <p>(a) moneys voted by Parliament for the purposes of the commission; and</p> <p>(b) any other moneys received by the commission in the performance of its functions.</p> <p>(2) A Constitutional Commission shall submit its estimates of revenue and expenditure to Parliament <i>for approval.</i></p> <p>(3) The administrative expenses of a Constitutional Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the commission are a charge on the Consolidated Fund.</p> <p>(4) Within three months after the end of the financial year, a constitutional commission shall submit its books and records of account to the Auditor-General for</p>	NONE	<p>-It was noted that financial independence was a fundamental pillar towards realization of independence of commissions.</p> <p>-Submission of reports after every</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
286	<p>Annual and other reports</p> <p>(1) Within seven months after the end of the financial year a Constitutional Commission shall submit a report to the President and to Parliament</p> <p>(2) The report shall contain-</p> <p>(a) a statement on its performance in meeting its objectives;</p> <p>(b) a statement on its activities for the year and its projection on its future activities; and</p> <p>(c) the report of the Auditor-General.</p> <p>(3) Parliament may, at any time, request a Constitutional Commission to send to it a report on a particular issue.</p> <p>(4) The President shall respond to</p>	<p>Annual and other reports</p> <p>(1) Within seven months after the end of the financial year a Constitutional Commission shall submit a report to the President and to Parliament.</p> <p>(2) The report shall contain-</p> <p>(a) a statement on its performance in meeting its objectives;</p> <p>(b) a statement on its activities for the year and its projection on its future activities; and</p> <p>(c) the report of the Auditor-General.</p> <p>(3) Parliament may, at any time, request a Constitutional Commission to send to it a report on a particular issue.</p> <p>(4) The President shall respond to the report of a Constitutional Commission in writing to Parliament,</p>	NONE	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	the report of a Constitutional Commission in writing to Parliament, which shall debate the report together with the response of the President.	which shall debate the report together with the response of the President. <i>(5) A person entitled to lodge a complaint under Article 73 (1) may refer part or all the reports of a commission to the High Court.</i>		-The scope of people entitled to access and examine the reports was made wider in order to achieve transparency, accountability and competence.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
287	<p>Special Constitutional Commissions</p> <p>In addition to such other Commissions as are established elsewhere in this Constitution, the following special commissions are established.</p> <p>(a) The Commission on Human Rights and Administrative Justice</p> <p>(b) The Ethics and Integrity Commission</p> <p>(c) The Salaries and Remuneration Commission</p> <p>(d) The Teachers Service Commission</p> <p>(e) The Constitution Commission</p>	<p>Special Constitutional Commissions</p> <p>In addition to such other Commissions as are established elsewhere in this Constitution, the following special commissions are established-</p> <p>(a) the Commission on Human Rights and Administrative Justice</p> <p>(b) <i>the Gender Commission</i></p> <p>(c) the Ethics and Integrity Commission</p> <p>(d) the Salaries and Remuneration Commission</p> <p>(e) the Teachers Service Commission</p> <p>(f) the Constitution Commission</p> <p>(g) <i>the Health Service Commission.</i></p> <p>(h) <i>the Cultural and National Honours Commission.</i></p> <p style="text-align: center;">227</p>	NONE	<p>-Gender commission was curved out of the Human Rights and Administrative Justice Commission because of the fear that the latter was likely to override gender issues.</p> <p>-The Health Commission was formed in order to help actualize the right to access medical care.</p> <p>- The Cultural and National Honours Commission was formed to preserve culture and to honour both independence and democracy heroes and heroines.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
288	<p>The Commission on Human Rights and Administrative Justice</p> <p>(1) The Commission on Human Rights and Administrative Justice shall consist of-</p> <p>(a) the Chairperson;</p> <p>(b) the Human Rights Commissioner;</p> <p>(c) the People’s Protector;</p> <p>(d) the Gender Commissioner; and</p> <p>(e) any such other commissioners not exceeding six in number as may be appointed in accordance with this Constitution.</p> <p>(2) Of the six commissioners referred to in clause (1)-</p> <p>(a) one shall have knowledge and experience in matters relating to</p>	<p>The Commission on Human Rights and Administrative Justice</p> <p>(1) The Commission on Human Rights and Administrative Justice shall consist of-</p> <p>(a) the Chairperson;</p> <p>(b) the Human Rights Commissioner;</p> <p>(c) the-People’s Protector;</p> <p>(d) the Minority Rights Commissioner; and</p> <p>(e) any such other commissioners not exceeding six in number as may be appointed in accordance with this Constitution.</p> <p>(2) Of the six commissioners referred to in clause (1)-</p>	NONE	NONE

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>children and shall ensure that the provisions of Article 37 of the Bill of Rights are adhered to;</p> <p>(b) one shall be a person with disability who has knowledge and experience in matters relating to disability and shall ensure that the provisions of Article 39 the Bill of Rights are adhered to; and</p> <p>(c) one shall have knowledge and experience in matters relating to basic needs.</p> <p>(3) The functions of the Commission on Human Rights and Administrative Justice are:</p> <p>(a) in relation to the jurisdiction of the Human Rights Commissioner-</p> <p>(i) to promote respect for human rights and develop a culture of human rights;</p>	<p>(a) one shall have knowledge and experience in matters relating to children and shall ensure that the provisions of Article 37 of the Bill of Rights are adhered to;</p> <p>(b) one shall be a person with disability who has knowledge and experience in matters relating to disability and shall ensure that the provisions of Article 39 of the Bill of Rights are adhered to;</p> <p>(c) one shall have knowledge and experience in matters relating to basic needs.</p> <p>(d) one shall have knowledge and experience in matters of the rights of the aged.</p> <p>(3) The functions of the Commission on Human Rights and Administrative Justice are:</p>		<p>-The issues of the rights of the aged should be addressed by the Human Rights Commission.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(ii) to promote respect for gender equality and equity including the protection and development of gender equality and equity;</p> <p>(iii) to promote the protection, development and attainment of human rights in public and private institutions;</p> <p>(iv) to monitor and access the observation of human rights in all spheres of life in the Republic;</p> <p>(v) to promote high standards of human rights in the Republic;</p> <p>(vi) investigate and to report on the observation of human rights;</p> <p>(vii) take steps to secure appropriate redress where human rights have been violated;</p> <p>(viii) to investigate any conduct in state affairs or in the public</p>	<p>(a) in relation to the jurisdiction of the Human Rights Commissioner-</p> <p>(i) to promote respect for human rights and develop a culture of human rights;</p> <p>(ii) to promote the protection, development and attainment of human rights in public and private institutions;</p> <p>(iii) to monitor and access the observation of human rights in all spheres of life in the Republic;</p> <p>(iv) to promote high standards of human rights in the Republic;</p> <p>(v) investigate and to report on the observation of human rights;</p> <p>(vi) take steps to secure appropriate redress where human rights have been violated;</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>administration in any sphere of government that is alleged or suspected to be improper or that could result in any impropriety or prejudice; and</p> <p>(ix) to investigate human rights within the disciplined forces including their relationships with the public.</p> <p>(b) in relation to the jurisdiction of the People’s Protector to-</p> <p>(i) ensure that government departments, local government authorities, publicly owned business, bodies created under statute, public office holders and all other organs of the State, responsive to the needs of the people and provide prompt remedy in cases of failure;</p> <p>(ii) receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt unlawful oppressive or unfair official conduct;</p>	<p>(vii) to investigate any conduct in state any sphere of government that is alleged or affairs or in the public administration in suspected to be improper or that could result in any impropriety or prejudice; and</p> <p>(viii) investigate human rights within the disciplined forces including their relationships with the public;</p> <p>(b) in relation to the jurisdiction of the People’s Protector to-</p> <p>(i) ensure that government departments, local government authorities, publicly owned business, bodies created under statute, public office holders and all other organs of the State, are responsive to the needs of the people and provide prompt remedy in cases of failure;</p> <p>(ii) receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt, unlawful,</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(iii) initiate investigations, conduct research and make recommendations to improve the functioning of government bodies;</p> <p>(iv) improve the standards of competence, honesty, integrity and transparency in the public services;</p> <p>(v) reform legislation that is unfair or inconsistent with the Constitution;</p> <p>(vi) reform practices of organs of state that are unfair or inconsistent with the Constitution;</p> <p>(vii) promote respect for and observance of the Leadership Code;</p> <p>(viii) investigate and report on any conduct in state affairs, or in the public administration, that is alleged or suspected to be improper or to result in any impropriety or prejudice; and</p>	<p>oppressive or unfair official conduct;</p> <p>(iii) initiate investigations, conduct research and make recommendations to improve the functioning of government bodies;</p> <p>(iv) improve the standards of competence, honesty, integrity and transparency in the public services;</p> <p>(v) reform legislation that is unfair or inconsistent with the Constitution;</p> <p>(vi) reform practices of organs of state that are unfair or inconsistent with the Constitution;</p> <p>(vii) promote respect for and observance of the Leadership Code of Conduct;</p> <p>(viii) investigate and report on any conduct in state affairs, or in the public administration, that is alleged or suspected to be improper or to</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(ix) recommend appropriate remedial action.</p> <p>(c) in relation to the jurisdiction of the Gender Commissioner to-</p> <p>(i) promote gender equality and equity, co-ordinate and facilitate mainstreaming in national development and to advise the Government on any of those matters,</p> <p>(ii) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints,</p> <p>(iii) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development,</p> <p>(iv) formulate programmes and advise in the establishment and</p>	<p>result in any impropriety or prejudice; and</p> <p>(ix) recommend appropriate remedial action; and</p> <p>(c) in relation to the jurisdiction of any other Commissioner, to perform such functions as may be assigned to them by the Commission; and</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>strengthening if institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to natural resources.</p> <p>(v) plan, supervise and co-ordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues,</p> <p>(vi) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions, and</p>			

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(viii) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution, and</p> <p>(ix) act as the Government's chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.</p> <p>(d) in relation to the jurisdiction of any other Commissioner, to perform such functions as may be assigned to them by the Commission.</p>			
289A	<p>Formerly Sub-Article 288 (c) and now elevated to a full commission), i.e.</p> <p>(c) in relation to the jurisdiction of the Gender Commissioner to-</p> <p>(i) promote gender equality and equity, co-ordinate and facilitate</p>	<p>The Gender Commission</p> <p><i>(1) The Gender Commission shall consist of -</i></p> <p><i>(a) the Chairperson; and</i></p> <p><i>(b) nine other members.</i></p>	NONE	<p>-The Commission is necessary in order to address gender issues more seriously. It was feared that gender issues were likely to be designated to the</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>mainstreaming in national development and to advise the Government on any of those matters,</p> <p>(ii) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints,</p> <p>(iii) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development,</p> <p>(iv) formulate programmes and advise in the establishment and strengthening if institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to natural resources.</p> <p>(v) plan, supervise and co-ordinate programmes to create public awareness and support for gender</p>	<p>(2) The functions of the Gender Commission are to-</p> <p>(a) promote gender equality and equity, co-ordinate and facilitate mainstreaming in national development and to advise the Government on any of those matters;</p> <p>(b) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints;</p> <p>(c) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development;</p> <p>(d) formulate programmes and advise in the establishment and strengthening if institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to natural</p>		<p>periphery in terms of priority if fused together with the general human rights issues.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues,</p> <p>(vi) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions, and</p> <p>(viii) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution, and</p> <p>(ix) act as the Government's chief agent in ensuring compliance with</p>	<p>resources;</p> <p><u>(e)</u> plan, supervise and co-ordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues;</p> <p>(f) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions;</p> <p>(g) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution;</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	obligation under international treaties and conventions on human rights.	and (h) act as the Government’s chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.		
289	<p>The Ethics and Integrity Commission</p> <p>(1) The Ethics and Integrity Commission shall consist of -</p> <p>(a) the Chairperson; and</p> <p>(b) six other members all of whom shall be persons of integrity and high moral character.</p> <p>(2) The functions of the Ethics and</p>	<p>The Ethics and Integrity Commission</p> <p>(1) The Ethics and Integrity Commission shall consist of -</p> <p>(a) the Chairperson; and</p> <p>(b) nine other members all of whom shall be persons of integrity and high moral character.</p> <p>(2) The functions of the Ethics</p>	NONE	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>Integrity Commission are to-</p> <p>(a) receive declarations in accordance with the Leadership Code;</p> <p>(b) retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament;</p> <p>(c) ensure compliance with and where appropriate, enforce the Leadership Code of law relating to the Leadership Code;</p> <p>(d) receive complaints about non-compliance with or breach of the Leadership Code or a law in relation to the Leadership Code, to investigate the complaint and where appropriate refer the</p>	<p>and Integrity Commission are to-</p> <p>(a) receive declarations in accordance with the Leadership Code <i>of Conduct</i>;</p> <p>(b) retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament;</p> <p>(c) ensure compliance with and where appropriate, enforce the Leadership Code <i>of Conduct</i>;</p> <p>(d) receive complaints about non-compliance with or breach of the Leadership Code <i>of Conduct</i> or a law in relation to the Leadership Code, to investigate the complaint and where appropriate refer the complaints to the relevant authorities for action where it is called for;</p> <p><i>(e) put in place measures aimed at the prevention of corruption</i></p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>complaints to the relevant authorities for action where it is called for;</p> <p>(e) investigate whether persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections for public offices are free of corruption and therefore fit and proper persons for those offices;</p> <p>(f) disqualify on investigation as in paragraph (e) those who are found not suitable for public office in terms of the Code or in terms of the law;</p> <p>(g) appoint, promote, dismiss, manage and exercise disciplinary control over the staff in accordance with an Act of Parliament enacted for that</p>	<p><i>including issuing guidelines to public bodies formed under an Act of Parliament;</i></p> <p>(3) The Commission shall not investigate any matter-</p> <p>(a) pending before a court of competent jurisdiction or a judicial tribunal; and</p> <p>(b) relating to the legislative power of Parliament;</p> <p><i>(4) The Commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of the assets and liabilities of public officers.</i></p> <p><i>(5) The Commission shall make the register of the assets and liabilities of public officers available for inspection by any citizen in a manner prescribed by an Act of Parliament.</i></p>		<p>-Records of public assets and liabilities should be made available to the public subject to the regulation by an Act of Parliament.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>purpose;</p> <p>(h) perform any other functions conferred on it by Parliament, or an Act of Parliament;</p> <p>(i) put in place measures aimed at the prevention of corruption;</p> <p>(j) investigate instances of corruption;</p> <p>(k) exercise the practices and procedures of public bodies and shall ensure that they are not conducive to corruption;</p> <p>(l) advise the heads of public bodies on the changes necessary to eliminate the likelihood of corruption; and</p> <p>(m) educate the public on the dangers of corruption.</p>			

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(3) A declaration of wealth under this Article is required-</p> <p>(a) in the case of a person then in office, within three months of the commencement of the Leadership and Integrity Code; or</p> <p>(b) in any other case within three months of the assumption of office by any person; and</p> <p>(c) thereafter on annual basis.</p> <p>(4) The Commission shall not investigate any matter-</p> <p>(a) pending before a court of competent jurisdiction or a judicial tribunal;</p> <p>(b) relating to the legislative power of Parliament;</p>			

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(c) the prosecution of which lies in the discretion of the Director of Public Prosecutions; or</p> <p>(d) relating to the granting of honours or a pardon.</p>			
290	<p>Salaries and Remuneration Commission</p> <p>(1) The Salaries and Remuneration Commission shall consist of:</p> <p>(a) the Chairperson;</p> <p>(b) one representative from the Attorney General’s office;</p> <p>(c) one representative from the Public Service Commission;</p> <p>(d) one nominee representing professional bodies;</p>	<p>Salaries and Remuneration Commission</p> <p>(1) The Salaries and Remuneration Commission shall consist of:</p> <p>(a) the Chairperson;</p> <p>(b) one <i>ex-officio</i> member from the Attorney General’s office;</p> <p>(c) one <i>ex-officio member</i> from the Public Service Commission</p> <p>(d) one nominee representing professional bodies;</p>	NONE	<p>-The commission should regulate and harmonize salaries of public employees who draw their salaries from the ex-chequer including parastatals employees in order to address the existing disparities in public servants remuneration.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(e) one nominee from an umbrella body representing employees;</p> <p>(f) one nominee from an umbrella body representing trade unions; and</p> <p>(g) one representative from Treasury.</p> <p>(2) The functions of the Salaries and Remuneration Commission are to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including-</p> <p>(a) the President, Vice-president, the Prime Minister, the Deputy Prime Ministers, the Ministers and Deputy Ministers;</p> <p>(b) members of Parliament;</p> <p>(c) the Attorney-General, Judges, the Director of Public Prosecutions, the Auditor-General and the members of</p>	<p>(e) one nominee from an umbrella body representing employers;</p> <p>(f) one nominee from an umbrella body representing trade unions,</p> <p>(g) one nominee from an umbrella body representing <i>informal sector</i>; and</p> <p>(h) one nominee representing farmers</p> <p>(i) one <i>ex-officio</i> member from Treasury.</p> <p>(2) The functions of the Salaries and Remuneration Commission are;</p> <p>(a) to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including-</p> <p>(i) the President, Vice- president, the</p>		<p>-Membership to the commission should be wide enough so as to accommodate representatives from all sectors of employment and public service, and both formal and informal sectors of employment.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>constitutional commissions;</p> <p>(d) other public officers including employees of parastatals.</p> <p>(3) The Commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of the assets and liabilities of public officers.</p>	<p>Prime Minister, the Deputy Prime Ministers, the Ministers and Deputy Ministers;</p> <p>(ii) members of Parliament;</p> <p>(iii) the Attorney-General, Judges, the Director of Public Prosecutions, the Auditor-General and the members of constitutional commissions;</p> <p><i>(b) to regulate the harmonization of salaries and remuneration of all public officers including officers of devolved governments and employees of parastatals.</i></p>		
291	<p>Teachers Service Commission</p> <p>(1) The Teachers Service Commission shall consist of:</p>	<p>Teachers Service Commission</p> <p>(1) The Teachers Service Commission shall consist of:</p>	NONE	

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(a) the Chairperson; and</p> <p>(b) six other members.</p> <p>(2) The functions of the Teachers Service Commission are-</p> <p>(a) in consultation with the Public Service Commission, to recruit and employ registered teachers;</p> <p>(b) to assign teachers employed by the commission for service in any public school;</p> <p>(c) to promote and transfer any such teacher;</p> <p>(d) to terminate the employment of any such teacher; and</p> <p>(e) to do anything which is</p>	<p>(a) the Chairperson; and</p> <p>(b) <i>nine</i> other members.</p> <p>(2) The functions of the Teachers Service-Commission are-</p> <p><i>(a) to register trained teachers;</i></p> <p><i>(b) subject to provisions under devolution;</i></p> <p><i>(i) to recruit and employ registered teachers,</i></p> <p>(ii) to assign teachers employed by the commission for service in any public school and any other learning institution;</p> <p>(iii) to promote and transfer any such teacher;</p> <p>(iv) to terminate the employment of any such teacher; and</p>		<p>-The mandate and structure of the teachers Service Commission shall be subject to the principles and structures of devolution.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>incidental or conducive to the exercise of its powers under paragraphs (a) to (d).</p> <p>(3) The commission shall keep under review the standards of education, training and fitness to teach appropriate to persons entering the teachers' service and the supply of teachers and to tender advice to the Government on matters relating to the teaching profession.</p>	<p>(v) to do anything which is incidental or conducive to the exercise of its powers under <i>this Article</i>.</p> <p>(3) The commission shall keep under review the standards of education, training and fitness to teach appropriate to persons entering the teachers' service and the supply of teachers and to tender advice to the Government on matters relating to the teaching profession.</p>		
292	<p>Constitution Commission</p> <p>(1) The Constitution Commission shall consist of-</p> <p>(a) the Chairperson; and</p> <p>(b) four other members.</p> <p>(2) The functions of the Constitution Commission are to-</p>	<p>Constitution Commission</p> <p>(1) The Constitution Commission shall consist of-</p> <p>(a) the Chairperson;</p> <p>(b) <i>nine</i> other members.</p> <p>(2) The functions of this Constitution Commission <i>are to</i></p>	NONE	<p>-To be in charge of monitoring, and overseeing the implementation of the new Constitution.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(a) ensure the implementation of the provisions of the Constitution which require new legislation and administrative action for full implementation;</p> <p>(b) to report twice a year to Parliament on the progress on implementation of the Constitution;</p> <p>(f) to outline the special difficulties that obstruct the timely implementation of the Constitution; and</p> <p>(g) to work closely with the chairpersons of the constitutional commissions and office holders to ensure that the letter and the spirit of the particular provisions of the Constitution are respected.</p> <p>(4) The Commission-</p>	<p><i>implement the Constitution as follows;</i></p> <p><i>(a) monitor, facilitate and oversee the development of-</i></p> <p><i>(i) legislation required under the 6th Schedule; and</i></p> <p><i>(ii) administrative procedures as required to fully implement the Constitution.</i></p> <p><i>(b) to report twice a year to the President and Parliament on the progress on-</i></p> <p><i>(i) the timely implementation of this Constitution; and</i></p> <p><i>(ii) any impediments to the timely implementation of this Constitution; and</i></p> <p><i>(c) to work with the Chairperson of each constitutional commission and</i></p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Two</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(a) may recommend measures on legislative and administrative matters to ensure and sustain the values of the Constitution;</p> <p>(b) shall report on any proposed amendments to the Constitution before or after the introduction of the Bill for amendment and to achieve that, the Commission may hold public hearings to receive the views of the people; and</p> <p>(c) shall hold consultations with the President aimed at safeguarding the Constitution.</p>	<p><i>each constitutional officer, to ensure that the letter and the spirit of this Constitution is respected; and</i></p> <p><i>(3) The Constitution Commission shall stand dissolved at the full implementation of this Constitution as determined by an Act of Parliament in accordance with Article 294.</i></p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
293	<p>Constitutional offices</p> <p>(1) The following Constitutional Offices are established elsewhere in the Constitution-</p> <p>(a) Attorney- General (b) Auditor-General (c) Controller of the Budget (d) Director of Central Bureau of Statistics (e) Director of the Kenya Correctional services (f) Director of the Kenya Police Service (g) Director of Public Prosecutions (h) Governor of Central Bank (i) Public Defender</p> <p>(2) The principles applicable to all commissions in terms of this Chapter apply with the necessary modification and adaptations to the holders of constitutional offices.</p>	Deleted	NONE	-The committee felt that it was not necessary to merely list the offices.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
293A	New	<p>Cultural and National Honours Commission</p> <p>(1) The Cultural and National Honours Commission shall consist of-</p> <p>(a) The Chairperson, and</p> <p>(b) nine other members.</p> <p>(2) Of the nine members two of them shall be named heroes and two shall be named heroines.</p> <p>(3) The functions of the Commission are-</p> <p>(i) identify, document, promote, develop. Preserve and protect the diverse cultures of Kenya;</p> <p>(ii) promote knowledge understanding' appreciation' tolerance, co-operation and respect of each others customs, traditions, beliefs, languages and religions;</p> <p>(iii) conduct civic education and involve the people in formation and implementation of linguistic and cultural development plans to ensure</p>	NONE	<p>-To honour imperialism, independence and democracy heroes and heroines.</p> <p>-To have a composite commission since cultural and heroes and heroines matters are usually interrelated.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
293B	New	<p><i>Health Service Commission.</i> <i>(1) The Health Service Commission shall consist of-</i> <i>(a) the Chairperson; and</i> <i>(b) nine other members.</i> <i>(2) of the nine members of the Commission, five members shall be health professionals.</i> <i>(3) The functions of the Commission are-</i> <i>(a) to register trained health workers,</i> <i>(b) subject to the provisions of this Constitution under devolution-</i> <i>(i) to recruit and employ registered health workers,</i> <i>(ii) to assign health workers employed by the Commission for service in any public hospital and other institutions;</i> <i>(iii) to promote and transfer any such health workers;</i> <i>(iv) to terminate the employment of any such health worker;</i> <i>(c) ensure planned health, human resources development, professional standards and ethics,</i> <i>(d) to prepare and disseminate information;</i> <i>(e) to conduct medical audit and professional research;</i> <i>(f) ensure viable technical management</i></p>	NONE	<p>-To help in actualizing the right to access medical care.</p> <p>-The commissions' structures and activities shall be subject to the principles and structures of devolution.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
<p><u>CHAPTER EIGHTEEN.</u></p> <p>294</p>	<p><u>CONSTITUTIONAL AMMENDMENT.</u> Constitutional Amendment</p> <p>(1) Subject to the provisions of this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.</p> <p>(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in its second and third reading in each House by not less than two thirds majority of the total membership of that House it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:</p>	<p><u>CONSTITUTIONAL AMMENDMENTS.</u> Constitutional Amendments.</p> <p>(1) Subject to the provisions of this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this <i>Chapter</i>.</p> <p>(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in its second and third reading in each House by not less than two thirds majority of the total membership of that House it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:</p>	<p>NONE</p>	<p>-Sub-article (3) dealing with amendment of entrenched provisions was carved out and made a full-fledged article specifically addressing amendment of entrenched provisions.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
		<i>(3) Parliament shall publicize and facilitate discussion on a Bill for an Act to amend any provisions of the Constitution.</i>		
295 A	<p>(Formerly Sub- Article 294 (3))</p> <p>(3) An amendment that seeks to make any change in-</p> <p>(a) the territory of Kenya as set out in Article 7 (1) and described in the First Schedule of the Constitution;</p> <p>(b) the sovereignty of the people</p> <p>(c) the principles and values of the Republic as set out in Article 6 (2) of the Constitution;</p> <p>(d) the Bill of Rights;</p> <p>(e) the structure, values and principles of devolution as set</p>	<p>Amendments requiring referendum.</p> <p>An amendment that seeks to make any change in-</p> <p>(a) the territory of Kenya.</p> <p>(b) the sovereignty of people</p> <p>(c) the Values and Principles of the Republic.</p> <p>(d) the Bill of Rights.</p> <p>(e) the values and principles of devolution</p> <p>(f) the rights of a citizen.</p>	NONE	<p>-To make core provisions in the Constitution hard to amend.</p> <p>-The term office of the President is entrenched in order to curb instances where Parliamentarians solely driven by their political expediencies could amend the Constitution by a mere two-third majority without</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>out in Chapter ten of the Constitution ;</p> <p>(f) citizenship; and</p> <p>(g) the provisions of this Article, shall also require ratification by the people in a referendum before the Bill making provision for such amendment is presented to the President for assent.</p>	<p>(g) <i>the term of office of the President</i>; and</p> <p>(h) the provisions of this Article, shall also require ratification by the People in a referendum before the Bill making provision for such amendment is presented to the President for assent.</p>		<p>first seeking the views of the Kenyans.</p>
295	<p>Amendment by Parliament.</p> <p>(1) A Bill for an Act to amend any provisions of the Constitution, other than the Articles referred to in Article 294 (3), shall not be taken as passed unless it is supported by the votes of two-thirds majority, at the second and third reading.</p> <p>(2) The committee on Good Governance and Public Participation shall publicize and facilitate discussion on the Bill.</p>	Deleted	NONE	<p>-The committee felt that this was unnecessary repetition since the logic under this article is already covered under Article 294.</p>

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
296A	New	<p><i>Amendment by the People</i></p> <p><i>(1) One million citizens entitled to vote may by a popular initiative propose an amendment to this Constitution.</i></p> <p><i>(2) A popular initiative for an amendment of this Constitution may be in the form of a general suggestion or a formulated draft bill.</i></p> <p><i>(3) where a popular initiative is in the form a general suggestion, the promoters of such popular initiative shall reduce it into a draft bill.</i></p> <p><i>(4) If the draft bill is approved by the majority of counties, it shall be submitted to the National Assembly where each chamber by a vote of two-thirds majority shall debate and pass it, and if they reject it or the chambers disagree, it shall be submitted to the people in a</i></p>	NONE	-To empower ordinary citizens to initiate constitutional amendments on their own motion and to end the current situation where it is a reserve of Parliamentarians.

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
		<p><i>referendum.</i></p> <p><i>(5) if the people adopt the popular initiative, the Bill shall be deemed to have been duly passed and shall be presented to the President for his assent.</i></p>		
296	<p><i>Certificate of compliance</i></p> <p>(1) The second and third readings referred to in Article 295 shall be separated by ninety days.</p> <p>(2) A Bill for the amendment of the Constitution which has been passed in accordance with this Chapter, shall be assented to by the President only if –</p> <p>(a) it is accompanied by a certificate of the Speaker that the provision of this Chapter have been complied with in relation to it; and</p>	<p><i>Certificate of compliance</i></p> <p>(1) The second and third readings referred to in Article 294, shall be separated by ninety days.</p> <p>(2) (a). A Bill for the amendment of the Constitution which has been passed in accordance with this Chapter, shall be assented to by the President only if –</p> <p>(b) it is accompanied by a certificate of the Speaker that the provision of this Chapter have been complied with in relation to it; and in the case of a</p>	NONE	NONE

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
	<p>(b) in the case of a Bill to amend the provisions to which Article 294 (3) apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum or, as the case may be, ratified by local authorities in accordance with this Chapter.</p> <p>(3) Where, in the case of a Bill to which clause (2) of this Article applies, the President –</p> <p>(a) refuses to assent to the Bill; or</p> <p>(b) fails to assent to the Bill within thirty days after the Bill is submitted, the President shall be taken to have assented to the Bill and the Speaker shall cause a copy of the Bill to be laid before Parliament and the Bill shall, notwithstanding Article 294 (2) become law without the assent of the President.</p>	<p>Bill to amend the provisions to which Article 295A and 296 A apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum.</p> <p>(3) Where, in the case of a Bill to which clause (2) of this Article applies, the President-</p> <p>(a) refuses to assent to the Bill; or</p> <p>(b) fails to assent to the Bill within thirty days after the Bill is submitted, the President shall be taken to have assented to the Bill and the Speaker shall cause a copy of the Bill to be laid before Parliament and the Bill shall, notwithstanding Article 294 (2) become law</p>		

<i>Article</i>	<i>2.2.1 As Printed In The Draft Bill</i>	<i>2.2.2. As Adopted By The Twc</i>	<i>2.2.3. As Formulated By The Minority (If Any)</i>	<i>2.2.4 Explanatory Notes</i>
		<p>without the assent of the President.</p> <p><i>(4) Parliament shall enact a Referendum Act.</i></p>		<p>-The committee proposed the establishment of the Referendum Act in order to govern referenda.</p>