

**NATIONAL CONSTITUTIONAL CONFERENCE  
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “B” ON  
CITIZENSHIP & BILL OF RIGHTS**

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

**2005**

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## 1. INTRODUCTION

Initially, the concept of rights came about as a result of the need to protect individuals who were at the risk of exploitation and oppression from the rise of strong states and markets. In recent years, this concept has broadened to include different dimensions of rights, namely, the civil and political rights, on one hand, and economic, social and cultural rights on the other.

In the current Constitution, provisions on human rights are contained in Chapter 5 entitled '*Protection of Fundamental Rights and Freedoms of the Individual*'. These provisions are notably limited in terms of those protected, the types of rights protected as well as the range of those bound by the duties associated with those rights and, further, provide for a large number of exceptions to the rights.

The Draft Bill, on the other hand, recommends a new design of the Bill of Rights of Kenya that protects the civil and political rights as well as the social and economic rights, and places great emphasis on social justice and the basic human needs.

Under the current Constitution, there are a number of anomalies in the provisions on citizenship, which the Draft Bill seeks to amend.

This Technical Working Committee was mandated to deliberate and make decisions with respect to Chapters Four and Five of the Draft Bill on Citizenship and The Bill of Rights respectively. The Committee, as of 26<sup>th</sup> February 2004, had a total of 53 members and had held a total of thirty-five meetings.

In addition to the members, the Committee comprised of Rapporteurs and Secretariat Staff as listed hereunder:

Convener	-	Hon. Cecily Mbarire
Co-convener	-	Hon. Suba Churchill Meshack
Rapporteurs	-	Comm. Ibrahim Lethome
	-	Comm. Salome Muigai
	-	Comm. Nancy Baraza
Draftsperson	-	Mr. Jeremiah Nyegenye
Assistant Program	-	Mrs. Liz Kingi (Bomas II)
	-	Mrs. Selina Kandie (Bomas II)
	-	Ms. Helene Namisi (Bomas III)
	-	Ms. Carol Ndindi (Bomas III)
Clerk	-	Mr. John Wanyoike
Verbatim Recorder	-	Ms. Martina Odhiambo

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

### **2.1 Mandate of the Committee**

Section 3 of the Constitution of Kenya Review Act (Cap 3A) provides that the object and purpose of the review is to secure provisions therein, *inter alia*, establishing a free and democratic system of government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity as well as promoting and facilitating regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights.

Pursuant to Section 17 of the Act, the functions of the Commission are, *inter alia*, to ensure that in reviewing the Constitution, the people of Kenya examine and review the right to citizenship and recommend improvements that will, in particular, ensure gender parity in the conferment of the right, to examine and review socio-cultural obstacles that promote various forms of discrimination and recommend improvements to secure equal rights for all and to examine the rights of the child and recommend mechanisms that will guarantee protection thereof.

Regulation 49 of the National Constitutional Conference (Procedure) Regulations (2002) establishes Technical Working Groups to consider any issue or theme arising from the Report and the Draft Bill, as they may consider appropriate. Pursuant thereto, Technical Working Committee “ B” was mandated to consider any issue or theme arising from the Report and the Draft Bill, on Chapter 4 on Citizenship, and Chapter 5 on the Bill of Rights.

### **2.2 Committee’s Method of Work**

The Committee’s method of work was based on the National Constitutional Conference (Procedure) Regulations (2002) and the Guidelines for the Technical Working Committees.

It was agreed that members would read the relevant provisions of the Commission’s Main Report, the Draft Bill and other reference documents such as the Annotated Draft Bill, in advance of Committee sessions in order to prepare adequately for technical consideration of the Report and the Draft Bill. In order to facilitate orderly deliberation, the Committee developed an Agenda for the business of each day.

The Committee decided that it would elect an Acting Convener to chair the Committee sessions whenever the Convener was absent.

Members resolved that in accordance with the Conference Regulations, decisions in the Committees would be made by consensus, and where necessary, by voting and any minority decisions would be recorded. The Rapporteurs provided explanation and clarification on various issues from time to time. Where necessary, the Committee

would invite experts to address the Committee on subjects that had been identified. It was explained that the Clerk from Parliament would assist members to draft motions for amendment.

To ensure proper coordination among and between Committees, at the close of business each day, all the Conveners and the Rapporteurs would meet with the Rapporteur-General.

All decisions by the Committee were reached by consensus, except on two occasions when a division was called. These were in relation to Article 23 on Dual Citizenship and Article 36A on the Youth, when a division was called to decide on the upper age limit of youth.

Upon completion of its consideration of the two Chapters, and compilation of the Chapters as amended by the Committee, the Committee unanimously adopted the annotated version as its report. The Convener and her co-convener presented this report at the Working Retreat For The Compilation Of The Committee Reports And Consolidation Of The Zero Draft Bill held at the Leisure Lodge Beach And Golf Resort, Mombasa.

Thereafter, the Committee reconsidered the two Chapters, with respect to the comments and issues raised after the presentation of the Committee Report at Mombasa, as well as the cross-cutting issues, in a bid to harmonize the provisions of its Chapters with other Chapters of the Draft Bill. Further amendments were adopted and a final Committee Report was presented for consideration and adoption before presentation of the same to the Steering Committee and Plenary.

### **3. ANALYSIS OF ISSUES RELATING TO THE REPORT AND DRAFT BILL**

#### **3.1 Issues relating to the Report**

The Committee did not directly discuss the Main Report but referred to it in its discussion on the Draft Bill.

The members agreed to proceed directly into the discussion on the Articles since the Report had already been debated at Plenary. It was further agreed that members would read the Main Report on an individual basis.

It was explained that the Main Report's provisions on Citizenship had laid out the conceptual background for the Draft Bill's provisions on citizenship and that Committee had the mandate to amend both the Report and the Draft Bill. Ultimately, the Committee would have to meet these requirements.

### **3.2: Issues relating to Specific Articles, Sub-articles and Clauses of the Draft Bill.**

#### ***Article 15: Duties of a citizen***

The following were the pertinent issues raised:

- It was pointed out that this Article should be discussed and considered together with other Articles relating to Citizenship, in Chapter Four, as opposed to it being deliberated by the Technical Working Committee on the Preamble.

#### ***Article 16: General Principles concerning Citizenship***

The following were the pertinent issues raised:  
The word 'except' as it appears at the beginning of the Article was rather confusing.

- The Article was clear as it granted equal rights and privileges to all citizens.
- The Article should first state the right and emphasize it, before stating the exception.
- Under Article 16 (c), other documents of identification should also be highlighted.
- Enumeration of the documents of identification i.e. Identity Card, Birth Certificate, Passport and Birth Certificate, should be left to consequential legislation.
- It would be too expensive to make passports for 40 million Kenyans.
- That Kenyans wanted the right to have a passport, a birth certificate and an identity card recognized in the Constitution because in the past, these documents have been very difficult to obtain.
- Except where the Constitution had made provisions to the contrary, all citizens of Kenya should be equally entitled to a Kenyan passport, National Identity Card and a Birth Certificate.

#### ***Article 17: Retention of Existing Citizenship***

The following were the pertinent issues raised:

- Use of the words "the Constitution" should be avoided as it may mean other Constitutions and the one being debated on. Instead reference should always be made to 'this Constitution'.
- Article 17 (2) is misplaced as it deals with acquisition of citizenship, yet Article 17 deals with retention of existing citizenship. The Article is also very long, winding and is unclear.
- It is necessary to qualify that only those individuals who had lawfully attained their citizenship would be considered as citizens.
- Some of the aspects of sub-article 17(2) could be taken care of in Article 18.

#### ***Article 17A: Citizenship of Persons who would have been citizens of Kenya***

A new Article 17A was inserted to read as follows:

*Every person who immediately before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya.*

***Article 18: Acquisition of Citizenship***

The following were the pertinent issues raised:

- Clarification was required on the distinction between naturalization and acquisition of citizenship.
- The word ‘may’ should be substituted with the word ‘shall’ to make the provision more compulsory than it was.

***Article 19: Citizenship by Birth***

The following were the pertinent issues raised:

- It was noted that citizenship by descent had been taken care of by the provisions on citizenship by birth and by naturalization.
- It was necessary to define citizenship by birth due to the history of discrimination in matters to do with citizenship.
- The words ‘mother and father’ in Article 19 (1) should be replaced with the words ‘both parents’ since the current wording appeared to glorify single motherhood which was not in keeping with African culture.
- The mischief that the Article was trying to cure is that there should no discrimination on the grounds of gender. If single fathers could confer citizenship, in the spirit of equal treatment, single mothers should also be able to do so.
- One of the objects of the Review Process, as stipulated in the Constitution of Kenya Review Act is to ensure that citizenship is provided for on a basis of gender parity.
- The principle of equal rights could destabilize our African culture.

***Article 20: Citizenship and Marriage***

The following were the pertinent issues raised:

- Other factors such as security, stability of the nation, investment and proof of lawful residence should be considered before the period of time is decided upon.
- The matrimonial relationship should be the overriding consideration since it would be difficult to prove residence or investment in Kenya in a case where the foreign spouse was abroad.
- The institution of marriage should be analysed positively so that it does not seem to discriminate against persons married to foreigners.
- The three-year period provided should be extended to 5, 7 or 10, in the interest of safeguarding the institution of marriage and preventing it from being commercialisation.
- A three-year period is too short and would be open to abuse by drug traffickers and other criminals.

- A ten-year would be reasonable in order to prevent foreigners from exploiting the poor through sham marriages.
- It is necessary to consider whether foreign spouses would be allowed to work and set up businesses in Kenya during the intervening period.

***Article 21: Citizenship by Naturalisation***

The following were the pertinent issues raised:

- The words “except for expatriate employees “ should be inserted after the words ‘seven years’.

***Article 22: Children found in Kenya and Adopted Children***

The following were the pertinent issues raised:

- The words ‘medically certified’ should be inserted before the words ‘to be less than eight years’ since the word ‘appear’ on its own would be insufficient.
- The Article was misplaced and should be deleted since it ought to deal with administrative matters.
- This Article did not address a constitutional issue but instead contained details which are better left to statute.
- The Article was too generous since Kenya already has too many children.
- The Article would consequently give Kenyan citizenship to very many foreigners, which would be undesirable.
- The Article was open to abuse as neighbouring countries could dump children along the border so that they acquire Kenyan citizenship.
- The unique situation in North Eastern Province e.g. Mandera should be considered as there are very many stateless children in that area due to the lack of government in Somalia.
- The words ‘nationality and’ should be inserted immediately after the words ‘eight years of age and whose’

***Article 23: Dual Citizenship***

The following were the pertinent issues raised:

- Dual citizenship should be restricted in certain situations and should not be permitted to persons in the Armed Forces, the Cabinet or Judiciary. This could prove to be a danger to state security since certain state secrets could be revealed.
- Dual citizenship was not really justified in this age of global terrorism.
- Dual citizenship should be permitted for school children and students abroad. It should also be permitted for those who wish to invest in Kenya.
- Permitting dual citizenship could prevent brain drain and capital flight.
- Dual citizenship is necessary in order to avoid excluding and discriminating against the genuinely-deserving citizens of Kenya.

- Since dual citizenship captures the modern trends of the world, it should be permitted but under special circumstances as defined by law e.g. for persons of Kenyan descent only. It should be allowed with restrictions and exceptions.
- Mechanisms should be put in place to monitor and ensure dual citizenship is allowed to only deserving categories.
- There are many persons especially those living along the border or abroad who would like to benefit from dual citizenship without necessarily having to denounce their Kenyan citizenship.
- The Constitution should not allow dual citizenship, as it is not useful to a sovereign State like Kenya. People should be patriotic and loyal to one country and avoid being selfish by being dual citizens.
- Permitting dual citizenship would encourage crime and subversive activities in Kenya.
- At BOMAS III, the 5-member sub-committee made a presentation with the following proposals:
  - (1) To have dual citizenship denied as a principle but allowed only in the following circumstances:
    - (i) where the person is a spouse of a Kenyan.
    - (ii) where the person is a Kenyan with a foreign spouse
    - (iii) where the person is a child, below the age of 18, born outside Kenya.
    - (iv) if there is substantial reason for the dual citizenship.

In this instance, persons holding public office would not be eligible to dual citizens.

- (2) To have dual citizenship as a right but withhold it from:
  - (i) persons who are not Kenyans by birth.
  - (ii) persons holding public office.
- Dual citizenship does not mean that a person is only eligible to citizenship from two countries.
- It was noted that a citizen by birth is one who is born to Kenyan parents regardless of how the parent acquired their citizenship.
- It was suggested that dual citizenship should be allowed as a principle, but that the qualifications for eligibility should be tightened.
- It was pointed out that the specific limitations to dual citizenship should be left to subsidiary legislation.
- Delete Article 23(1) and insert a new Clause denying dual citizenship as a principle.

***Article 24: Cessation of Citizenship***

The following were the pertinent issues raised:

- There is need to clarify the meaning of the words ‘lawful’ and ‘unlawful’.
- The words ‘or by other unlawful means’ should be deleted since they leave room for discretion, which might be abused.

- There was need to clarify issues relating to loosing, denouncing and cessation of citizenship.

***Article 25: Citizenship of Parent dying before Birth of Person***

The following were the pertinent issues raised:

- The Article was vague and needed to be clarified.
- Any acquisition of citizenship should be in terms of the Constitution

***Article 26: Residence***

The following were the pertinent issues raised:

- It is clearly stipulated in this Article that residence is not citizenship.
- Foreign children borne of Kenya citizens should reside in Kenya.
- There is need to clarify the meaning of the word ‘residence’ and what it entails.

***Article 27: Powers of Parliament***

The following were the pertinent issues raised:

- The word “may” enact legislation should be replaced by the word “shall”
- The Article gives Parliament powers outside the Constitution.
- The Article was ambiguous and unnecessary.
- The Article was repetitive and redundant.
- The provisions of Article 27(a) and (b) are taken care of in the other Chapters of the Constitution.

***Article 28: Citizenship Registration Board***

The following were the pertinent issues raised:

- It is not necessary to establish a Citizenship Registration Board in the Constitution since this would be a duplication of the role of the Immigration Department.
- The Article should be merged with Article 27, to give Parliament the power to enact legislation on the same.

***Chapter Title: Citizenship***

The following were the proposed titles for the Chapter:

- “Right to Citizenship”
- “Enhancement of the Rightful Citizenship”
- “Citizenship and Residential Status”

***Article 29: Fundamental Rights and Freedoms***

The following were the pertinent issues raised:

- The word ‘political’ should be inserted before the word ‘social’ in Article 29 (1).
- The word ‘religion’ should be inserted before the word ‘cultural’ in Article 29 (1).
- It was unnecessary and unjustifiable to insert the word religion in the Article. It would contradict the provisions of Article 10 on the State and Religion.
- Religion had already been implied in the Bill of Rights, in Article 44 on the Freedom of worship, and thus there was no need to state it in this Article.
- Religion should be included in addition to culture, since religion is a belief in God.
- Though the Preamble recognised God, it was possible that those in Committee A could dispense with the reference to God and so God should be captured in the Chapter on the Bill of Rights.

#### *Article 29 (2)*

- The word ‘substantive’ should be inserted before the words ‘social justice’ in order to provide a connection between the rights as set out formally in the Constitution and accessing them in practice.
- Inclusion of the word ‘substantive’ would make the rights justifiable and enforceable in a court of law and ensure that the Government performs certain duties.
- The Article did not recognize certain ethnic communities such as the Malakote.
- The Article purported to establish the principle of individual and group rights.
- Reference should be made to ‘ethnic and other communities’ since ethnic communities are not the only type of communities in existence.
- It was necessary to include the word “ethnic” in order to remove the mischief of having to go to court for a declaration of community status.
- Ethnicity has been recognized in the Preamble and for continuity, it could also be recognized in this Article.
- The intention of the Article is mainly to recognize the presence of community rights and not necessarily the specific tribes.
- The word “communities” was all-inclusive and sufficient.

#### *Article 29 (3)*

- The Article attempted to capture the principle that human rights are inherent.
- The principle that one’s should not infringe on the rights of others has been captured in the limitations (Article 31).
- Article 29 (3) (a) should be deleted and substituted therefor the words ‘rights are inherent and inalienable to all the people of Kenya’.
- Community rights as a concept together with its operationalisation have gained universal acceptance.
- Inherent rights cannot accrue to communities. If such rights were to accrue to communities, they would naturally have certain responsibilities as a whole.
- The sub-article seemed to capture and recognize other rights, which are not expressly outlined in the Chapter that could have adverse effects.
- Community rights should be included in the sub-article.

***Article 30: Duty of the State to Protect Rights and Freedoms***

Some members took issue with the heading and suggested that the word “ensure” be substituted with ‘promote’ and others suggested that the heading should remain since it allows for growth and development; while others suggested that the heading of the Article should only be considered after the contents of the Article had been discussed.

*Article 30 (5)*

- There was need for the definition of the words ‘civil society’, ‘instruments’ and ‘provide’.
- The merits and the demerits of the principle of partnership between the Government and civil society was in issue.
- In the past, government and civil society have been antagonistic towards each other.
- In the past, civil society has played a key role in the provision of checks and balances for the government and provision of civic education.
- There was need to exercise caution since external forces could misuse the civil society to destabilize the government.
- Article 297 of Chapter Nineteen on Interpretation provided a definition for the words ‘civil society’, which was defined as any society that is not government, although this did not include the church.
- The history of civil society in Kenya and the need for positive reforms were considered.

*Article 30 (6)*

- Members expressed deep concerns and reservations about international treaties and the treaty- making process.
- In a broad sense, this Article sought to insubordinate Kenya’s sovereignty on the pretext of being accountable to international human rights treaties. Since Kenya was sovereign, a clause should be included to provide that any treaty is approved by Parliament before coming into operation in Kenya.
- This Article was very dangerous to Kenya’s sovereignty because it may be used to sneak in unfavorable provisions. It would bring about re-engineering of our laws by foreigners.
- International treaties on human rights may have undesirable impacts e.g. legalizing homosexuality in Kenya.
- There were many inequalities at play at the negotiation of those treaties as a result of arm-twisting e.g. threats to withdraw donor aid. Therefore, those treaties were not entered into fairly. The Government should not be under obligation to enter into treaties. The Government was only obliged to honour the international obligations that it had freely entered into.
- The Article did not compromise our Kenyan sovereignty since it dealt with International human rights treaties and it was obvious that Kenya is a citizen of the

international community. Kenya would participate in the negotiations and the treaty – making process, and would have the opportunity to decide and take what was good before it became a signatory. Kenya would at the domestication stage pass Kenyan legislation to operationalise the treaties. If the Government was not satisfied with some treaty provisions, it could refuse to sign the particular treaty or enter reservations.

- Since Kenya shared a lot of similarities with other countries and since issues on Bill of Rights and other related issues had transnational linkages, it was desirable to have the Article since Kenya needs to have international rules and regulations.
- The spirit of the Article was about true and accurate reporting on human rights. Government would be forced to report unlike in the past when the Government had routinely delayed reports or failed to report altogether.
- The Article brought in enforcement mechanisms, which would especially come in handy if the domestic mechanisms failed to secure the upholding of human rights.
- The Article was for the benefit of the common man.
- In the past the international community had come to the aid of the Kenyans especially when human rights were being abused.
- Sometimes, for practical reasons, part of our sovereignty could be ceded with a view to securing a better and fuller protection of human rights.
- The Article gave a wide foundation for the role of the State in matters of human rights and was for the benefit of the citizenry.

#### *Article 30 (6)*

- The words ‘on time’ in Article 30 (6) (a) should be replaced with the words ‘in the manner required’
- The term ‘instruments’ should be used instead of the term ‘treaties’ since ‘instruments’ was a broader terminology that captured both treaties and declarations.
- The two-month period provided in Article 30 (6) (b) for submission of draft reports to international bodies is too short and impractical since the views of all stakeholders will not have been adequately discussed and exhausted.
- The two months proposed for submission of draft reports by the Republic to international bodies was adequate time for debate from the public in Article 30. A time limit is very important in order to avoid loopholes when submitting draft reports. Today’s modern information technology can ensure issues are adequately debated.
- There is need for the Human Rights Commission to handle issues that promote the rights and freedoms for the people of Kenya.
- It was necessary to build people’s participation. The public must be fully involved in debate on issues to ensure they understand what their country is submitting to international bodies.
- That civil society has a right to submit reports and therefore the Government should facilitate their submission. Civil society should be able to ensure that the Government sends authentic reports.

- There is need for checks and balances, accountability and transparency when the Government sends reports. Divergent views of issues proposed by civil society may also be sent to international bodies with the Government facilitating this process.

***Article 31: Limitation of Rights***

The following were the pertinent issues raised:

- The Article was too technical.
- There was need to recognize and accept the principle that all rights are subject to some limitations and that no right is absolute. That conceptually, rights are subject to certain limitations in accordance with the laws of general application i.e. the Penal Code or other laws that are applied equally by the courts of law to all Kenyans.
- The principle that in the enjoyment of one's rights, one should not infringe upon the rights of others, should be included.
- The wording of Article 31 (a) and (b) should be considered in depth to see whether it departs from the provisions of the current Constitution and international human rights.
- The current Constitution had many claw-back mechanisms whereby it gave rights with one hand and took them away with the other.
- The limitations should be considered alongside the provisions of Article 2 on Supremacy of the Constitution i.e. that statutes should not infringe upon the Constitution
- The new Judiciary would interpret the Bill of Rights according to objective criteria i.e. according to law and not according to their whims.
- Before the rights of an individual are limited, the state has to prove a two- tier criteria i.e. firstly, the limitation must be part of a law of general application and secondly, that the limitation should be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom e.t.c.

***Article 31(4)***

- Clarification was sought on how the words "may" or "shall" harm the Muslim women. The word "may" gives the Muslim man the option to refuse to pay dowry, to pay inheritance or maintenance and this was not in the interest of Muslim women.
- This Article would contravene the provisions on equality yet the Constitution was for all Kenyans on equal terms.
- Differences in religion should not be debated in the Constitution but should be dealt with on another level.
- Article 31(4) affected only those people who accepted the Islamic religion and that no one was forced to accept a religion. The teaching of Islam was that the Islamic law applied to the Muslims. The Article did not harm non-Muslims.

- The issue to be considered should be whether this Article enhanced the spectrum of rights enjoyed by Muslim women and the girl child, and if so the Article should be supported. That the Muslim women enjoyed a greater spectrum of rights under the Islamic Law over and above those granted by the equality clauses.
- Diversity should be recognized even in terms of religion.
- If the limitation is not provided for, it would violate the provisions of Article 44 (6)(e).
- Since the spirit of the Bill of Rights is to bring about substantive justice, the limitation clause is necessary, as it would bring about substantive social justice.

***Article 32: Right to Life***

The following were the pertinent issues raised:

- Everyone has a right to life and nobody has a right to terminate life.
- Life should be defined as commencing at conception until natural death.
- Natural death means no interference to life whatsoever e.g. abortion and euthanasia (mercy killing). There is need to define what natural death is in this Article.
- When the life of an expectant mother was in danger e.g. in the case of an ectopic pregnancy a doctor should be allowed to undertake an abortion. The enforcement mechanisms to this exception should be made tight enough.
- Scientific technologies should be embraced when discussing the right to life.
- Doctors should mind their medical ethics; their primary responsibility is to save life.
- Where life is established the essence of the Article is to “protect life” irrespective of how life is obtained.
- There is need to protect against euthanasia.
- There is a lot of danger in legitimizing abortion.
- Cloning was cited as an example of scientific technology that may interfere with issues of natural life.
- A sub-clause should be inserted stipulating that ‘abortion is abolished’
- Defining when life begins would greatly limit the provisions of the Article to the extent that the Article is meant to protect all life.

***Article 32 (2)***

- The right to life has to be protected.
- With the death penalty in existence, innocent victims may have been sent to death.
- African culture had no death sentence.
- The death penalty is one of the limitations on the right to life.
- Death penalty should not be abolished, especially in the case of murderers and rapists.
- It would be hypocritical and contradictory to give the right to life with one hand, and then take it away with the other by allowing the death penalty.

- Life is a God-given right and no one, not even the State, has a right to take that life away.
- It should not be said that the State does not have a right over the lives of its citizenry since the State can engage its people in war against other states, where life of a person can be taken away.
- The death sentence, in itself, was not deterrent enough since there was still an increase in the number of robberies with violence and murderers.
- The death penalty should be permitted as retribution for the victim or the victim's family.

***Article 33: Equality***

The following were the pertinent issues raised:

- The Koran has divergent views on issues of equality between men and women.
- Kenyans are equal before the law.

***Article 34: Discrimination***

The following were the pertinent issues raised:

- There was need to add “on grounds of health status” as one of the grounds upon which individuals should not be discriminated against.
- The words ‘unfair discrimination’ are used so as to allow for positive discrimination i.e. affirmative action.
- The categories to benefit from affirmative action should be enumerated in this Article.
- The definition of affirmative action and the various categories that qualify for affirmative action was proposed as a new clause in Chapter Nineteen of the Draft Bill i.e. relating to interpretation.
- The word “may” should be replaced with the word “shall”
- That a specific Article on minorities should be included just as there is an Article on children.
- That Affirmative action is temporary and should be reflected as such.
- A definition of discrimination was necessary for the purpose of avoiding conflict.
- The words “health status” and “education” should be included as grounds upon which one should not be discriminated against.
- ‘Dress’ is also a way through which one could be discriminated against and thus should be included in the Article.

***Article 35: Women***

The following were the pertinent issues raised:

***Article 35 (1)***

- There is need to include the word “men” so that men and women can be seen to complement each other and not be seen as competing.
- The issues addressed relate to the historical injustices perpetuated against women. The Draft Bill should be able to correct the historical imbalances. It is necessary to address the issue of power relationships between men and women to avoid discrimination.
- Women in society have not been treated well; there has been a lot of inequality. Women have a right to equal treatment and opportunity with men.
- Issues concerning women need to be emphasized as much as possible. Women have been sidelined politically, economically, culturally and socially.

*Article 35 (2)*

- The law needs to protect the dignity of both men and women.
- Women need to be given equal treatment with men.
- Article 35 (2) strengthens the principles already expressed in Article 35 (1).
- When considering different issues, the State should not discriminate against women.
- It is the duty of the State to take care of both men and women and ensure discrimination does not occur.
- There is need to emphasis an environment of peaceful co-existence. It is important to affirm equality in dignity and not lose sight of respective duties and roles.
- In certain areas and regions, women are not accorded the dignity they deserve. This Article is meant to correct the anomaly.
- Article 35 (1) and (2) needs to be condensed together to avoid repetition of issues.
- The sub-section 35 (2) antagonizes men and women.
- There is need to amend the sub-section to read men and women, so that the Constitution is seen as superior and not in favour of one gender.

*Article 35 (4)*

- There is need to address the historical imbalances regarding the rights of women since our culture, which is patriarchal, has not encouraged the rights of women.
- The Article specifically and particularly addresses the issues of women.
- The phrasing in Article 35 (4) gives restriction on issues of discrimination of women. Men are also discriminated upon especially culturally where they are expected to pay dowry.
- The Article is sweeping and gives a lot of leeway to certain sections of the community i.e. women are given preference.
- Some cultures also discriminate against men. There is need to mention the rights of both men and women.

***Article 36: Older Member of Society***

The following were the pertinent issues raised:

- Older members of society have a duty to share their wisdom.
- The responsibilities of society to the older generation need to be brought out clearly. Older persons are vulnerable and need care.
- An individual should plan for his/her retirement.
- The state should ensure that the elderly are well taken care of and facilitate a plan for their retirement.
- Article 36 (1) should be discussed in the context of the family and what the State can do.
- The role of the State and the family towards the elderly should be clearly stipulated in this Article.
- The State should ensure that retirees get their benefits on time.
- There is need to create an older persons' council, which will define policies for the care and the protection of older persons.

*Article 36(6)*

- Insert the words '*by legislation*' between the words '**shall**' and '**establish**'.

*New Article 36(5)(a)*

- Insert a New Article 36(5)(a) to read '***The State shall establish a Council which will define and advise on policies and programs for the care and protection of elderly persons***'.

*Article 36 A: The Youth*

The following were the pertinent issues raised:

- There was a proposal for the inclusion of a new Article on the youth as issues dealing with the youth had been glaringly left out of the Bill.
- The upper limit for the youth should be extended from 25 years to 35 years so as to include more persons in the category and make provisions for the class of persons aged between 25 and 35 years who would have otherwise been excluded and would not reap the benefits that accrue to the rest of the group.
- While considering the upper age limit, it is important to bear in mind that nowadays, individuals graduate at a later age than was the case in the past. This means that they may be recent graduates and unemployed and are already outside the parameters of persons classified as youth. The age limit should thus be extended.

*Article 37: Children*

The following were the pertinent issues raised:

*Article 37 (1)*

- The word “*psychological*” should be inserted so as to encompass several issues.
- There was need to include provisions on discipline to give children some sense of responsibility.
- Children’s interests need to be addressed.
- The word “nurture” is inclusive and takes care of all the aspects of discipline.
- When issues of discipline are put in Article 37, it would give leeway to parents to mishandle children. The words ‘guidance and formative discipline’ were proposed for inclusion.

*Article 37 (2)*

- The words “whether born within or outside wedlock” appearing in this sub-article should be deleted.
- Those responsible for children born out of wedlock should take care of those children.
- Children are children irrespective of how they are brought into this world.
- All children whether born out of marriage or not are Kenyan children, and the law should protect them equally.
- It was noted that prior to the repeal of the Affiliation Act, women commercialized and misused the provisions of the Act.
- The Affiliation Act provided for the care of children by both men and women and no particular gender was favoured.
- Government should provide mechanisms to counter those who could misuse the Affiliation Act. Such legislation would ensure that it was not abused.

*Article 37 (3)*

- The interests of children are paramount and children should not be segregated.
- The word “shall” should be added to Article 37(3) to make it stronger and add meaning.

*Article 37 (4)*

- The responsibilities of both parents should be equal and the State should ensure that both parents play their roles in taking care of the child.
- The first role of the parent is to take care of the child.
- The Constitution should bear in mind the African culture. The provisions of the clause encourage immorality especially among women by allowing them not to get married but to have children carelessly.
- The main obstacle to the care of children is the father.
- Whether married or not people, parents must take care of their children.

*Article 37 (5)*

- The Article does not provide for adopted children.
- Birth registration is the first identification of the child, yet birth certificates are expensive.
- Adopted children are equally entitled to naming, registration and birth certificates.
- All children are entitled to legal advice.
- There is need to include provisions that cater for children with disabilities.
- There should be a simplified version of the Constitution for the benefit of children, which Constitution should recognize and represent the interests of children.
- The Children's Act lays out an elaborate plan on how to deal with children.

*Article 37(6)*

- The words '**nomadic children**' should be inserted immediately after the word disabilities.

*Article 37 (9)*

- The words "this Article" should be deleted and substituted therefor the words 'this Constitution'

***Article 38: The Family***

- The family and the institution of marriage should be defined in order to avoid erroneous interpretations of what constitutes the family unit.
- Marriage should only be between persons of the opposite sexes.
- Family cannot be defined in the Constitution, as this would exclude certain groups of persons.
- The African way of defining the family is different from the western concept. African families are extended and the definition of a family should consider this.
- The family is a growing concept but when it comes to responsibility each one of us knows what a family means.
- The Constitution should clearly state that marriages between homosexuals are prohibited.

*Article 38 (3)*

- Some married people have connections with lesbianism and homosexuality
- Kenya should make its own laws even if that means going against international trends in human rights e.g. on gay rights.
- There is need to protect our culture.
- Lesbianism and homosexuality is prevalent in our Kenyans schools.
- The words '**a person of the opposite sex**' should be inserted between the words '**marry**' and '**based**'.

- It was pointed out that the issue of same sex marriages (surrogate marriages) allowed in certain communities should be addressed.
- A new clause should be inserted to address the issue of same sex marriages and relationships.
- It was pointed out that the Article should be specific that it was targeting conjugal relationship of same sex couples.

*Article 38 (4)*

- The words ‘before marriage’ need to be clarified.
- Marriage is a process and certain aspects took place before marriage.
- The Article was open to abuse by those who wanted to marry for commercial gain.
- The Article took care of rape in marriage.
- The Article was addressing political, economic and social rights.
- The word “parties” should be inserted at the beginning.
- The words “in the marriage” should be deleted and the words “as to the marriage” be inserted in place thereof.

*Article 38(5)*

- A new clause should be inserted as follows:  
***‘Same sex marriage is prohibited’***
- The word ‘*is*’ between the words ‘**marriage**’ and ‘**prohibited**’ should be deleted.
- The words ‘***and homosexuality are***’ should be inserted between the words ‘**marriage**’ and ‘**prohibited**’.

***Article 39: Persons with Disability***

The following were the pertinent issues raised:

*Article 39 (1)*

- Persons with disabilities should be fully considered as part of society and that they should be understood and given what they require.
- The word ‘disability’ would be more appropriate since the word ‘disabilities’ implies that the person referred to has several disabilities.
- Legislation that is provided for in Article 39 (2) (b) would create rights and penalties.
- The words “disabled persons” should be replaced with the words “persons with disability”.
- The idea of “all places” should be more specific and needs clarification.
- The words “to houses for use by the public” should be inserted after the words ‘all places’.

- The word “encourage” should be deleted and be substituted with “ensure”.
- The state shall ensure the use of sign language, Braille and other appropriate means of communication for persons with disability.
- Persons with disabilities are usually referred to in a demeaning manner in public and in private use of language.
- Education should be used as opposed to punitive measures.
- The word “require” in Article 39 (f) should be replaced with the word ‘encourage’.
- The State should provide for the inclusion and participation of persons with disability in decision making at all levels as part of affirmative action.
- There was need to ensure that persons with disability have equal rights as other persons to inheritance, access and control of property.
- A new clause should be inserted to provide that the State shall, by legislation and policy measures ensure that persons with disabilities have equal rights with other persons to inherit, access and control property and to fair treatment in the political, economic and social fields.

*Article 39 (3)*

- The words “whenever appropriate” should be deleted.

*Article 39 (4) (a)*

- It was necessary to include autistic disabilities.
- The word “normal” should be deleted and be substituted with the word ‘ordinary’.
- It was necessary to include elderly persons who become disabled in the provisions of the Article.

***Article 39 A: Minorities and Other Marginalised Groups***

The following were the pertinent issues raised:

- Marginalized groups include persons with disabilities, women and children.
- The Draft Bill should cater for all classes and categories of persons.
- Other communities within the bigger communities are also left out e.g. Ogiek, Mbeere, Tharaka and Somalis from Somalia
- Marginalization should not be tied to livelihood.
- The state has systematically and deliberately marginalized some communities over the years. However, issues concerning marginalized communities have been taken care by the paper titled ‘*Proposed Revision to Address Matters of Equality and Affirmative Action.*’
- Issues of marginalization cut across all the Articles and have been addressed in every Article in the Draft Bill.
- The Draft Bill had left out the marginalized groups, hunters, gatherers, nomadic pastoralists and fishing communities.

***Article 40: Human Dignity***

No issues were raised.

***Article 41: Freedom and Security of the Person***

No issues were raised.

***Article 42: Slavery, Servitude and Forced labor***

The following were the pertinent issues raised:

- The word ‘shall’ should be used instead of the word ‘may’
- The definition of forced labour should be addressed.
- The word ‘may’ is appropriate since it alludes to the possibility that there are certain circumstances within the law under which people may be subjected to forced labor.

***Article 43: Privacy***

- The word ‘private’ is subject to perception, and depends on our cultural orientation. What is private to one person may not be private to another.
- The protection guaranteed in the Article should not be limited to mere protection against intrusion by the State but also by other individuals and bodies e.g. the media.

***Article 44: Freedom of Religion, Belief and Opinion***

The following were the pertinent issues raised:

- The Committee should concern itself with the attendant practices of devil worship and not devil worship itself since it is difficult to define devil worship.
- Religion in its nature is difficult to define since it is a matter of faith.
- It is difficult to include protection against devil worship in the Article since devil worship is undefinable.
- There should be a provision included in this Article to discourage the observance of cults.
- The words ‘including a day of rest’ should be inserted between the words ‘observance’ and ‘practice’ in Article 44 (2) so as to protect the right of all persons to observe their respective days of worship.
- The inclusion of the words ‘including observance of a day of rest’ would be in harmony with Article 44 (6) (c), which outlines the observance, but in the negative, thus protecting those who may be forced to observe days of worship other than their own.
- It was suggested that if the Article was amended to read as proposed. It would open a Pandora’s box since every religion has its own day or rest.
- It was suggested that the institutions stated in Article 44 (5) should be specified as both private and public.

- It was noted that if the provisions of Article 44 (5) remain as they are, this would entitle one to employment regardless of religion.
- The phrase ‘institutions and facilities’ in Article 44 (5) as regards access should be critically examined as the same could mean a mosque or other place of worship.
- There was concern that if Article 44 (5) was left as is, it could become problematic, as people would invoke it to gain access to places of worship.
- There was a suggestion that the phrase ‘institutions or facilities’ should be deleted thus making Article 44 (5) more concise.
- It was noted that the language used in Article 44 (5) ambiguous and needed improvement.
- It was suggested that Article 44 (6) (a) & (b) should be merged since they have the same meaning.
- The phrase ‘ that is not that person’s religion’ should be replaced with the phrase ‘against one’s will’.
- One should not be compelled to participate in any religious ceremony, even if such ceremony is that of a religion that he /she proscribes to, unless he/she wishes to do so.
- It was suggested that a person should not be compelled to disclose his/her religion by any group of persons or any individual.
- It was pointed out that a public body might have mechanisms to make one disclose information concerning his/her religious beliefs or convictions.
- It was suggested that the phrase ‘**or any other body**’ be included after the word ‘**public body**’ in Article 44 (6).
- A motion to amend the clause by inserting the words ‘ *or private*’ between the words ‘*public*’ and ‘*body*’ was proposed and seconded. The motion carried.

#### ***Article 45: Freedom of Expression***

The following were the pertinent issues raised:

- Dress is a form of expression but is not a form of artistic expression. It should be encompassed in its own sub-article and not merged with artistic creativity.
- Many men and women have, in the past, been violated for expressing themselves through dress.
- The phrase ‘artistic creativity’ is broad enough to accommodate ‘dress’.
- There is inclusivity if the Article is left as is, and amending it to include dress would create the risk of excluding other forms of artistic expression.
- Inserting the phrase ‘including dress’ would otherwise fall under culture.
- The word ‘presentation’ should be clearly defined since African culture has the value of decency.
- Dress should be addressed as a form of expression in appreciation of African culture.

- The Suppression of Terrorism Bill provides for suspicion of persons as terrorists on the grounds of their dressing, and that mechanisms to fight such legislation should be put in place.
- Reference to dress as regards freedom to dress rightly falls under the Article dealing with discrimination.
- Expression through dress should be acceptable and decent.
- Article 45 (2) is a clear claw back on the freedom of expression as set out in Article 45 (1) and should be deleted.
- Article 45 (2) is also in contradiction to the provisions of Article 46.
- There should be a provision included elsewhere that legislation should be enacted to cover the spirit of Article 45 (2).
- Given the historical background of Kenya, Article 45 (2) should not be deleted.
- The words '*including dress*' should be inserted between the words '*creativity*' and '*and*'.

#### ***Article 46: Publication of Opinion***

The following were the pertinent issues raised:

##### *Article 46 (1) and (2)*

- Media should not be limited to electronic and print media only, since there are other forms of media at the moment, and new ones may emerge in future.
- Other forms of media require protection and should be included in the Article.
- Books and vendors should also be protected in the Article.
- The clause was an attempt to censor publication by media in order to protect against pornography and indecency.
- Distributors do not require the protection of the Article.
- The phrase 'or institution' should be inserted in Article 46 (2) (a) before the word 'person'.
- It was noted that the state should be barred from exercising control over the media.

##### *Article 46 (3)*

- The clause does not cover all forms of broadcasting that are independent of airwaves, yet the modern world does not necessarily depend on airwaves.
- The clause should remain as was since deletion of the phrase 'of the airwaves' would take away the history that contributed to it.
- The clause should appreciate the narrowing divide between the various forms of media and its armophous nature.
- The words 'and other forms of signal distribution' should be inderted immediately after the words 'airwaves'.

*Article 46 (4)*

- Public broadcasters should be totally independent of the government of the day and should be able to discharge their duties.
- The word ‘state-owned’ is meant to distinguish such broadcasters from the community-based broadcasters that are owned by and serve a particular community.

*Article 46 (5)*

- The provisions of Article 46(3) cater for the licensing of the institution whereas the provisions of Article 46(5) address the issue of publication and dissemination of information.

*Article 46 (6)*

- In the future, the mode of election campaigning may change and airtime by broadcasting media may not be required.
- Political parties can own media; therefore the sub-article should be deleted.
- The media can determine the popularity of a party and therefore it would be difficult to genuinely prove that a particular political party is indeed most popular.
- Any political party should be allowed to approach any media houses depending on its financial capability.
- Every person has a right to information. It was noted that unless voters had information about whom they are voting for, they would not be able to vote wisely.
- The Draft Bill proposes to fund political parties from the Consolidated Fund.
- At the rate at which by-elections are held in Kenya, media houses would not be able to meet their financial obligations if there was to be allocation of airtime.
- Article 46 (6) (c) should address the issue of censoring pornography.
- Everyone has the fundamental right to watch whatever he or she pleases.
- Broadcasting houses should be left to self-regulate and to formulate code of ethics amongst themselves.
- That there should be broad parameters within the law to determine what is or is not acceptable.
- It might be difficult to address this issue since Kenya is a developing country and is still within the confines of various religious persuasions.
- The Article as in the Draft Bill gives government a window to guard the media. The effect therefore being that government would use legislature to censor content even in the political context.
- Broadcasting houses depend on revenue from advertising. Prior censorship of advertisement would adversely affect media houses.

- Media houses are self-regulatory and are aware of the repercussions that would accrue if they aired material that is contrary to cultural values.
- There must standards to regulate the media.
- Article 46 (6)(c) should be redrafted to read as follows:

Parliament shall enact law that: -

- (c) **provides for establishment of a body independent of Government or political control, reasonably reflective of the interests of all affected sections of the community, to set, regulate and monitor compliance with media standards.**

- The clause should be sub-divided to read as follows:

Parliament shall enact law that:

- (i) provides for setting of media standards
- (ii) provides for the establishment of a body independent of government or political control, reflective of the interests of, and constituted by, all affected sections of the community, to regulate and monitor compliance with those standards.

*Article 46(7)*

- The clause should be deleted.

***Article 47: Access to Information***

The following were the pertinent issues raised:

*Article 47 (1)*

- It was noted that in some circumstances, some information should be kept confidential and should not be published.
- The public has a right to know what its government is doing since the government does it in the name of the public.
- It should be ensured that journalists are protected from police and government harassment.
- The Government has, in the past, misused the Official Secrets Act to muzzle its misdeeds.

*Article 47 (3)*

- It is important that the State publicizes information that affects its citizenry, especially where lives are at stake.

*Article 47 (4)*

- The clause should be moved to the Schedule, to be dealt with by the Technical Working Committee on Transitional Arrangement.

***Article 48: Freedom of Association***

There were no issues arising.

***Article 49: Assembly, Demonstration, Picketing and Petition***

There were no issues arising.

***Article 50: Political Rights***

The following were the pertinent issues raised:

***Article 50 (3)***

- There was a need to streamline the principle of Affirmative action.
- The Clause only addresses the right of the individual and does not talk about the duties of political parties.
- ‘Equity’ simply means justice and does not have any reference to gender or issues of marginalization.

***Article 51: Freedom of Movement and Residence***

The following were the pertinent issues raised:

***Article 51 (3)***

- The challenge is to sensitize the communities, particularly in the case of the minority groups, so that they are not exploited as opposed to infringing on the rights of all other persons.

***Article 52: Refugees and Asylum***

There were no issues raised.

***Article 53: Freedom of Trade, Occupation and Profession***

There were no issues raised.

***Article 54: Property***

The following were the pertinent issues raised:

- Compensation by the government should be at market value and should be fair.
- The Land Acquisitions Act addresses the issues that are to be considered in compensation.
- In the past, the government has made arbitrary and unilateral decisions on what it is to pay persons for compulsory acquisition of their land and has used the word 'full' to give unfair compensation.
- Compensation may be in cash or kind.
- The word 'person' in Article 54 (1) should be replaced with the words 'man or woman' since in the past the word 'person' has been interpreted to mean man.
- The words 'in any part of the Republic' should be inserted after the words 'in association with others' in Article 54 (1), so as to allow a Kenyan citizen to acquire property in part of the Republic.
- People should not be allowed to own land in any part of the Republic as this would deprive the locals of certain areas from owning their own land due to corrupt deals and exploitation by wealth persons who purchase land in those areas.
- Article 54 (2) should be amended by inserting a new sub-clause immediately after Article 54 (2) (b) which reads as follows:

(c) ***limit or in any way restrict the enjoyment of any right under this Article on any of the grounds under Article 34.***

- The words 'of fair and adequate' in Article 54 (3) (b) (i) should be deleted and insert the words 'full and' immediately after the word 'requires'

### ***Article 55: Labour Relations***

The following were the pertinent issues raised:

- There is need for definition of 'labor practices'.
- Employers, under Article 55 (2), are not entitled to any substantial rights, for example, the right to a full day's work from their employees.
- The government could misuse the clause by encouraging the registration of splinter Trade Unions in order to counter stronger or more powerful Trade Unions.
- The police should not have the right to strike since they can cause havoc in the society.
- Payment of striking employees would be unfair to their employers.
- A new clause should be inserted immediately after Article 55 (5) to read as follows:

*Within two years of the coming into force of this Constitution, Parliament shall enact legislation giving full effect to this Article.*

- There should be no specific time limit within which Parliament should enact a law.
- Under Article 55 (6), a time frame is important so that Parliament can be held accountable.

**Article 56: Social Security**

The following were the pertinent issues raised:

- The words ‘including, if they are unable to support themselves and their dependants, appropriate social security assistance by the state’ should be deleted.
- A new clause (2) should be inserted immediately after clause (1) to read as follows:

***(2) The State shall provide appropriate social security assistance to persons who are unable to support themselves and their dependants.***

- Another clause should be inserted immediately after the new clause (2) to read as follows:

***(3) Within two years of coming into force of this Constitution, Parliament shall enact legislation giving full effect to this Article.***

**Article 57: Health**

- The words ‘reproductive health care’ are ambiguous and should be clarified.
- The Article should not be limited to modern medicine. It should also include traditional medicine.
- Insert a new sub-clause 2 to read as follows:

***(2) For the purposes of clause (1) “health care services” includes traditional and alternative medicine***

- Reproductive health care has a lot to do with the roles of a man or a woman in the whole area of childbirth and the services that go with it.
- Reproductive health care enables one to plan his/her family as well as ensuring other maternity services.

***Article 58: Education***

The following were the pertinent issues arising:

- According to the standards set by the United Nations, the government should provide basic education, but facilitate secondary and tertiary education.
- Every person should have the right to education regardless of how the same is acquired.
- In Article 58 (1), the words ‘basic’ and ‘including pre-primary, primary and secondary education’ should be deleted.
- In Article 58 (2), the words ‘special attention shall be paid to children with special needs’ should be inserted at the end of the clause.
- In Article 58 (3), the words ‘secondary and’ should be inserted immediately after the word ‘accessible’.

***Article 59: Housing***

The following were the pertinent issues raised:

- The words ‘have access to’ should be deleted and the words ‘and accessible’ inserted immediately after the word ‘adequate’.

***Article 60: Food***

The following were the pertinent issues raised:

- The word ‘quantity’ should be inserted immediately after the word ‘adequate’
- Everyone has a right to be free from hunger.

***Article 61: Water***

The following were the pertinent issues raised:

- The word ‘access’ should be inserted before the word ‘water’.

***Article 62: Sanitation***

There were no issues arising.

***Article 63: Environment***

There were no issues arising.

***Article 63 A: Language and Culture***

There were no issues arising.

### ***Article 64: Consumer Rights***

The following were the pertinent issues raised:

- The words ‘and goods’ should be inserted immediately after the word ‘services’ in Article 64 (2).
- The words ‘within three years of coming into force of the new Constitution’ should be inserted in Article 64 (5) immediately after the word ‘shall’.

### ***Article 65: Fair Administration***

The following were the pertinent issues raised:

- It was pointed out that many citizens have in the past suffered because of decisions made by administrators.

### ***Article 66: Right not to obey unlawful instructions***

No issues were raised.

### ***Article 67: Access to Courts***

The following were the issues raised:

- In addition to being accessible, courts should be affordable.
- The distances to courts should be reduced so that the courts are more accessible.
- A new clause should be inserted immediately after the Article to read as follows:

***(2) The court or tribunal referred to in clause (1) shall be accessible and affordable so as to enhance access to justice.***

### ***Article 68: Rights of Arrested Persons***

The following were the pertinent issues raised:

- It was noted that the Article could be misused by the administration to hold people in prison on the basis that a person was arrested far from a court of law.
- It was suggested that the Article should be amended to provide that an arrested person is entitled to at least one phone call.
- It was also noted that the Article does not address the issue of persons with disabilities.

### ***Article 69: Fair Trial***

The following were the pertinent issues raised:

- The words ‘if substantial injustice would otherwise result’ as appearing in Article 69 (1) (h) should be deleted.

***Article 70: Rights of persons held in custody***

The following were the pertinent issues raised:

- Denial of liberty and freedom of movement, as in prisons is very punitive.
- ‘Health care’ for persons held in custody should be prompted.
- In Article 70 (2) (h), the word ‘prison’ should be deleted.
- In Article 70 (2) (j), the words ‘by authorized persons’ should be inserted immediately the word ‘informed’.
- In Article 70 (2) (k), the word ‘prison’ should be deleted since it is obvious that the discipline being referred to discipline within the prisons.
- In Article 70 (2) (n), the right to vote for prisoners should not be qualified and all prisoners should have the right to vote, irrespective of the length of their sentences.
- A new clause should be inserted in Article 70 (2) to cater for persons with disabilities, and should read as follows:

*(o) In the case of persons with disabilities, to facilitate modified as necessary to fit the circumstances of such disabilities.*

***Article 71: State of Emergency***

The following were the pertinent issues raised:

- The word ‘twenty one’ as appearing in Article 71 (2) (b) should be deleted and substituted therefor the word ‘fourteen’ since a period of twenty-one days would be too long.

***Article 72: Application of the Bill of Rights***

The following were the pertinent issues raised:

- The words ‘a’ and ‘any’ should be deleted and substituted therefor the words ‘every’, ‘shall’ and ‘the’ in Article 72 (2).

***Article 73: Right to Ask the Commission on Human Rights and Administrative Justice or Court to uphold the Bill of Rights***

There were no issues arising.

***Article 74: Authority of the Courts to Uphold and Enforce the Bill of Rights***

There were no issues arising.

***Article 75: Interpretation of the Bill of Rights***

The following were the pertinent issues raised:

- The word ‘equity’ should be inserted immediately after the word ‘equality’ in Article 75 (1) (a)
- In Article 75 (1) (b), a new clause should be inserted to read as follows:
  - (b) *shall recognize the importance of considering the interests of other species, aspects of the environment and future generations in ensuring that each may play its rightful role in the ongoing evolution of life;*
  - The words ‘recognize the fundamental importance of maintaining the ecological balance and harmonious between human being and the environment’ should be added at the end of Article 75 (2).

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

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

The Main Report was not substantively discussed at the Committee.

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

The following were the general recommendations on the Draft Bill:

- The Committee agreed to adopt Article of its Chapters later it would harmonise these Article with provisions of other Chapters.
- On the issue of definitions, the Committee decided to retain its definitions and that these would be referred to the Draftspersons who would relocate them to a more suitable Chapter in the Bill.
- It was pointed out that the Bill of Rights was by far the most crucial Chapter of the Bill and should be prioritized when it came to consequential legislation.

### 4.3 Specific Recommendations on the amendments to the Draft Bill

The following are the specific recommendations on the amendments to the Draft Bill, Article by Article:

<u>ARTICLE</u>	<u>AMENDMENTS</u>
16	Article 16 (c) amended by inserting the words “ <i>registration and</i> ” after the words “ any document of”
17	a) Clause 17(1) adopted without amendment. b) Clause 17(2) deleted from article 17 and made to become a new Article 17A.
18	Adopted without amendment.
19	Adopted without amendment.
20	a) Clause 20(1) amended by deleting the word “three “ and substituting therefor the word “ <i>seven.</i> ” b) Clause 20(2) adopted without amendment.
21	Adopted without amendment.
22	(1) Clause 22(1) amended by inserting the words “ <i>nationality and</i> ” immediately after the words “eight years of age, and whose” (2) Clause 22(2) adopted without amendment.
23	(a) Clause (1) deleted and the following new clause substituted- (1) <i>Parliament shall enact legislatin providng for conditions upon which:</i> (i) <i>a person who is a citizen of Kenya may not lose the citizenship of Kenya by reason of acquiring the citizenship of another country;</i> (ii) <i>the citizenship of Kenya may be granted to individuals who are citizens of other countries;</i>  (b) Clause (2) amended by inserting the words ‘ <i>in accordance with the provisions of Article 23 (1)</i> ’ immediately after the words ‘citizen of Kenya’  (c) Clause (3) deleted.
24	Amended by deleting the words “ <i>or by other unlawful means</i> ” appearing at the end of the Article.
25	a) Clause (1) amended by deleting the word “ <i>refers</i> ” appearing immediately after the words “of that person” and inserting it immediately after the words “the death of the parent” b) Clause 2 deleted

<b>26</b>	Clause (1) adopted without amendment. Clause (2) amended by deleting the word ‘one’ and substituting therefor the word ‘two’
<b>27</b>	Amended in the opening paragraph by deleting the word “may” and substituting therefor the word “ <i>shall</i> ”
<b>28</b>	Deleted.
<b>29</b>	(a) Clause 29(1) adopted without amendment. (b) Clause 29(2) amended by inserting the word “ <i>substantive</i> ” before the words “social justice.” (c) Clause (3)(a) amended by inserting the words “ <i>and community</i> ” immediately after the words “to each individual”  Clause (3)(b) adopted without amendment
<b>30</b>	(a) Clause 30(1) adopted without amendment. (b) Clause 30(2) amended by deleting the words” It is” and substituting therefor the words “ <i>It shall be</i> ” (c) Clause 30(3) adopted without amendment. (d) Clause 30(4) adopted without amendment. (e) Clause 30(5) amended by deleting the word “provide for” and substituting therefor the word “ <i>facilitate.</i> ” (f) Clause 30(6)(a) amended by inserting the words “ <i>and other instruments</i> ” after the word “treaties” appearing at the end of the clause. (g) Clause 30(6)(b) amended by deleting the words “two months” and substituting therefor the words “ <i>a reasonable period</i> ” (h) Clause 30(6)(c) adopted without amendment. (i) Clause 30(6)(d) adopted without amendment.
<b>31</b>	Clause 31 (1) (b) amended by inserting a new sub clause (iv) as follows –  <i>(iv) the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others; and</i>
<b>32</b>	Article re-drafted as follows: <b>Right to life</b>  32 (1) <i>The right to life is protected.</i>  (2) <i>In relation for an unborn child, Parliament shall enact legislation that recognizes the sanctity of life and ensures:</i> <i>(a) the safety of the pregnant woman; and</i> <i>(b) the safety of the unborn child</i>  (3) <i>There shall be no capital punishment.</i>
<b>33</b>	Adopted without amendment.
<b>34</b>	(a) Clause (1) amended by – (i) deleting the word “unfairly;” and (ii) inserting the words “ <i>health status</i> ” after the words “marital status.” (iii) inserting the word ‘ <i>dress</i> ’ after the word ‘language’

	<p>(b) Clause (2) amended by deleting the word “unfairly”</p> <p>(c) <i>New clause</i> (3) inserted to read as follows:</p> <p><b><i>(3) In this Constitution, “discrimination” means any distinction, exclusion or restriction made on the basis of one or more of the grounds specified at clause (1), which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by a person or group of persons of any of the rights recognised in this chapter on a basis of equality.</i></b></p> <p>(d) Clause (3) amended by –</p> <p>(i) re-numbering it as clause (4);</p> <p>(ii) deleting the word “may” and substituting therefor the word “<b>shall</b>” and</p> <p>(iii) inserting the words “<b>including but not limited to affirmative action programmes and policies</b>” immediately after the word “measures”.</p>
35	<p>(a) Clause (1) amended to read “<b>Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.</b>”</p> <p>(b) Clause (2) adopted without amendment.</p> <p>(c) Clause (3) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) adopted without amendment.</p>
36	<p>Article re-drafted as follows:</p> <p><b>Older members of society</b></p> <p><b>36 (1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights.</b></p> <p><b>(2) The state shall by legislation and policy measures ensure the rights of older persons to –</b></p> <p><b>(a) participate fully in the affairs of society;</b></p> <p><b>(b) pursue their personal development;</b></p> <p><b>(c) be free from all forms of discrimination and abuse;</b></p> <p><b>(d) live in dignity and respect;</b></p> <p><b>(e) retain their social, economic and political autonomy; and</b></p> <p><b>(f) receive reasonable care and assistance of family and state.</b></p> <p><b>( (3) Members of society, with the facilitation of the state, have a duty to plan for their old age.</b></p>

	<p><i>(4) Older members of society have a responsibility to share their knowledge and skills with others and to remain active in society.</i></p> <p><i>(5) Relevant Ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to deal with issues affecting older members of society.</i></p> <p><i>(6) The State shall establish a Council to define and advise on policies and programmes for the care and protection of elderly persons.</i></p> <p><i>(7) In this Constitution, “older member of society” means a person above the age of sixty years.</i></p> <p><i>(8) Within two years of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.</i></p>
<p><b>36A</b></p>	<p><i>New Article on “The youth” adopted as follows:</i></p> <p><b>36A The youth</b></p> <p><i>(1) The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, taking into account their unique needs.</i></p> <p><i>(2) The state shall take reasonable legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.</i></p> <p><i>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth –</i></p> <ul style="list-style-type: none"> <li><i>(a) access to quality and relevant education and training;</i></li> <li><i>(b) full participation in governance;</i></li> <li><i>(c) access to gainful employment;</i></li> <li><i>(d) adequate opportunities in the social, economic and other spheres of national life;</i></li> <li><i>(e) freedom of association to further their legitimate interests;</i></li> <li><i>(f) protection from any culture, custom or tradition that could undermine their dignity or quality of life; and</i></li> </ul>

	<p><b>(g) a life free from discrimination, exploitation or abuse.</b></p> <p><b>(4) Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting the youth.</b></p> <p><b>(5) In this Constitution, “youth” refers to a woman or a man who has attained the age of eighteen years but is not above the age of thirty-five years.</b></p>
<b>37</b>	<p>(a) Clause (1) amended by deleting the word “emotionally and substituting therefor the word <b>“psychologically”</b></p> <p>(b) Clause (2) adopted without amendment.</p> <p>(c) Clause (3) amended by deleting the word “are” and substituting therefor the words <b>“shall be”</b></p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5)(i) to (o) re-numbered.</p> <p>(f) Clause (5) (i) to be amended by inserting the words <b>‘to be treated in a manner that promotes the child’s dignity and self-worth and that pays attention to the child’s rights, including but not limited to the right to’</b> after the words ‘arrested or detained’</p> <p>(g) Clause (5) (i) (iv) amended by inserting the words <b>‘disability, if any’</b> after the words ‘account of child’s’</p> <p>(h) Clause (5) (i) (v) to be renumbered as Clause (5) (j)</p> <p>(i) Clause (7) re-numbered as clause (6) and amended by inserting the words <b>“nomadic children”</b> after the words “children with disabilities”.</p> <p>(j) Clause (8) re-numbered as clause (7) and adopted without amendment.</p> <p>(k) Clause (9) re-numbered as clause (8) and amended by deleting the word <b>“Article”</b> and substituting therefor the word “Constitution</p>
<b>38</b>	<p>(a) Clause (1) adopted without amendment.</p> <p>(b) Clause (2) adopted without amendment.</p> <p>(c) Clause (3) adopted without amendment.</p> <p><b>(d) Clause (4) amended by deleting the words “in the marriage and substituting therefor the words <b>“as to the marriage”</b>”.</b></p> <p>(e) New clause (5) inserted:</p> <p><b>(5) Same sex marriages and homosexuality are prohibited.</b></p> <p>(f) Clause (5) renumbered as clause (6)</p>
<b>39</b>	<p>(a) Article amended by deleting the phrase “persons with disability” wherever it appears and substituting therefor the phrase <b>“persons with disabilities”</b> <b>(This amendment was proposed to be effected throughout the Draft Bill)</b></p>

	<p>(b) Clause (1) amended by deleting the words “participate as fully in society as they are able” and insert the words <b>“be full participants in society”</b>.</p> <p>(c) (i) Clause (2)(a) and (b) adopted without amendment.</p> <p>(ii) Clause (2)(c) amended by –</p> <ul style="list-style-type: none"> <li>• Deleting the word “education” and substituting therefor the word <b>“educational”</b></li> <li>• deleting the words “disabled persons’ and “the disabled” and substituting therefor the words <b>“persons with disabilities”</b> and “their” respectively;</li> </ul> <p>(iii) Clause 2(d) amended by inserting the words <b>“to houses for use by the public”</b> after the words “ensure access to all places.”</p> <p>(iv) Clause 2(e) amended by deleting the words “encourage the development and” and substituting therefor the words <b>“develop and ensure the”</b></p> <p>(v) Clause 2(f) amended by deleting the word “require” and substituting therefor the word <b>“encourage”</b></p> <p>(vi) Clause 2(g) amended by-</p> <p>(i) by inserting the word <b>“inclusion and”</b> immediately after the words “provide for the”; and</p> <p>(ii) deleting the words “disabled persons” and substituting therefor the words <b>“persons with disabilities.”</b></p> <p>(viii) Clause 2(h) amended by-</p> <p>(i) inserting the word <b>“facilities”</b> immediately after the word “materials”, and</p> <p>(ii) deleting the words “the disabled” and substituting therefor the words <b>“persons with disabilities”</b></p> <p>(iii) deleting the words “due to” immediately after the words “overcome constraints” and substituting the words <b>“arising from”</b></p>
	<p>(ix) <b>New clauses 2(i) and 2(j) adopted as follows:</b></p> <p style="padding-left: 40px;"><b>(i) ensure that persons with disabilities have equal rights as other persons to inherit, access and control property;and</b></p> <p style="padding-left: 40px;"><b>(j) ensure that persons with disabilities have the right to equal and fair treatment and opportunities in the political, economic and social spheres as the rest of the society.</b></p> <p>(x) Clause (3) amended by deleting the words “wherever appropriate”</p> <p>(xi) Clause (4) amended by-</p> <p>(i) deleting the word “Article” and substituting therefor the word <b>“Constitution;”</b></p>

	<p>(ii) inserting the word “<i>psychological</i>” immediately the word “mental”</p> <p>(iii) deleting the word “normal” and substituting therefor the word “<i>ordinary</i>”</p> <p>i. deleting the word “or” at the end of paragraph (a)</p> <p>ii. deleting paragraph (b)</p> <p>a. <i>New Clause</i> (5) adopted as follows:</p> <p><b><i>(5) Within one year of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.</i></b></p>
<p><b>39A</b></p>	<p><b>New Article</b> adopted on “Minorities and marginalized groups” as follows:</p> <p><b><i>39A Minorities and other marginalized groups</i></b></p> <p><b><i>(1) Minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, on a basis of equality, taking into account their special circumstances and needs.</i></b></p> <p><b><i>(2) The state shall, by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to benefit minorities and other historically marginalized groups.</i></b></p> <p><b><i>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups –</i></b></p> <p style="padding-left: 40px;"><b><i>(a) participate and are fully represented in governance and in all other spheres of national life;</i></b></p> <p style="padding-left: 40px;"><b><i>(b) are accorded special opportunities in the educational and economic fields;</i></b></p> <p style="padding-left: 40px;"><b><i>(c) are accorded special opportunities for access to gainful employment;</i></b></p> <p style="padding-left: 40px;"><b><i>(d) are assisted to develop their cultural values, languages and practices;</i></b></p> <p style="padding-left: 40px;"><b><i>(e) are assisted and provided with a reasonable opportunity to meet their basic needs;</i></b></p> <p style="padding-left: 40px;"><b><i>(f) are assisted to acquire the ancestral land which they occupy; and</i></b></p> <p style="padding-left: 40px;"><b><i>(g) live a life free from discrimination, exploitation or abuse.</i></b></p> <p><b><i>(4) Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.</i></b></p>

	(5) <i>In this Constitution “minorities and other historically marginalized groups” includes, but is not limited to hunter gatherers, nomadic pastoralists, pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</i>
40	Adopted without amendment
41	Adopted without amendment
42	Adopted without amendment
43	Adopted without amendment
44	(a) Clause (1) adopted without amendment (b) Clause (2) amended by inserting the words “ <i>including observance of a day of worship</i> ” immediately after the words “worship, observance” (c) Clause (3) adopted without amendment (d) Clause (4) adopted without amendment (d) Clause (5) adopted without amendment Clause (6) amended in sub clause (d) by inserting the words “ <i>or private</i> ” after the words “ a public”
45	(a) Clause (1) (a) adopted without amendment (b) Clause (1) (b) adopted without amendment (c) Clause (1) (c) amended by inserting the words ‘ <i>including dress</i> ’ immediately after the words ‘ <i>artistic creativity</i> ’. (d) Clause (1) (d) adopted without amendment (e) Clause (2) deleted.
46	(a) Clause (1) amended by deleting the words “ and print” and substituting therefor the words and “ <i>print and other</i> ” (b) Clause (2) deleted and the following new clause substituted: <i>(2) The state shall not-</i> <i>a) exercise control over, or interfere with any person or institution concerned in broadcasting or production or circulation of any publication or in the dissemination of information by any other medium; or</i> <i>b) harass or penalize any such person or institution for any opinion or view or the content of any such broadcast, publication or dissemination.</i> (c) Clause (3)(a) amended by inserting the words “ <i>and other forms of signal distribution and</i> ” after the words “of the airwaves” (d) Clause (3)(b) adopted without amendment. (e) Clause (4) adopted without amendment. (f) Clause (5) adopted without amendment. (g) Clause (6)(a) amended to read as follows: <i>(a) makes reasonable provision for equitable allocation of airtime by state-owned and other specified categories of broadcasting media, to political parties either generally or during elections campaigns.</i> (h) Clause (6)(b) adopted without amendment. (h) Clause (6)(c) deleted and the following new clause (6) (c) and (d) substituted –

	<p><i>(c) sets media standards; and -</i>  <i>(d) provides for the establishment of a body independent of government or political control, reflective of the interests of all sections of the community, to regulate and monitor compliance with the media standards referred to under paragraph (c).</i></p> <p>(i) Clause (7) deleted</p>
47	Adopted without amendment
48	Adopted without amendment
49	Adopted without amendment
50	Adopted without amendment
51	Adopted without amendment
52	Adopted without amendment
53	Adopted without amendment
54	<p>(a) Clause (1) amended by inserting the words <i>“in any part of the Republic”</i> immediately after the words “ in association with others”</p> <p>(b) Clause (2) amended to read as follows:</p> <p>(2) Parliament shall not enact a law that permits the state, or any person to-</p> <p>a) <i>arbitrarily</i> deprive a person of property of any description; or</p> <p>b) <i>arbitrarily</i> deprive a person of any interest in ,or interest over, such property;</p> <p>(c) New sub clause (2) (c) inserted to read as follows:</p> <p>a) <i>Limit or in any way restrict the enjoyment of any right under this article on the basis of any of the grounds set out under article 34(1)</i></p> <p>(d) Clause (3) (a) adopted without amendment.</p> <p>(e) Clause (3) (b) (i) amended to read as follows;  <i>requires the prompt payment in full of a just compensation to the person before the property is taken; and</i></p> <p>(d) Clause (3) (b) (ii) adopted without amendment</p> <p>(e) Clause (4) adopted without amendment.</p>
55	<p>(a) Clauses (1) to (5) adopted without amendment</p> <p>(b) <i>New clause (6)</i> inserted to read as follows:</p> <p><i>(6) Parliament shall within two years of the coming into force of the Constitution, enact legislation to give effect to this Article.</i></p>
56	<p>Re-phrased to read as follows:</p> <p><i>56 (1) Every person has a right to social security.</i></p> <p><i>(2) The state shall provide appropriate social security assistance to persons who are unable to support themselves or their dependants.</i></p> <p><i>(3) Parliament shall within three years of the coming into force of the Constitution enact legislation to give effect to this Article</i></p>

57	Adopted without amendment
58	<p>(a) Clauses (1) and (2) amended to read as follows:</p> <p><b><i>(1) Every person has the right to education.</i></b></p> <p><b><i>(2) The Government shall institute a programme to implement the right of every child to free and compulsory pre- primary and primary education and in so doing the Government shall pay particular attention to children with special needs.</i></b></p> <p>(b) Clause 58 (3) amended by inserting the words “<b><i>secondary and</i></b>” immediately after the words “available and accessible”.</p> <p>(c) Clause (4) adopted without amendment.</p>
59	<p>(a) Clause (1) amended by deleting the words “have access to adequate” and substituting therefor the words “<b><i>adequate and accessible housing</i></b>”.</p> <p>(b) Clause (2) adopted without amendment.</p> <p>(c) Clause (3) adopted without amendment.</p>
60	Delete the words “food in adequate quantities and” and substitute therefor the words “ <b><i>adequate food.</i></b> ”
61	Amended by inserting the words “ <b><i>access to</i></b> ” immediately after the words “ the right to.”
62	Adopted without amendment.
63	Adopted without amendment.
63A	Adopted without amendment.
64	<p>(a) Clause (1) adopted without amendment.</p> <p>(b) Clause (2) amended by inserting the words “<b><i>goods and</i></b>” after the words “Those who offer”</p> <p>(c) Clause (3) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) amended by inserting the words “<b><i>within three years of the coming into force of the Constitution</i></b>” after the words “ Parliament shall”</p>
65	Adopted without amendment.
66	Adopted without amendment.
67	<p>New clause (2) inserted:</p> <p><b><i>(2) The court or other tribunal referred to in clause (1) shall be accessible and affordable so as to enhance access to justice.</i></b></p>
68	Adopted without amendment.
69	Adopted without amendment.
70	<p>(a) Clause (1) adopted without amendment</p> <p>(b) Clause (2) amended:</p> <p>(i) in sub clause (h) by deleting the word “ <i>prison</i>” immediately after the words “law and order and”</p> <p>(ii) in sub clause (j) by inserting the words “<b><i>by authorized persons</i></b>”</p>

	<p>immediately after the words “to be informed”</p> <p>(iii) in sub clause (k) by deleting the word “ <i>prison</i>” immediately after the words “hearing in”</p> <p>(iii) in sub clause (n) by deleting all the words after the words “to vote”</p> <p>(d) <b>NEW sub clause</b> (o) adopted to read as follows:</p> <p><b><i>(o) in the case of persons with disabilities, to facilities modified as necessary to fit the circumstances of such disabilities.</i></b></p> <p>(e) Clause (3) adopted without amendment</p>
<b>71</b>	<p>(a) Clause (1) adopted without amendment.</p> <p>(b) Clause (2) amended in sub clause (b) by deleting the words “twenty one” immediately after the words “more than” and substituting therefor the word “<b><i>fourteen</i></b>”</p> <p>(c) Clause (3) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) adopted without amendment.</p> <p>(f) Clause (6) adopted without amendment.</p> <p>(g) Clause (7) adopted without amendment.</p>
<b>72</b>	<p>(a) Clause (1) adopted without amendment.</p> <p>(b) Clause (2) amended by deleting the words “ A person enjoys the benefit of any right or freedom” and substituting therefor the words “<b><i>Every person shall enjoy the rights or freedoms</i></b>”.</p> <p>(c) Clause (3) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) adopted without amendment.</p>
<b>73</b>	Adopted without amendment.
<b>74</b>	Adopted without amendment.
<b>75</b>	<p>(a) Clause (1) amended-</p> <ul style="list-style-type: none"> <li>• in sub clause (a), by inserting the word “<b><i>equity</i></b>” immediately after the words “dignity, equality.”</li> </ul> <p>(b) Clause (2) adopted without amendment</p> <p>(c) Clause (3) amended by deleting the words “ to the extent that they are consistent with the Bill” and substituting therefor the words “ <b><i>unless they are inconsistent with the Bill of Rights.</i></b>”</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) adopted without amendment</p>

## APPENDICES

### APPENDIX 1: LIST OF MINORITY VIEWS

<b>ARTICLE</b>	<b>NAME</b>	<b>VIEW</b>	<b>AS FORMULATED BY MINORITY</b>
20 Citizenship and marriage	Hon. Joyce Umbima (Del. No. 466) Hon. Anne Njogu (Del. No. 475)	Opposed amendment of Article 20 (1) to read ‘seven years’ instead of ‘three years’.	<i>(1) A person who has been married to a citizen of Kenya for a period of not less than three years is entitled, on application, to be registered as a citizen of Kenya.</i> <i>(2) Citizenship is not lost through marriage of the dissolution of the marriage.</i>
29 Fundamental rights and freedoms  <i>Article 29 (2)</i>	Hon. Moses ole Sisika (Del. No. 365) Hon. Jillo Onotto (Del. No. 237) Hon. Ali Wario (Del. No. 206) Hon. Korir Sing’oei’ (Del. No.  Hon. Salah Maalim Wario (Del. No. 259)	The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and tribal communities and to promote social justice and the realization of the potential of all human beings.  There is need to clarify which “communities” Article 29 (2) refers to. Ethnic communities have become internationally recognized to collectiveness with a corpus of rights (see the Ogoni and Katange Secession Communities before the African Commission on Human and People’s Rights). In the absence of clear distinction as to which “communities” are under reference.	
<i>Article 29 (3)</i> <i>(b)</i>	Hon. Nichasius Mugo (Del. No. 287) Hon. Moses ole Sisika	<b>The clause should not left open to include other rights that have not been specified.</b>	

	(Del. No. 365) Hon. Millie Odhiambo (Del. No. 451) Hon. Evelia Rebecca Jandeka (Del. No. 384)		
31 Limitation of Rights <i>Article 31 (4)</i>	Hon. Millie Odhiambo (Del. No. 451)  Hon. Joyce Umbima (Del. No. 466)	The Article should have been worded differently to indicate that ‘where Islamic Law and other personal law provides a higher standard for women than equality standards.’	
32 Right to life	Hon. Neera Kent Kapila (Del. No. 524) Hon. Joyce Umbima (Del. No. 466) Hon. Rose Arungu-Olende (Del. No. 502) Hon. Bernadette Quadros (Del. No. 622) Hon. Lorna Laboso (Del. No. 499) Hon. Fahim Twaha (Del. No. 200) Hon. Salah Maalim (Del. No. 259) Hon. Esther Keino (Del. No. 214) Hon. Yusuf Wako (Del. No. 269)	<b>The new sub-article that states that life is from conception until natural death should not be added.</b>	

	<p>Hon. Eliud Paul Nakitare (Del. No. 392)</p> <p>Hon. John Njue (Del. No. 539)</p> <p>Hon. Sylvanus Onyambu Ogari (Del. No. 425)</p> <p>Hon. Marie Therese Gachambi (Del. No. 519)</p>	<p><b>New sub-article 32(3) should be deleted as it did not completely stop abortion.</b></p>	
<p>32 Right to life</p>	<p>Hon. Rosemary Kinyanjui (Del. No. 526)</p>		<p>(1) The right to life is protected.</p> <p>(2) For the purposes of clause (1), the right to life commences on conception and subsists until death.</p> <p>(3) In relation to an unborn child, Parliament shall enact legislation that recognizes the sanctity of life and ensures:</p> <p>(i) the safety of the pregnant woman; and</p> <p>(ii) the safety of the unborn child.</p> <p>(4) There shall be no capital punishment.</p>
<p>39 Persons with disability</p>	<p>Hon. Mary Teresa Osunga (Del. No. 411)</p>	<p><b>Phrase ‘person with disability’ was more appropriate</b></p>	

44 Freedom of Religion, belief and opinion	Hon. Mary Teresa Osunga (Del. No. 411) <i>Article 44 (1)</i>	<b>Provision should be included to discourage the observance of cults</b>	<i>A person may not be deprived of access to employment of the enjoyment of any right for reasons of that person's religious beliefs.</i>
	Hon. Pamela Mboya (Del. No. 473) Hon. Joyce Umbima (Del. No. 466) <i>Article 44 (5)</i>	<b>Language should be improved since the Article is ambiguous if left as is.</b>	
		Phrase 'institutions or facilities' should be deleted from the Clause, in order to make the clause clearer.	
45 Freedom of expression  <i>Article 45 (1)</i>	Hon. Mary Teresa Osunga (Del. No. 411) Hon. John Njue (Del. No. 539) Hon. Nichasius Mugo (Del. No. 287) Hon. George Wesonga (Del. No. 398) Hon. Jillo Onotto (Del. No. 237) Hon. Sylvanus Onyambu Ogari (Del. No. 425) Hon. Godfrey Masanya  (Del. No. 097)	Opposed to the insertion of the new sub-clause.	

<i>Article 45 (2)</i>	Hon. Godfrey Masanya (Del. No. 097)	Opposed to the deletion of the Sub-article.	
	Hon. John Katumanga (Del. No. 435) Hon. Sylvanus Onyambu Ogari (Del. No. 425) Hon. Millie Odhiambo (Del. No. 451) Hon. Lihanda Savai (Del. No. 608) Hon. Florence Machayo (Del. No. 512) Hon. Dorcas Mbelesia (Del. No. 378) Hon. Francis Kaloki (Del. No. 292) Hon. Lucas Chepkitony (Del. No. 020) Hon. Gaudentia Atonga (Del. No. 417)		

<p>46 Publication of Opinion  <i>Article 46 (6)</i> <i>(a)</i></p>	<p>Hon. Rosemary Kinyanjui (Del. No. 526) Hon. Abdulrahman Wandati (Del. No. 547) Hon. Lawrence Mute (Del. No. 455) Hon. Sisika Leng'ete (Del. No. 365) Hon. Salah Maalim Alio (Del. No. 259) Hon. Yusuf Wako (Del. No. 269) Hon. Neera Kent Kapila (Del. No. 524) Hon. Dorcas Mbelesia (Del. No. 378) Hon. Joyce Umbima (Del. No. 466) Hon. Lihanda Savai (Del. No. 608)</p>	<p>The sub-clause should be deleted.</p>	
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<p><i>Article 46 (6)</i> <i>(c)</i></p>	<p>Hon. Abdulrahman Wandati (Del. No. 524) Hon. Wilfred Kiboro (Del. No. 619) Hon. Margaret Kamar Hon. Yusuf Wako (Del. No. 269) Hon. Moses ole Sisika (Del. No. 365) Hon. George Wesonga (Del. No. 398) Hon. Salah Maalim (Del. No. 259)) Hon. Neera Kent Kapila (Del. No. 524) Hon. John Katumanga (Del. No. 435)</p>	<p>The clause should be deleted.</p>	
<p>47 Access to Information <i>Article 47 (4)</i></p>	<p>Hon. Nichasius Mugo (Del. No. 287)</p>	<p>This sub-article should be dealt with by the Technical Working Committee on Transition and Consequential Arrangements.</p>	
<p>49 Assembly, demonstration, picketing and petition</p>	<p>Hon. Florence Machayo (Del. No. 512)</p>	<p>Such demonstrations should be peaceful and disciplined. The public should be educated on the same.</p>	

50 <i>Article 50 (3) (b)</i>	Hon. Joyce Umbima (Del. No. 466) Hon. Pamela Mboya (Del. No. 473)	The principle of affirmative action should be included in this sub-article to provide for equality in gender, persons with disabilities and for the marginalized groups.	
51 <i>Article 51 (3)</i>	Hon. Mary Teresa Osunga (Del. No. 411) Hon. Moses ole Sisika (Del. No. 365) Hon. Gaudentia Atonga (Del. No. 417)	Opposed to the inclusion of this right in the Bill	
54 <i>Article 54(1)</i>	Hon. Lihanda Savai (Del. No. 608)  Hon. Fatuma Ali (Del. No. 505)  Hon. Amina Zuberi (Del. No. 227)  Hon. Esther Keino (Del. No. 214)  Hon. Pamela Mboya (Del. No. 473)	To be amended to read ‘Every man or woman....’	<b><i>Every man or woman has a right to acquire and own property either individually or in association with others.</i></b>
<i>Article 54 (1)</i>	Hon. Salah Maalim (Del. No. 259)	Opposed amendments to the sub-article	<b><i>Every person has a right to acquire and own property either individually or in association with others.</i></b>

Article 54 (3) (b) (ii)	Hon. Lihanda Savai (Del. No. 608)	Opposed the provisions of the sub-clause	
55 Labor Relations	Hon. Mary Teresa Osunga (Del. No. 411)	Title to be amended	<i>“Fair Labor Practices”</i>
57 Health Article 57 (1)	Hon. Stephen Ondiek (Del. No. 168)  Hon. Marie Therese Gachambi (Del. No. 519)	Reproductive healthcare should not be included in the sub-article	<i>(1) Every person has the right to health, which includes the right to health care services.</i>
68 Rights of arrested person Article 68 (1) (e)	Hon. George Wesonga (Del No. 398) Hon. Nichasius Mugo (Del. No. 287) Hon. Millie Odhiambo (De. No. 451)	Sub-article should be deleted	
69 Fair trial Article 69 (1) (h)	Hon. Marie Therese Gachambi (Del. No. 519) Hon. Joyce Umbima (Del. No. 466)	Sub-article should be deleted.	
70 Rights of persons held in custody Article 70 (2) (c)	Hon. Lihanda Savai (Del. No. 608)	<b>The Sub-article should not grant persons in custody all the rights enumerated therein.</b>	

<p>75 Interpretation of the Bill of Rights Article 75(2)</p>	<p>Hon. Anne Njogu (Del. No. 475)</p>		<p><i>(2) When interpreting and developing any legislation, common law or customary law, every court, tribunal or forum shall promote the spirit, purpose and objects of the Bill of Rights.</i></p>
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## APPENDIX II

### LIST OF COMMITTEE MEMBERS

**Convenor: Ms. Cecilly Mbarire**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Ali Wario	206
2	Amina Zuberi	227
3	Anne A. Okoth	474
4	Anne Njogu	475
5	Bernadette Quadros	622
6	Bishop Stephen Ondiek	168
7	Cecily Mbarire	217
8	Choge Jim	21
9	Dorcas Mbelesia	378
10	Esther Keino	214
11	Evelia Rebecca	384
12	Fahim Twaha	200
13	Fatuma Ali Saman	505
14	Florence Machayo	512
15	Francis N. Kaloki	292
16	Gaudentia Atonga	417
17	George Wesonga	398
18	J. W. Nyagah	151
19	Jane Mwendu	291
20	Jillo Onotto	237
21	John Katumanga	435
22	John Njue	539
23	Joyce Umbima	466
24	Kilonzo Charles Mutavi	127
25	Lawrence Mute	455
26	Lihanda K. Savai	608
27	Lorna Laboso	499
28	Lorna Timanoi	360
29	Lucas K. Chepkitony	20
30	Magugu Arthur	88
31	Marie Therese Gachambi	519
32	Masanya Godfrey Okeri	97
33	Milly Odhiambo	451
34	Moses Lengete Ole Sisika	365
35	Neera Kent Kapila	524
36	Nichasius Mugo	287
37	Pamela Mboya	473
38	Peter O. Bwana	516

39	Rose Olende	502
40	Rosemary Kinyanjui	526
41	Sabenzia N. Wekesa	478
42	Sahara Ahmed Hillo	257
43	Salah Maalim Alio	259
44	Sheikh Abdalla	243
45	Silvanus Ogari	425
46	Simeon Lesrima	82
47	Sing'oei Korir	464
48	Suba Churchill Meshack	463
49	Sudi David Kiprono Sutter	192
50	Teresa Osunga	411
51	Wafula Wamunyinyi	203
52	Wilfred Kiboro	619
53	Yusuf Wako	269

### APPENDIX III

#### THE LIST OF FORMAL MOTIONS FOR AMENDMENT OF THE REPORT AND DRAFT BILL AGREED TO BY THE COMMITTEE.

The Committee moved most of its motions orally on the floor, with the exception of the following:

ARTICLE	DELEGATE NAME & NO	MOTION
<b>32 Right to Life</b>	Hon. Marie Therese Gachambi Del. No. 519	<ul style="list-style-type: none"> <li>i. Every person has the right to life</li> <li>ii. For the purposes of clause (1), the right to life commences on conception and continues until natural death.</li> <li>iii. It is not a violation of clause (1) if the termination of the life of an unborn child is caused or occasioned or occurs as the result of the act of a medical practitioner done in good faith and without negligence, if according to contemporary medical knowledge, ethics and practice, the act is necessary to save the life of the mother of unborn child.</li> <li>iv. The death penalty is abolished.</li> </ul>
<b>36 Older Members of Society</b>	Hon. Pamela Mboya Del. No. 473	<p>Insert a new clause (5) as follows:</p> <p>There shall be established a Council of Elders which will define and advise on policies for the care and protection of elderly persons.</p>
<b>36 A The Youth</b>	Hon. Suba Churchill Meshack Del. No. 463	<ul style="list-style-type: none"> <li>(1) The youth constitute an intergral part of society and are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, taking into account their unique needs.</li> <li>(2) The State shall take the reasonable legislative and other measures including but not limited to affirmative action policies and programmes to promote the welfare of the youth.</li> <li>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth: <ul style="list-style-type: none"> <li>(i) access to quality and relevant education and training</li> <li>(ii) full participation in governance</li> <li>(iii) access to gainful employment</li> <li>(iv) adequate opportunities in the social, economic and other spheres of national life</li> <li>(v) unhindered freedom of association to further their legitimate interests</li> <li>(vi) protection from any culture, custom or tradition that could undermine their dignity or their quality of life; and</li> </ul> </li> </ul>

		<p>(vii) a life free from discrimination, exploitation or abuse.</p> <p>(3) Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with the issues affecting the youth.</p> <p>(4) For the purposes of this Article, in this Constitution, youth refers to a woman or a man who has attained the age of eighteen years but is not above the age of thirty-five years.</p>
<b>36A</b>	Hon. Salah Maalim Alio Del. No. 259	<p>Insert the following clauses to Article 36A.</p> <p>(5) That the youth have a duty to cooperate with other members of society and to strive to achieve their full potential for the benefit of the society.</p> <p>(6) Relevant ministries and complaints bodies including the Commission of Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting the youth.</p> <p>(7) For the purposes of this Constitution <b>youth</b> refers to any man or woman who has attained the age of eighteen (18) years but is not above the age of thirty-five (35) years inclusive.</p>
<b>37 Children</b>	Hon. Joyce Umbima Del. No. 466	Insert the words ' <i>nomadic children</i> ' immediately after the word 'disabilities' in Article 37 (6)
<b>39 A Minorities and other marginalized groups</b>	Hon. Jillo Onotto Del. No. 237	<p>(1) Minorities and other historically marginalized groups are entitled to enjoy all rights and freedoms set out in this Bill of Rights on a basis of equality, taking into account their special circumstances and needs.</p> <p>(2) The State shall by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to benefit minorities and other historically marginalized groups.</p> <p>(3) The measures referred to under clause (2) shall include but not limited to measures to ensure that minorities and other historically marginalized groups:</p> <p>(a) participate and are fully represented in governance and in all other spheres of national life;</p> <p>(b) are accorded special opportunities in the educational and economic fields;</p> <p>(c) are accorded special opportunities for access to gainful employment</p> <p>(d) are assisted to develop their cultural practices, languages and practices and</p> <p>(e) are assisted to acquire the ancestral land which they</p>

		<p>occupy</p> <p>(f) live a life free from discrimination, exploitation or abuse</p> <p>(4) Relevant ministries and complaint bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.</p> <p>(5) In this Constitution, minorities and other historically marginalized groups includes, but is not limited to hunter gatherers, nomadic pastoralists, pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</p>
<b>54 Property</b>	Hon. Wangari Maathai Del. No. 084	<p>Insert a new clause (5) as follows:</p> <p>Every person who owns or is responsible for:</p> <p>(a) a living organism must treat it with the care and respect appropriate to a living being and a co-habitant of Kenya;</p> <p>(b) part of Kenya must respect and care for it, and conserve and protect any indigenous plants and animals on it, as a trustee for the present and future generations.</p>
<b>57</b>	Hon. John Katumanga Del. No. 435	<p>Insert a new clause (2) immediately after clause (1) to read as follows:</p> <p><i>For the purposes of clause (1), ‘health cares services’ includes traditional and alternative medicine.</i></p>
<b>75</b>	Hon. Wangari Maathai Del. No. 084	<p>Insert a new paragraph immediately after paragraph (1) (a) as follows:</p> <p><i>Shall recognize the importance of considering the interests of other species, aspects of the environment and future generations in ensuring that each has the freedom to play its role in the ongoing evolution of life</i></p> <p>Further, insert the words <i>‘and recognize the fundamental importance of maintaining the ecological balance and a harmonious relationship between human beings and the environment’</i> after the words <i>‘Bill of Rights’</i> in clause (2)</p> <p>Further, insert the words <i>‘unless they are inconsistent with</i></p>

		<i>the Bill of Rights</i> ' after the words ' <i>law or legislation</i> ' in clause (3).
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## APPENDIX IV

### AGENDA & MINUTES OF THE PROCEEDINGS

#### NATIONAL CONSTITUTIONAL CONFERENCE

#### MINUTES OF THE FIRST MEETING OF THE TECHNICAL WORKING GROUP B ON CITIZENSHIP AND BILL OF RIGHTS HELD ON 26<sup>TH</sup> MAY 2003 AT COMMITTEE TENT NO. 2, AT BOMAS OF KENYA NAIROBI

##### PRESENT:

1. Comm. Ibrahim Lethome - Chair
2. John Cheruiyot
3. Roselinda Simiyu
4. Florence Machayo
5. Martha Koome
6. Rose Olende
7. Teresa Osunga
8. Grace Nduyo
9. Yusuf Wako
10. Jane Mwende
11. Francis N. Kaloki
12. James N. Gatiti
13. George Kinyua
14. Joseph Nyagah
15. Moses L. Ole Sisika
16. Simeon Lesrima
17. Lucas K. Chepkitony
18. David Kigen
19. Nancy Iyadi
20. Lorna Timanoi
21. Mary Wambui Kanyi
22. Masanya Godfrey Okeri
23. Silvanus Ogari
24. Teresa Osunga
25. .Gaudentia Atonga
26. .Marie Therese Gachambi
27. .Neera Kent Kapila
28. .Rosemary Kinyanjui
29. .Kamau Ruth Wanjiku
30. .Peter O. Bwana
31. .John Njue
32. .Nue Ibrahim Abdi
33. .Sahara Ahmed Billow
34. .Nasra Aweis Abubakar

35. .Fatuma Ali Saman
36. .Wambui Kanyi
37. .Suba Churchill Meshack
38. .Eluid P. Nakitore
39. .Julia Ojiambo
40. .Dorcas Mbelesia
41. .George Wesonga
42. .Evelia Rebecca
43. .Sheikh Abdalla
44. .Fahim Twaha
45. .Amina Zuberi
46. .Sabenzia N. Wekesa
47. .Sing'oei Korir
48. .Salah Maalim Ali
49. .Lihanda Kemeni Savai
50. .Jillo Onotto

#### **IN ATTENDANCE:**

Mrs. Liz Kingi - Programme Assistant

#### **N.NCC/TWGB/O1/03: COMMENCEMENT OF MEETING**

The Chairman called the meeting to order at 11.45 a.m. and took attendance of the committee members present by ticking against their names on list of members. He also announced that there was quorum.

#### **MIN /NCC/TWGB/O2/03: ADOPTION OF THE AGENDA**

The Agenda of the meeting was:

1. The election by Committee members of their proposed Convenor of the Technical Working Group B on citizenship and Bill of Rights, subject to the steering committee's approval.

The members adopted the agenda of the meeting.

#### **MIN/NCC/TWGB/O3/03: NOMINATION AND ELECTION OF THE PROPOSED CONVENOR**

- a) The mode of nomination:

The Hon. Moses Ole Sisika quickly nominated **Hon. Simeon** (Samburu West) as the proposed convenor of the Technical Working Group.

However, before it was seconded **Hon. Joseph Nyaga** (Gachoka) discussed the mode

of nomination and election. He informed the committee members of an agreement on the election of convenor that had been earlier agreed upon by the Provincial Convenors during their provincial meetings and further that the honorable delegates had been informed of this agreement at their respective provincial briefings.

He further explained that under that agreement, the proposed convenor elected would have to come from a specified province as illustrated hereunder: -

<b>Technical Working Group</b>	<b>Chapters</b>	<b>Province</b>
Group A	The Preamble, Su premacy of the Constitution, Republic and National Goals, Values and Principles	Nyanza
Group B	Citizenship \$ The Bill of Rights	Eastern
Group C	Representation of the People	Central
Group D	The Executive	Western
Group E	The Judiciary	Eastern
Group F	The Legislature	Rift Valley
Group G	Devolution	Nyanza
Group H	Public Finance	North Easten
Group I	Defence and National Security	Rift Valley
Group J	Land Rights and Environment	Coast Province
Group K	Constitutional CommIssions & Amendments to the Constitution	Central

Group L	Transitional and Consequential Arrangements	Nairobi
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Pursuant to the foregoing understanding on the mode of nomination and election, **Hon. Joseph Nyagah** therefore proposed that the Convenor in Technical Working Group B would have to come from Eastern Province.

Only one honorable delegate objected to that proposal on the grounds that the above agreement had been entered into in the absence of the honorable delegate.

However the overwhelming majority of the delegates supported and agreed to the adoption of **Hon. Nyagah's** Proposal and confirmed that the matter had been discussed at the provincial briefings and that his proposal was a true account of what had been agreed upon. They further agreed to be bound by it such that the proposed Convenor would have to be a member who came from Eastern Province.

Consequently, **Hon. Jane Mwendu** proposed **Hon. Martha Koome** (Women Organizations) and Hon. Simeon Lesirma (Samburu West) and **Hon. Amina Zuberi** (Coast Province) seconded her.

#### **b) The Election**

The Chair then asked the committee members if they were in consensus with the proposal to have **Hon. Martha Koome** as their convenor and they all unanimously agreed.

The Chair then announced that **Hon. Martha Koome** had been unanimously elected as the proposed convenor for the Technical Working Group and invited her to make an acceptance speech.

#### **MIN/NCC/TWGB/O4/03: ACCEPTANCE SPEECH BY THE PROPOSED CONVENOR**

In her acceptance speech to the committee **Hon. Koome** said that she was humbled by her nomination and added that she would serve with dedication and with the interest of Kenyans at heart. She thanked them for showing confidence in women. She introduced herself as a lawyer who had been the immediate former chairperson of FIDA. She confirmed that she came from Eastern Province and that she was representing women organizations.

#### **MIN/NCC/TWGB/O5/03: ANY OTHER BUSINESS**

Commissioner **Ibrahim Lethome** pointed out that from then on he would be the rapporteur of the committee alongside with Commissioner **Nancy Baraza**, and handed over the chair to the proposed convenor.

Thereafter, **Hon. Eliud P. Nakitare** sought to know whether it was in order to elect a Vice Convenor. Commissioner Lethome informed them that the National Constitutional Conference Regulations 2003, were silent on the election of a vice convenor and as such they had no mandate to do so and secondly there was only one agenda for that meeting; i.e. "To Elect a Proposed Convenor".

The proposed Convenor however welcomed the idea of a nomination of a co-convenor. Before any nominations were made, **Hon Rose Waruinge** noted that the members of the committee were yet to receive some working guidelines for the technical committee and as such they should wait for them.

The committee members then agreed to wait for the guidelines and defer the election of a co-convenor to a later date. They also agreed that if the Convenor was not present, the delegates could elect a temporary one from among themselves but that person had to have been continuously present to ensure continuity.

The Chair then asked the Secretariat to provide members with the Hansard reports of the plenary debates and proceedings on Citizenship and Bill of Rights.

**MIN.CCC/TWGB/O6/03: CLOSURE OF THE MEETING**

The Chair adjourned the meeting at 12.10 p.m. and said that members would be informed of the next meeting.

**HON MARTHA KOOME  
CONVENOR**

## **NATIONAL CONSTITUTIONAL CONFERENCE**

### **MINUTES OF THE SECOND MEETING OF THE TECHNICAL WORKING GROUP B ON CITIZENSHIP AND BILL OF RIGHTS HELD ON 19<sup>TH</sup> AUGUST 2003 AT COMMITTEE TENT NO. 2, AT BOMAS OF KENYA, NAIROBI AT 3.30 P.M.**

#### **PRESENT:**

Comm. Nancy Baraza - Chair

1. Bishop Stephen Ondiek
2. Masanya Godfrey Okeri
3. Silvanus Ogari
4. Gaudantia Alonya
5. Sr. Therese M. Gachambi
6. Rosemary Kinyanjui
7. Peter O. Bwana
8. Nasra Aweis Abubakri
9. Fatuma Ali Saman
10. Abdirahman Wandati
11. Salah Maalim
12. Pamela Mboya
13. Churchill Meshak Suba
14. Sabenzia N. Wekesa
15. Anne Okoth
16. Julia Ojiambo
17. Dorcas Mbelersia
18. George Wesonga
19. Avelia Rebecca
20. George Kinyua
21. Jillo Onotto
22. Sheikh Abdalla
23. Amina Zuberi
24. John Katumanga
25. Roselinda Simiyu
26. Florence Machayo
27. Grace Mlembi Nduyo
28. Yusuf Wako
29. Jane Mwendu
30. Francis N. Kaloki
31. Joseph Nyagah
32. Esther Keino
33. Moses Lengete Ole Sisika

34. Lorna Tinamoi
35. B. Wairimu Kimamia

### **IN ATTENDANCE**

Liz Kingi - Assistant Programme Officer  
David k. Zia - Committee Clerk

### **MIN.CCC/TWGB/07/03: DISTRIBUTION OF DOCUMENTS**

Members attending the meeting collected the following documents:

- (i) A spring file containing the official minutes
- (ii) A box file containing:
  - List of Committee Members.
  - Guidelines for the technical working group
  - Conference Regulations
  - Hansard Report of 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> May, 2003 On Citizenship and the Bill of Rights.
  - Extracts from the plenary proceedings.
  - Summary of the issues arising from general debate

### **MIN.CCC/TWGB/08/03: DELIBERATIONS ON THE NOMINATION OF A CONVENOR**

The Chair explained that the position of the Convenor had been left vacant after the then convenor Mrs. Matha Koome resigned following her appointment to the Judiciary. The Chair then called for proposals. Delegate Amina Zuberi proposed Dr. Willy Mutunga but the proposal was dropped after the Committee was informed that he was no longer a member of the Committee.

The Committee discussed and resolved that in the nomination of the Convenor the previous criteria agreed was to be applied. The criteria was that the Convenor must come from Eastern Province and possible be a woman with the necessary qualifications as agreed in the first meeting on May 26,2003.The Members finally agreed that the Delegates from Eastern province will meet on Wednesday 20,2003 at 8.30 am. To nominate a Convenor and then present the name to the Committee at a meeting to be held the same day at 9.00 am.

The committee was also unanimous that during nomination of the Convenor issues of gender balance will be considered.

The Committee agreed to meet on Wednesday August 20, 2003 at 9.00 a.m. where Eastern Province will name the Convenor for the Committee.

### **MIN. CCC/TWB/09/03 ANY OTHER BUSINESS**

The Committee agreed to change the sitting arrangement to a U-shape after complaints were raised that the present arrangement was inconveniencing Members.

**MIN. CCC/TWGB/10/03**

**DATE OF NEXT MEETING**

The Committee scheduled to meet on Wednesday, August 20, 2003 AT 9.00 A.M. to name the convenor for the Committee.

**MIN. CCC/TWGB/11/03**

**ADJOURNMENT**

And the time being 4.15 p.m. the Chair adjourned the meeting up to Wednesday, August 20, 2003 at 9.00 a.m.

**SIGNED** .....

**DATE** .....

**REF: CCC/TWGB/03**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**TO: GROUP B MEMBERS**

**RE: NOTICE OF MEETING AND AGENDA  
TECHNICAL WORKING GROUP B  
CITIZENSHIP AND BILL OF RIGHTS**

Take Notice that the Technical Working Group B on Citizenship and Bill of Rights will have a meeting at Tent B on Thursday, 21<sup>st</sup> August 2003 at 9.00 a.m

**AGENDA**

1. Confirmation of a new Convener

**SIGNED .....**

**DATE .....**

**COMM. IBRAHIM LETHOME  
COMMITTEE B RAPPORTEUR**

**SIGNED .....**

**DATE .....**

**COMM. NANCY BARAZA  
COMMITTEE B RAPPORTEUR**

## **NATIONAL CONSTITUTIONAL CONFERENCE**

### **MINUTES OF THE THIRD MEETING OF THE TECHNICAL WORKING GROUP B ON CITIZENSHIP AND BILL OF RIGHTS HELD ON 21<sup>ST</sup> AUGUST 2003 AT COMMITTEE TENT NO. 2, AT BOMAS OF KENYA, NAIROBI AT 11.00 A.M.**

#### **PRESENT:**

1. Commissioner Nancy Baraza - Chair
2. Commissioner Ibrahim Lethome
3. Sr. Therese M. Gachambi
4. Nasra Aweis Abubakri
5. Fatuma Ali Saman
6. Abdirahman Wandati
7. Salah Maalim
8. Pamela Mboya
9. Churchill Meshak Suba
10. Julia Ojiambo
11. Dorcas Mbelersia
12. Avelia Rebecca
13. Jilo Onotto
14. Amina Zuberi
15. Jane Mwendu
16. Francis N. Kaloki
17. Joseph Nyagah
18. Moses Lengete Ole Sisika
19. Lorna Tinamoi
20. Cecily Mbarire
21. Lihanda Kemen Sirai
22. Archbishop John Njue

#### **IN ATTENDANCE**

- Achieng Olende - Programme Officer
- Mrs. Liz Kingi - Assistant Programme Officer
- Mr. David K. Zia - Committee Clerk
- Lucy Ngethe

#### **MIN.CCC/TWGB/12/03: DELIBERATIONS ON THE NOMINATIONS OF A CONVENOR**

The Chair asked Hon. Joseph Nyagah, MP to present before the Committee the name of the person selected by the Delegates from Eastern Province for the position of a Convenor for the Committee. The Hon. Nyagah informed the members that Eastern Province had nominated the Hon. Cecily Mbarire, MP for the position.

The Chair then called for proposals. Delegate Amina Zuberi proposed Hon. Cecily Mbarire and Councilor Salah Maalim Ali seconded her.

There being no other proposals, the Hon. Cecily Mbarire became the Convenor for the Technical Working Group B on Citizenship and Bill of Rights.

**MIN.CCC/TWGB/13/03: REMARKS BY THE CONVENOR**

The Convenor Hon. Cecily Mbarire, MP then took the Chair and thanked the members for the honour they had bestowed on her and promised to work with all members to achieve the objectives of the Committee. She also thanked the delegates from Eastern Province for nominating her.

**MIN.CCC.TWGB/13/03 ADJOURNMENT**

And the time being 11.15 p.m. the chair adjourned the meeting till further notice.

**SIGNED ..... DATE .....**  
**HON. CECILLY MBARIRE**  
**CONVENOR**

**NATIONAL CONSTITUTIONAL CONFERENCE**

9<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Tuesday, 9<sup>th</sup> September 2003 at Tent No. 2, Bomas of Kenya at 9. 00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Consideration of Business
5. Deliberation on the Chapters on Citizenship and Bill of Rights
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation**

**Date:** .....

**Time:** .....

## NATIONAL CONSTITUTIONAL CONFERENCE

### MINUTES OF THE FOURTH SITTING OF THE TECHNICAL WORKING COMMITTEE B ON CITIZENSHIP AND BILL OF RIGHTS HELD ON 9<sup>TH</sup> SEPTEMBER 2003 AT COMMITTEE TENT NO. 2, AT BOMAS OF KENYA AT 8.30 A.M.

#### **PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Ali Wario
3. Amina Zuberi
4. Bermadette Quadros
5. Churchil Meshack
6. Dorcas Mbelersia
7. Eliud Nakitare
8. Esther Keion
9. Evalia Rebecca
10. Fatuma Ali Saman
11. Florence Machayo
12. Francis N. Kaloki
13. Qaudentia Atonga
14. George Wesonga
15. Jane Mwendu
16. Jillo Onotto
17. John Katumanga
18. Kilonzo Charles Mitavi
19. Lucas K. Chepkitony
20. Maguga A
21. Masanya Godfrey Okeri
22. Moses Lengete Ole Sisika
23. Neera kent Kapila
24. Pamela Mboya
25. Peter O. Bwana
26. Rose Olende
27. Roselinder Simiyu
28. Rosemary Kinyanjui
29. Sheikh Abdalla
30. Silvanus Ogari
31. Simeon Lesirma
32. Sudi David Kiprono Sutter
33. Teresa Osunga

34. J. W. Nyagah
35. Lihanda Kemen Savai
36. John Njue
37. Marie Theresa Gachambi
38. Joyce Umbima
39. Lawrence Mute
40. Millie Odhiambo
41. Sabenzia N. Wekesa
42. Lorna Laboso
43. Yusuf Doge
44. Fahim Twaha
45. Anne Okoth
46. Nichasius Mugen
47. Ngetich Samson
48. Kennedy Sanga

**OBSERVERS PRESENT:**

1. Ndida Mutinda
2. Davis Malombe
3. Elisha Godana
4. Johnson Awuor
5. Mana Muthengi
6. Joseph K. Waweru
7. Angela Gethi
8. Penina Ngugi
9. Solomon Kayia
10. Penina Vulimu
11. Rosemary Benzina

**RAPPORTEURS:**

1. Comm. Nancy Baraza
2. Comm. Ibrahim Lethome

**IN ATTENDANCE**

1. Achieng Olende - Programme Officer
2. Liz Kingi - Assistant Programme Officer
3. David Ziah - Committee Secretary
4. Celina Kandie - Assistant Programme Officer
5. Martina Odhiambo - Verbatim Recorder
6. Prof. Philip Knight - Draftsman
7. John Adeya
8. Naswa Odinga
9. Antony Wamae
10. Sarah Rukwaro

**MIN.CCC/TWGB/15/03      OPENING REMARKS**

The meeting was opened with a prayer by Hon. Bishop John Njenga. The Convenor Hon. Cecily Mbarire welcomed the members to the meeting and explained that there were enough supporting staff who would assist the members of the committee in case of any problem.

**MIN.CCC/TWGB/16/03      CONFIRMATION OF MINUTES**

The minutes of the third meeting of the Committee were confirmed and signed by the convenor. Hon. Mrs. Pamela Mboya confirmed the minutes as a true record and was seconded by the Hon. Silvanus Ogari delegate number 425.

**MIN.CC/TWGB/17/03      ISSUE OF REFERENCE FILES**

The following committee members have been issued with their respective reference files and minute files.

1. Amina Zuberi
2. Bermadette Quadros
3. Bishop Stephen Ondiek
4. Cecily Mbarire
5. Churchil Meshack
6. Dorcas Mbelersia
7. Eliud P. Nakitare
8. Esther keino
9. Evalia Rebecca
10. Fatuma Ali Saman
11. Florence Machayo
12. Francis Kaloki
13. Gaudentia Atonga
14. George Wesonga
15. Jane Mwendu
16. Jillo Ouotto
17. John Katumanga
18. Kilonzo Charles Mutavi
19. Lucas K. Chepkitony
20. Maguga A.
21. Masanya Godfrey Okeri
22. Moses Lengete Ole Sisika
23. Neera kenya Kapila

24. Pamela Mboya
25. Peter O. Bwana
26. Rose olende
27. Roselinder Simiyu
28. Rosemary Kinyanjui
29. Sahara Ahmed Hillo
30. Sheikh Abdalla
31. Silvanus Ogari
32. Simeon Lesirma
33. Sudi David Kiprono Sutter
34. Teresa Osunga
35. Lihanda Kemen Savai
36. John Njue
37. Marie Therese Gachambi
38. Joyce Umbima
39. Lawrence Mute
40. Milicent Odhiambo
41. Sabencia N. Wekesa
42. Lorna Laboso

**MIN.CCC.TWGB/18/03      CONSIDERATION OF BUSINESS**

**List of Members**

Several delegates complained that their names were missing from the list which had been released by the Secretariat. It was decided that the Hon. Fahim Twaha MP, be included in list since the committee was informed that coast delegates recommended him to be in this committee. The committee agreed to accommodate the other members who were currently missing in the list but they were asked to liase with the Provincial Co-ordinators to see what had happened.

**List of Observers**

The following are the bonafide observers during the Committee meetings:

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ndinda Mutinda       | - | (002)                       |
| 2. Davis Malombe        | - | (012)                       |
| 3. Elisha Daniel Godana | - | (002)                       |
| 4. Johnson Awuor        | - | (146)                       |
| 5. Mana Muthengi        | - | (150)                       |
| 6. Joseph K. Waweru     | - | (069)                       |
| 7. Angela Gethi         | - | (030)                       |
| 8. Peninah Ngugi        | - | (040)                       |
| 9. Solomon Kayia        | - | (202)                       |
| 10. Peninah Vulimu      | - | (Sign language interpretor) |
| 11. Rosemary Benzina    | - | (027)                       |

The Convenor explained to members that the Convenors were to occupy seats behind other members of the Committee.

### **Personal Assistants**

Mr. Samson Metich and Kennedy Sunga were named as the Personal Assistants to Hon. Lawrence Mute and Hon. Teresa Osunga respectively.

### **Seat Arrangements**

It was agreed that the sitting arrangements be changed to horseshoe.

### **Tea**

Members observed that it would save time if tea could be served at the tent. The Convenor explained that it may not be possible to serve tea at the tent because of shortage of staff. She advised members to save time by strictly following the timetable.

### **Deputy Convenor**

The issue of a deputy convenor came up for discussion. Members were informed that the regulations did not provide for the position of a Deputy Convenor but members are allowed to appoint a temporary Convenor in case the Convenor is not present.

### **Deliberation on the guidelines**

The Convenor briefed the members on the regulations guiding the conduct of business in the technical committees. It was stressed that members read the second schedule of the regulations.

### **Committee Membership**

The Convenor explained that members belonged to one technical committee but the regulations provide for a member to attend the proceedings of a committee to which he/she is not a member. While there, such a member is allowed to make contributions but cannot vote.

### **Written Submissions**

Members complained that they had submitted written memos during Bomas I which have not been featured anywhere. The Convenor responded by saying that a copy of the written submission will be issued to each member.

On the issue of whether members who had not submitted written memos could do it to the Committee. Members were told they could do it orally.

### **Contribution time**

Members were assured that every member will be availed enough time to contribute.

### **Draft Motions**

The Convenor explained that staff from Parliament will assist members to draft amendment motions.

### **Change of Rules and Regulations**

It was explained that Rules and Regulations could not be changed by the committee.

However, a member could forward a motion to the Steering Committee which will forward it to the conference for consideration.

### **Minority Positions**

Members were informed that the report by the Committee will record minority views.

This will only be for record purposes but will not open debate at the plenary.

### **Information About Other Committees**

1. There will be a lot of consultations between the convenor and members can be informed accordingly.
2. The Rapporteur general will prepare a report on what every the committees have deliberated on. The report can be availed to members the following day.

### **MIN.CCC/TWGB/19/03      DELIBERATIONS ON THE CHAPTER ON CITIZENSHIP AND BILL OF RIGHTS**

Rapporteur Ibrahim Lethome informed the Members that the committee have several documents to refer to during its deliberations which were all important. Some of these are the Rapporteur General's Report on plenary discussions, the Report by the commission and the Draft Bill.

### **MIN.CCC/TWGB/20/03      ANNOUNCEMENT BY CONVENOR:**

- (i) To be carrying their box files and their spring files (Minutes files)
- (ii) To be carrying their copies of their draft bill and the main report.
- (iii) To keep their files in safe custody to avoid unnecessary reissuing of documents
- (iv) To be ensuring that they sign the members list in meetings. So that they are not left out in the minutes.
- (v) To make sure that they introduce themselves before they speak and wait for the microphone before they speak

### **MIN.CCC.TWGB/21/03      PROGRAMME FOR THE COMMITTEE**

It was agreed that a whole programme for the committee will be prepared after a sub-committee puts the agenda of the day.



**NATIONAL CONSTITUTIONAL CONFERENCE**

9<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, September 10<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 9.30 am**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Main Agenda
5. Any Other Business
  - (i) **Presentation by Mr. Tavenga Nhongo (Regional Director for Africa Helpage International)**
  - (ii) **General Comments on Citizenship (report)**
  - (iii) **Substantive discussion on citizenship**
6. Date of Next Meeting

**Approved for circulation**

**Date .....**

**Time .....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE TECHNICAL WORKING COMMITTEE  
B ON CITIZENSHIP AND BILL OF RIGHTS HELD ON 10<sup>TH</sup> SEPTEMBER 2003 AT  
COMMITTEE TENT NO.2 AT BOMAS OF KENYA.**

**Present:**

1. Cecily Mbarire - **Convenor**
2. Amina Zuberi
3. Bernadette Quadros
4. Suba Churchil Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Gaudentia Atonga
11. George Wesonga
12. Jillo Onotto
13. John Katumanga
14. Kilonzo Charles Mitavi
15. Lucas K. Chepkitony
16. Mburugu Florence Ruhui
17. Masanya Godfrey Okeri
18. Moses Lengete Ole Sisika
19. Neera Kent Kapila
20. Pamela Mboya
21. Peter O. Bwana
22. Rose Olende
23. Roselinder Simiyu
24. Rosemary Kinyanjui
25. Sheikh Abdalla
26. Silvanus Ogari
27. Simeon Lesrima
28. Sudi David Kiprono Sutter
29. Teresa Osunga
30. Lihanda Kemen Savai
31. John Njue
32. Marie Therese Gachambi
33. Joyce Umbima
34. Millie Odhiambo
35. Sabenzia N. Wekesa

36. Lorna Laboso
37. Yusuf Wako
38. Ann Okoth
39. Nichasius Mugo
40. Lorna Timanoi Tetu

**RAPORTEURS:**

1. Comm. Nancy Baraza
2. Comm. Ibrahim Lethome
3. Comm. Salome Muigai

**OBSERVERS**

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Ndinda Mutinda      | - | (002)                       |
| 2. Davis Malombe       | - | (012)                       |
| 3. Elisha Godana       | - | (002)                       |
| 4. Johnson Awuor       | - | (146)                       |
| 5. Mona Muthengi       | - | (150)                       |
| 6. Joseph K. Waweru    | - | (069)                       |
| 7. Angela Gethi        | - | (030)                       |
| 8. Peninah Ngugi       | - | (040)                       |
| 9. Solomon Kayia       | - | (202)                       |
| 10. Peninah Vulimu     | - | (Sign language interpretor) |
| 11. Rosemary Benzina   | - | (027)                       |
| 12. Hilda Agola Orimba |   |                             |

**MIN. CCC/TWG/24/03: COMMENCEMENT**

The meeting began at 12.20 p.m. with the convenor, Ms. Cecily Mbarire in the Chair.

**MIN.CCC/TWGB/25/03 ;AGENDA**

The agenda was circulated and adopted as follows:

1. Prayers
2. confirmation of minutes
3. Matters Arising
4. Main Agenda
  - (i) Presentation by Mr. Terenga Nhongo
  - (ii) General comments on citizenship
  - (iii) Substantive discussion on citizenship
4. Any other business
5. Date of the next meeting.

**MIN.CCC/TWGB/26/03: PRAYERS**

The Committee noted that prayers had been said at Plenary.

### **MIN.CCC/TWGB/27/03: OPENING REMARKS**

The Convenor and the members expressed concern over the management of time and noted that the committee time should be spent more qualitatively.

### **MIN/CCC/TWGB/28/03: CONFIRMATION OF MINUTES**

The members confirmed the minutes of the fourth sitting dated 9<sup>th</sup> September 2003 with some corrections. Hon. Yusuf Dogo proposed them and Hon. Nichasius Mugo seconded them.

The following corrections were and are hereby made;

- Page 4: In the sentence concerning the sitting of observers the word ‘convenors’ should be corrected to read ‘observers’. The word ‘bonafide’ is deleted.
- In MIN.CCC/TWGB/20/03 a sentence is added introducing the minute i.e. “ The honourable delegates were requested by the Convenor”.
- Page 1& 2:

Esther Keion is corrected to Esther Keino  
Quadentia Atonga is changed to Gaudentia Atonga  
Dorcas Mbelersia is changed to Dorcas Mbelesia  
Evalia Rebecca is changed to Evelia Rebecca  
Simeon Lesirma is changed to Simeon Lesrima  
Yusuf Doge is changed to Yusuf Dogo  
John Njenga is changed to John Njue  
Neera kent Kapila is changed to Neera Kent Kapila

That in future minutes the official names of the members should be correctly spelt.

That on page 4. The list of members who had complained about having been omitted was added;

- Hon. Yusuf Wako Doge (269)
- Hon. Fahim Twaha
- Hon. Mugo (287)
- Hon. Lorna Timanoi

### **MIN. CCC/TWGB27/03 MATTERS ARISING**

#### **(i) List of members**

The following members reported to the Committee that they had discussed with their respective provincial coordinators who all confirmed that they were bonafide members of Group B. These are:

- Hon. Yusuf Wako Doge

- Hon. Mugo (287)
- Hon. Lorna Timanoi

(ii) **Sitting Arrangement**

The Committee agreed to have its sitting arrangement changed to a horse-shoe shape by its next sitting.

(iii) **Participation of Personal Assistants**

The Convenors announced that Personal Assistants were not allowed to participate on behalf of the honourable delegates, as attendance was not by proxy. That further, only the personal assistants to the persons with disability could be allowed to attend the committee meetings. This announcement was made pursuant to a request by Hon. Bishop Stephen Ondiek to have his personal assistant sit in on his behalf in committee meetings.

(iv) **Contribution Time**

The members noted that in the previous meeting there no determination on the amount of time allowed for contributions. The members resolved consequently that each member should be allowed upto five minutes to contribute.

(v) **Observers**

That the observers present in any sitting of the committee should register their presence with the secretariat.

**MIN. CCC/TWGB/28/03 MAIN AGENDA**

(i) **Presentation by Mr. Tavenga Nhongo**

This presentation was deferred to Thursday, 11<sup>th</sup> September 2003 at 9.30 a.m.

(ii) **General comments on Citizenship**

The Rapporteur, Com. Lethome informed the Committee members that comments from other honourable delegates who were not members of the Committee on Citizenship and Bill of Rights will be allowed to make their contributions during the time allocated for general comments.

He went on further to explain that the role of the Rapporteur's report in the committee was to primarily inform the debate of the committee, without necessarily having to agree with it.

He explained that the main report's had laid out the conceptual background for Draft Bill's provisions on citizenship and highlighted that the committee had the mandate to amend the Draft Bill.

He then invited debate on the Main Report's provisions on citizenship.

**MIN. CCC/TWGB/29/03 ADJOURNMENT**

The time being 1 p.m., the Convener adjourned the meeting for lunch break. The Committee members agreed to return at 2 p.m. in the Afternoon for debate on the Main Report's provisions on citizenship.

The Committee by consensus elected Hon. Suba Churchill Meshack to be the Convener in the Afternoon Session since the Convener would be absent with apology as she was indisposed.

**CONVENOR ..... DATE.....**  
**CECILY MBARIRE**

**NATIONAL CONSTITUTIONAL CONFERENCE**

10<sup>th</sup> September 2003

TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Thursday, September 11<sup>th</sup> 2003 at Tent No. 2, Bomas of Kenya at 8.30 am**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. **Main Agenda**
  - (i) **General Comments on Citizenship**
  - (ii) **Substantive discussions on Citizenship as from Article 17**
5. Any Other Business
6. Date of Next meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date .....

Time .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**MINUTES OF THE SIXTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO 2 ON THURSDAY, SEPTEMBER 11, 2003 AT 9.15 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Suba Churchil Meshack
4. Dorcas Mbelesia
5. Eliud Nakitare
6. Esther Keino
7. Evelia Rebecca
8. Fatuma Ali Saman
9. Francis N. Kaloki
10. Gaudentia Atonga
11. George Wesonga
12. Jane Mwende
13. Jillo Onotto
14. John Katumanga
15. Kilonzo Charles Mutavi
16. Lucas K. Chepkitony
17. Magugu Arthur
18. Moses Lengete Ole Sisika
19. Neera Kent Kapila
20. Pamela Mboya
21. Peter O. Bwana
22. Rosemary Kinyanjui
23. Sahara Ahmed Hillow
24. Sheikh Abdalla
25. Silvanus Ogari
26. Sudi David Kiprono Sutter
27. Teresa Osunga
28. Lihanda Kemen Savai
29. Marie Therese Gachambi
30. Joyce Umbima
31. Sabenzia N. Wekesa
32. Ann Okoth
33. Nichasius Mugo
34. Yusuf Wako
35. Lorna Timanoi Tetu
36. Salah Maalim Alio
37. Samson Ng'etich

## **ABSENT**

1. Ali Wario
2. Choge Jim
3. David Kigen
4. Florence Machayo
5. Masanya Godfrey Okeri
6. Mburugu Florence Ruhiu
7. Rose Olende
8. Roselinder Simiyu
9. Simeon Lesrima
10. Wafula Wamunyinyi
11. Wilfred Kiboro
12. J. W. Nyaga
13. Lawrence Mute
14. Millie Odhiambo
15. Sing'oei Korir
16. Iorna Laboso
17. Fahim Twaha

## **OBSERVERS PRESENT:**

1. Ndinda Mutinda
2. Davis Malombe
3. Elisha Godana
4. Mona Muthengi
5. Joseph K. Waweru
6. Solomon Kayia
7. Penina Vulimu
8. Rosemary Benzina
9. Murigi G. Mugo
10. J. K, Wanjeru
11. Kennedy Sanga (Aide)

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 6. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 7. Comm. Salome Muigai   | - | Rapporteur                  |
| 8. Liz Kingi             | - | Assistant Programme Officer |
| 9. Selina Kandie         | - | Assistant Programme Officer |
| 10. Martina Odhiambo     | - | Verbatim Recorder           |
| 11. Tim Otim             | - | Verbatim                    |
| 12. Jeremiah Nyegenye    | - | Draftsman                   |

### **National Assembly**

- |               |   |                 |
|---------------|---|-----------------|
| John Wanyoike | - | Clerk Assistant |
|---------------|---|-----------------|

**MIN. CCC/TWGB/35/03 CONFIRMATION OF MINUTES**

Minutes of the fifth sitting held on Wednesday, September 10, 2003 were proposed and confirmed by Hon. delegate Eliud P. Nakitare and seconded by Hon. delegate Neera Kent Kapila and signed by the Convenor.

**MIN. CCC/TWGB/36/03 MATTERS ARISING**

That Hon. Commissioner Salome Muigai had not been highlighted as an additional Rapporteur. This is now and hereby corrected as she was officially introduced and welcomed to the committee.

**MIN. CCC/TWG/37/03 DEFERRED ARTICLE**

The delegates resolved to first finalize deferred **Article 17 (1) and (2)**.

**MIN. CCC/TWGB/38/03 DELIBERATIONS**

The delegates deliberated on citizenship.

(i) **Article 17**  
**Retention of existing citizenship**

The delegates deliberated on Article 17 Sub-articles (1) and (2) and adopted sub-article (1) without amendments and resolved that Sub-Article (2) be shelved until at a later stage during the other Articles consideration.

(ii) **Article 18:**  
**Acquisition of Citizenship**

Article 18 sub-articles (a), (b) and (c) were adopted without Amendments.

(iii) **Article 19**  
**Citizenship by Birth**

Article 19 Sub-Article (1) and (2) were adopted without Amendments.

(iv) **Article 20**  
**Citizenship and Marriage**

- (a) Article 20 (1)  
The word “**three**” years was deleted and the word “**seven**” years was inserted therein;  
The Article was adopted with Amendments.

- (b) Sub-Article (2) was adopted without Amendments.

(v) **Article 21**  
**Citizenship by naturalization**

Article 21 was adopted without Amendments.

**MIN. CCC/TWGB/39/03 DIVERGENT VIEWS**

(i) **Article 19**  
***Citizenship by Birth***

Article 19, Sub-clause (1). The following delegates were of the contrary opinion, they opposed the Article without Amendments.

Hon. delegate Milly Odhiambo  
Hon. delegate Fatuma Ali Samani  
Hon. delegate Amina Zuberi  
Hon. delegate Ann Wairimu Njogu  
Hon. delegate Joyce Umbima

(ii) **Article 20**  
**Citizenship and Marriage**

Article 20 Sub-Article (1)  
The Hon. Delegate Umbima and the Hon. delegate Ann Wairimu Njogu were of the contrary opinion they opposed the Amendment the word “**seven**”.

**MIN. CCC/TWGB/40/03 ADJOURNMENT**

And the time being 1 O'clock, the Convenor adjourned the sitting until 2.00 p.m.

**AFTERNOON SITTING**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Amina Zuberi
3. Bernadette Quadros
4. Suba Churchil Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Francis N. Kaloki
11. Gaudentia Atonga

12. Jane Mwende
13. Jillo Onotto
14. John Katumanga
15. Kilonzo Charles Mutavi
16. Lucas K. Chepkitony
17. Moses Lengete Ole Sisika
18. Neera Kent Kapila
19. Pamela Mboya
20. Peter O. Bwana
21. Rose Olende
22. Rosemary Kinyanjui
23. Sahara Ahmed Hillow
24. Sheikh Abdalla
25. Silvanus Ogari
26. Simeon Lesrima
27. Teresa Osunga
28. Lihanda Kemen Savai
29. John Njue
30. Marie Therese Gachambi
31. Joyce Umbima
32. Sabenzia N. Wekesa
33. Ann Okoth
34. Nichasius Mugo
35. Yusuf Wako
36. Lorna Timanoi Tetu
37. Salah Maalim Alio
38. Kennedy Sanga
39. Ann Njogu
40. Magugu Arthur
41. Millie Odhiambo
42. Kennedy Sanga (Aide)

### **ABSENT**

1. Ali Wario
2. Choge Jim
3. David Kigen
4. Florence Machayo
5. Masanya Godfrey Okeri
6. Mburugu Florence Ruhiu
7. Roselinder Simiyu
8. Wafula Wamunyinyi
9. Sudi David Kiprono Sutter
10. Wilfred Kiboro
11. J. W. Nyaga
12. Lawrence Mute

13. Sing'oei Korir
14. Iorna Laboso
15. Fahim Twaha

**OBSERVERS PRESENT:**

1. Ndinda Mutinda
2. Elisha Godana
3. Mona Muthengi
4. Joseph K. Waweru
5. Solomon Kayia
6. Penina Vulimu
7. Angela Gethi
8. Dr. G. K. Wanyeni
9. Onyoro Samuel
10. Justus M. Kivindyo

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Liz Kingi             | - | Assistant Programme Officer |
| 4. Celina Kandie         | - | Assistant Programme Officer |
| 5. Martina Odhiambo      | - | Verbatim Recorder           |
| 6. Tim Otim              | - | Verbatim                    |
| 7. Jeremiah Nyegenye     | - | Draftsman                   |

**National Assembly**

John Wanyoike - Clerk Assistant

The delegates reconvened at 2.00 p.m.

**MIN. CCC/TWGB/41/03: DELIBERATIONS**

The delegates resumed deliberations on citizenship.

**(vi) Article 22**  
***Children found in Kenya and adopted children.***

Article 22 Sub-Article (1) was deleted.

Article 22 Sub-Article (2) was inserted as Article 22.

The title; **“Children found in Kenya and”** was deleted and the words; **“by Kenya citizens”** was inserted after the words **“adopted children”**.

New title; **“Adopted children by Kenya citizens”** was adopted.

**(vii) Article 23  
Dual Citizenship**

Article 23 Sub-Article 1, 2 and 3 debate to continue.

**MIN.CCC/TWGB/43/03: DEFERRED ARTICLE 17 (SUB-ARTICLE 2)**

**Article 17 (sub-article 2)  
Retention of existing citizenship.**

Article 17 (sub-article 2) the delegates mandated the draftsman to insert article 17 (sub-clause 2) to an appropriate relevant place in the draft bill.

**MIN. CCC/TWGB/44/03 ADJOURNMENT**

And the time being forty-five minutes past Four Oc'lock, the Convenor adjourned the sitting until Friday, September 12, 2003 at 8.30 a.m.

**Signed:.....  
CECILY MBARIRE  
(CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

11<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Friday, September 12<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. **Main Agenda**
  - (i) **Substantive discussions on Citizenship from Article 23 – 75**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date ..... Time .....

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## NATIONAL CONSTITUTIONAL CONFERENCE

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**MINUTES OF THE SEVENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO 2 ON FRIDAY, SEPTEMBER 12, 2003 AT 9.20 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Suba Churchil Meshack
4. Dorcas Mbelesia
5. Eliud Nakitare
6. Esther Keino
7. Evelia Rebecca
8. Fatuma Ali Saman
9. Florence Machayo
10. Francis N. Kaloki
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Kilonzo Charles Mutavi
17. Lucas K. Chepkitony
18. Masanya Godfrey Okeri
19. Moses Lengete Ole Sisika
20. Neera Kent Kapila
21. Pamela Mboya
22. Peter O. Bwana
23. Rosemary Kinyanjui
24. Sahara Ahmed Hillow
25. Sheikh Abdalla
26. Silvanus Ogari
27. Simeon Lesrima
28. Teresa Osunga
29. J. W. Nyagah
30. Lihanda Kemen Savai
31. Marie Therese Gachambi
32. Lawrence Mute
33. Millie Odhiambo
34. Sabenzia N. Wekesa
35. Amina Zuberi

36. Ann Okoth
37. Nichasius Mugo
38. Lorna Timanoi Tetu
39. Salah Maalim Alio
40. Samson Ng'etich
41. Salah Maalim Ali
42. Ng'etich K. Samson (Aide)
43. Kennedy Sanga (Aide)

**ABSENT**

1. Ali Wario
2. Choge Jim
3. David Kigen
4. Rose Olende
5. Roselinder Simiyu
6. Sudi David Kiprono Sutter
7. Wafula Wamunyinyi
8. Wilfred Kiboro
9. John Njue
10. Joyce Umbima
11. Sing'oei Korir
12. Lorna Laboso
13. Yusuf Wako
14. Fahim Twaha

**OBSERVERS PRESENT:**

1. Ndinda Mutinda
2. Davis Malombe
3. Elisha Godana
4. Mona Muthengi
5. Joseph K. Waweru
6. Solomon Kayia
7. Penina Vulimu
8. Rosemary Benzina
9. J. K. Wanjeru
10. Ongoro Samuel
11. Victor Mutuma

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                            |              |
|----------------------------|--------------|
| 1. Comm. Ibrahim Lethome - | Rapporteur   |
| 2. Comm. Salome Muigai     | - Rapporteur |
| 3. Comm. Nancy Baraza      | - Rapporteur |
| 4. Jeremiah Nyegenye       | - Draftsman  |

- |                     |   |                             |
|---------------------|---|-----------------------------|
| 5. Achieng Olende   | - | Programme Officer           |
| 6. Liz Kingi        | - | Assistant Programme Officer |
| 7. Selina Kandie    | - | Assistant Programme Officer |
| 8. Martina Odhiambo | - | Verbatim Recorder           |
| 9. John Wanyoike    | - | Clerk Assistant             |

## **PRAYERS**

Hon. Marie Therese Gachambi led the Committee members in a word of prayer.

## **MIN. CCC/TWGB/45/03 CONFIRMATION OF MINUTES**

Minutes of the sixth sitting held on Thursday, September 11, 2003 were proposed by delegate John Katumanga and seconded by delegate Dorcas Mbelesia and signed by the Convenor.

## **MIN. CCC/TWGB/46/03 MATTERS ARISING**

### **(a) Under MIN. CCC/TWGB/39/03; Divergent Views**

#### **(iv) Article 19 Citizenship by Birth**

That the word “**Article 19**” should read “**Article 22**” as the delegates had given divergent views on Article 22, Title on “**children found in Kenya and adopted children,**” which was amended to read “**Adopted children by Kenyan citizens**” and

Sub-Article (1) was deleted and Sub-Article (2) was amended to be Sub-Article (1) further that,

- (ii) The divergent views should be more expounded.

### **(b) Ceasation of Membership**

That delegate No. 287, Hon. Mburugu Florence Ruhu had moved to another Technical Committee A, and that her being recorded absent should cease..

### **(c) Absent with Apology**

That Comm. Nancy Baraza had not been recorded as absent with apology in the afternoon.

### **(d) Delegates Present**

That Hon. Delegate Amina Zuberi had been inadvertently omitted as present on Thursday, September 12, 2003.

- (e) That a “h” should be added to Hon. J. W. Nyaga i.e. J.W. Nyagah.

**MIN. CCC/TWGB/47/03                      DELIBERATIONS**

The delegates deliberated on citizenship.

**(i)     Article 23  
Dual Citizenship**

Article 23 Sub-Article, 1, 2, and 3 after long deliberations were deferred to another day, the delegates requested the rapporteurs to bring an expert (s) to explain and discuss the Article on Dual Citizenship.

**(ii)    Article 24  
Cessation of Citizenship**

Article 24 at the end of the word fact, the words “**or by other unlawful means**” were deleted thereon.

The Article was adopted with Amendments.

**(iii)   Article 26  
Residence**

Article 26 Sub-Article (1) and (2) were adopted without Amendments.

**MIN. CCC/TWGB/48/03                      REWORDING**

**(iv)    Article 25  
*Citizenship of parent dying before birth of a person.***

Article 25 was deferred to another day and the draftsman was mandated to re-word the Article 25, Sub-Article (1) and (2).

**(v)     Article 26  
Residence**

Article 26 Sub-Article (1) and (2) were adopted without Amendments.

**MIN. CCC/TWGB/49/03                      PAPER LAID**

Delegate Lihanda Kemen Savai laid a paper concerning views and suggestions on citizenship and Bill of Rights.

**MIN. CCC/TWGB/50/03     ADJOURNMENT**

And the time being thirty minutes past noon the Convenor adjourned the sitting until 2.00 p.m.

## **AFTERNOON SITTING**

### **PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Amina Zuberi
4. Suba Churchil Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Florence Machayo
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Lucas K. Chepkitony
18. Masanya Godfrey Okeri
19. Moses Lengete Ole Sisika
20. Neera Kent Kapila
21. Pamela Mboya
22. Peter O. Bwana
23. Rose Olende
24. Rosemary Kinyanjui
25. Sahara Ahmed Hillow
26. Sheikh Abdalla
27. Silvanus Ogari
28. Teresa Osunga
29. J. W. Nyagah
30. Lihanda Kemen Savai
31. Marie Therese Gachambi
32. Lawrence Mute
33. Millie Odhiambo
34. Ann Okoth
35. Nichasius Mugo
36. Lorna Laboso
37. Salah Maalim Alio
38. Salah Maalim Ali
39. Yusuf Wako
40. Fahim Twaha

41. Ng'etich K. Samson (Aide)
42. Kennedy Sanga (Aide)

**Absent with Apology**

Simeon Lesrima

**ABSENT**

1. Ali Wario
2. Choge Jim
3. David Kigen
4. Kilonzo Charles Mutavi
5. Roselinder Simiyu
6. Sudi David Kiprono Sutter
7. Wafula Wamunyinyi
8. Wilfred Kiboro
9. John Njue
10. Sabenzia N. Wekesa
11. Joyce Umbima
12. Sing'oei Korir
13. Magugu Arthur

**OBSERVERS PRESENT:**

1. Ndinda Mutinda
2. Davis Malombe
3. Mona Muthengi
4. Joseph K. Waweru
5. Solomon Kayia
6. Penina Vulimu
7. Rosemary Benzina
8. Dr. J. K. Wanjeru
9. Murugi G. Mugo
10. Justus M. Kivindyo
11. Ongoro Samuel
12. Victor Mutumah
13. Dan Munda
14. Tim Gitau

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                            |                     |
|----------------------------|---------------------|
| 1. Comm. Ibrahim Lethome - | Rapporteur          |
| 2. Comm. Salome Muigai     | - Rapporteur        |
| 3. Comm. Nancy Baraza      | - Rapporteur        |
| 4. Jeremiah Nyegenye       | - Draughtsman       |
| 5. Achieng Olende          | - Programme Officer |

- 6. Liz Kingi - Assistant Programme Officer
- 7. Selina Kandie - Assistant Programme Officer
- 8. John Wanyoike - National Assembly
- 9. Martina Odhiambo - Verbatim Recorder

The delegates assembled at 2.00 p.m.

**MIN. CCC/TWGB/51/03    CLARIFICATION**

- (i)    **Article 22,**  
***Adopted Children by Kenya Citizens.***

The Chairman of the Constitution of Kenya Review Commission Prof. Yash Pal Ghai gave a detailed background information on Article 22 on Children found in Kenya and who may be less than eight years and parents unknown may be presumed to be citizens of Kenya; and

- (ii)    **Article 23**  
***Dual Citizenship;***

Article 23 Sub-Article (i); that Britain and some other Commonwealth countries do permit dual citizenship.

- (iii)    **Article 27,**  
***Powers of Parliament***

Article 27, Sub-Article a, b, c, d ,e and f, that Parliament may be mandated to some matters on citizenship, registration or naturalization.

**MIN. CCC/TWGB/52/03                      SUB-COMMITTEE ON DUAL CITIZENSHIP**

The delegates resolved and formed a sub-committee to look into thorough details of Article 23, on Dual Citizenship. The terms of reference were stipulated as under:

- (i)    The interpretation of Article 23. Sub-Article 1, 2, and 3. The impact, merits and demerits of Dual Citizenship, whether it is appropriate and report back to the main Committee.
- (ii)    The Sub-Committee report may be adopted by the main Committee.
- (iii)    The delegates also resolved the following be members of the ad-hoc Committee:

- Hon. delegate Millie Odhiambo
- Hon. delegate Lawrence Mute
- Hon. delegate Esther Keino
- Hon. Suba Churchill Meshack
- Hon. John Katumanga
- Hon. Salah Maalim Ali

**MIN. CCC/TWGB/53/03    DELETED ORIGINAL ARTICLE 22 (1)**

After a protracted deliberation and with consensus the delegates revisited and reversed the resolutions on:

**(i)     Article 22  
Adopted Children of Kenya**

Article 22 Sub-Article (1) was renumbered to read Sub-Article (2)

- (ii) Deleted Sub-Article (1) was introduced again and adopted with amendments that the words “**parents are**” were deleted, and therein the words “**Nationality is**” were inserted therein.
- (iii) The Sub-Article was adopted with Amendments and renumbered Sub-Article (1).
- (iv) The title, “**Adopted Children by Kenyan Citizens**” was deleted and the old title, “**Children found in Kenya and adopted Children**” was inserted thereof.

**MIN. CCC/TWGB/54/03    DELIBERATIONS**

**Article 27  
*Powers of Parliament***

Sub-Title, the word “may” before the word Parliament was deleted and the word “shall” was inserted therein.

Article 27, and Sub-Article a, b, c, d, e and f, powers of Parliament were deferred to another day.

**Article 28  
Citizenship Registration Board**

Article 28 was deleted.

**MIN. CCC/TWGB/55/03    ADJOURNMENT**

And the time being Four O’clock, the Convenor adjourned the sitting until Monday, September 15<sup>th</sup>, 2003 at 8.30 a.m.

**Signed:.....  
CECILY MBARIRE  
(CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

12<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Monday, September 15<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am**

**AGENDA**

1. Prayers
2. Apologies
3. Confirmation of Minutes
4. Matters Arising
- 5. Main Agenda**
  - (i) Substantive discussions on Citizenship from Article 23, 27, 29 –75**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE EIGHTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO 2 ON MONDAY, SEPTEMBER 15<sup>TH</sup>, 2003 AT 12.00 NOON.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Ali Wario
4. Suba Churchil Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Florence Machayo
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwende
15. Jillo Onotto
16. John Katumanga
17. Lucas K. Chepkitony
18. Magugu Arthur
19. Masanya Godfrey Okeri
20. Moses Lengete Ole Sisika
21. Neera Kent Kapila
22. Pamela Mboya
23. Peter O. Bwana
24. Rose Olende
25. Rosemary Kinyanjui
26. Sahara Ahmed Hillow
27. Silvanus Ogari
28. Teresa Osunga
29. J. W. Nyagah
30. Lihanda Kemen Savai
31. Marie Therese Gachambi
32. John Njue
33. Joyce Umbima
34. Millie Odhiambo
35. Sabenzia N. Wekesa

36. Amina Zuberi
37. Nichasius Mugo
38. Lorna Laboso
39. Lorna Timanoi Tetu
40. Samson Ng'etich
41. Salah Maalim Ali
42. Ann Wairimu Njogu
43. Kennedy Sanga (Aide)

**Absent with Apology**

Rapporteur Comm. Ibrahim Lethome  
Simeon Lesrima

**ABSENT**

1. Choge Jim
2. David Kigen
3. Kilonzo Charles Mutavi
4. Roselinder Simiyu
5. Sheikh Abdalla
6. Simeon Lesrima
7. Sudi David Kiprono Sutter
8. Wafula Wamunyinyi
9. Wilfred Kiboro
10. Lawrence Mute
11. Sing'oei Korir
12. Yusuf Wako
13. Fahim Twaha
14. Ann Okoth

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Davis Malombe
3. Elisha Godana
4. Mona Muthengi
5. Dr. J. K. Wanjeru
6. Solomon Kayia
7. Penina Vulimu
8. Tim Gitau

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Comm. Salome Muigai | - | Rapporteur                  |
| 2. Comm. Nancy Baraza  | - | Rapporteur                  |
| 3. Jeremiah Nyegenye   | - | Draftsman                   |
| 4. Achieng Olende      | - | Programme Officer           |
| 5. Liz Kingi           | - | Assistant Programme Officer |
| 6. Selina Kandie       | - | Assistant Programme Officer |
| 7. Martina Odhiambo    | - | Verbatim Recorder           |
| 8. John Wanyoike       | - | Clerk Assistant             |
| 9. Sarah Rukwaro       | - | Support Staff               |
| 10. John Adeya         | - | Support Staff               |

**MIN. CCC/TWGB/56/03 CONFIRMATION OF MINUTES**

Minutes of the Seventh sitting held on Friday, September 12, 2003 were proposed by delegate Jillo Onotto and seconded by delegate Evelia Rebecca and signed by the Convenor.

**MIN. CCC/TWGB/57/03 MATTERS ARISING**

(a) **Ceasation of Membership**

That delegate No. 21, Hon. Jim Chege had moved to another Technical Committee A, and that his being recorded absent should cease.

(b) **Absent with Apology**

That Hon. delegates Joyce Lubina and Ann Njogu had not been recorded as absent with apology on Friday, September 12, 2003

(c) That delegates Salah Maalim Ali and Salah Maalim Ali was one and the same person and that Ng’etich K. Samson and Ng’etich Samson was the same and one person.

**MIN. CCC/TWG/58/03 DELIBERATIONS**

The delegates deliberated on Citizenship.

**Title “Citizenship”**

Title of Chapter Seven “CITIZENSHIP” was adopted without Amendment.

**Article 29**

***Fundamental rights and freedom state***

Debate to continue in the afternoon.

**AFTERNOON SITTING**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Ali Wario
4. Suba Churchil Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Florence Machayo
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Kilonzo Charles Mutavi
18. Lucas K. Chepkitony
19. Magugu Arthur
20. Masanya Godfrey Okeri
21. Moses Lengete Ole Sisika
22. Neera Kent Kapila
23. Pamela Mboya
24. Peter O. Bwana
25. Rose Olende
26. Rosemary Kinyanjui
27. Sahara Ahmed Hillo
28. Silvanus Ogari
29. John Njue
30. Teresa Osunga
31. J. W. Nyagah
32. Lihanda Kemen Savai
33. Joyce Umbima
34. Marie Therese Gachambi
35. Lawrence Mute
36. Millie Odhiambo
37. Sabenzia N. Wekesa
38. Amina Zuberi
39. Fahim Twaha
40. Ann W. Njogu
41. Nichasius Mugo
42. Lorna Timanoi Tetu
43. Samson Ng'etich

44. Lorna Laboso
45. Ng’etich K. Samson (Aide)
46. Kennedy Sanga (Aide)

**OBSERVERS PRESENT:**

1. Victor Mutuma
2. Elisha Godana
3. Mona Muthengi
4. Joseph K. Waweru
5. Solomon Kayia
6. Penina Vulimu
7. J. K. Wanjeru
8. Victor Mutuma
9. Samson Ng’etich

**Absent with Apology**

Rapporteur Comm. Ibrahim Lethome  
Simeon Lesrima

**ABSENT**

1. David Kigen
2. Roselinder Simiyu
3. Sudi David Kiprono Sutter
4. Wafula Wamunyinyi
5. Wilfred Kiboro
6. Sing’oei Korir
7. Simeon Lesrima
8. Sheikh Abdalla
9. Yusuf Wako

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |     |                     |   |                             |
|-----|---------------------|---|-----------------------------|
| 1.  | Comm. Salome Muigai | - | Rapporteur                  |
| 2.  | Comm. Nancy Baraza  | - | Rapporteur                  |
| 3.  | Jeremiah Nyegenye   | - | Draftsman                   |
| 4.  | Achieng Olende      | - | Programme Officer           |
| 5.  | Liz Kingi           | - | Assistant Programme Officer |
| 6.  | Selina Kandie       | - | Assistant Programme Officer |
| 7.  | Martina Odhiambo    | - | Verbatim Recorder           |
| 8.  | John Wanyoike       | - | Clerk Assistant             |
| 9.  | Sarah Rukwaro       | - | Support Staff               |
| 10. | John Adeya          | - | Support Staff               |

The delegates resumed deliberation at 2.20 p.m.

**MIN. CCC/TWG/59/03**

**THE LATE HON. DELEGATE CHRISPINE MBAI**

Debate arose that the Committee stands adjourned until Tuesday, September 16<sup>th</sup>, 2003 at 8.30 a.m. to facilitate the Delegates visit and console the bereaved family of the late Hon. Delegate Prof. Chrispine Odhiambo Mbai.

**Question was put and agreed on:**

The delegates left for the Hon. Delegate Prof. Chrispine Odhiambo Mbai's residence.

**MIN. CCC/TWG/58/03**

**ADJOURNMENT**

And the time being thirty minutes past Two O'clock, the Convenor adjourned the meeting until Tuesday September 16, 2003 at 8.30 p.m.

**Signed:.....**  
**CECILY MBARIRE (CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

16<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, September 17<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Apologies
3. Confirmation of Minutes
4. Matters Arising
5. **Main Agenda**
  - (i) **Substantive discussions on Bill of Rights, from Article 29 -75**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date .....

Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE NINTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO 2 ON WEDNESDAY, SEPTEMBER 17<sup>TH</sup>, 2003 AT 9.15 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Ali Wario
4. Bishop Stephen Ondiek
5. Suba Churchil Meshack
6. Dorcas Mbelesia
7. Eliud Nakitare
8. Esther Keino
9. Evelia Rebecca
10. Fatuma Ali Saman
11. Florence Machayo
12. Francis N. Kaloki
13. Gaudentia Atonga
14. George Wesonga
15. Jane Mwendu
16. Jillo Onotto
17. John Katumanga
18. Kilonzo Charles Mutavi
19. Lucas K. Chepkitony
20. Magugu Arthur
21. Masanya Godfrey Okeri
22. Moses Lengete Ole Sisika
23. Neera Kent Kapila
24. Pamela Mboya
25. Rose Olende
26. Rosemary Kinyanjui
27. Sahara Ahmed Hillow
28. Silvanus Ogari
29. Simeon Lesrima
30. Teresa Osunga
31. Wafula Wamunyinyi
32. Lihanda Savai
33. Marie Therese Gachambi
34. Millie Odhiambo

35. Sing'oei Korir
36. Sabenzia N. Wekesa
37. Amina Zuberi
38. Nichasius Mugo
39. Lorna Laboso
40. Lorna Timanoi Tetu
41. Samson Ng'etich
42. Yusuf Wako
43. Fahim Twaha
44. Kennedy Sanga (Aide)

**Absent with Apology**

Bishop John Njue  
Godfrey. O Masanya

**ABSENT**

1. David Kigen
2. Peter O. Bwana
3. Roselinder Simiyu
4. Sheikh Abdalla
5. Sudi David Kiprono Sutter
6. Wilfred Kiboro
7. J.W. Nyagah
8. Joyce Umbima

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Davis Malombe
3. Elisha Godana
4. Mona Muthengi
5. Dr. J. K. Wanjeru
6. Solomon Kayia
7. Tim Gitau
8. Dr. Jacinta Muteshi
9. Kepta Ombati
10. Ndinda Mutinda
11. Ali Galgalo
12. Nasra Aweis Abubakar
13. Penina Vulimu
14. Samuel Ungoro
15. Joyce Majiwa
16. Nakalo David Okuja

17. Judith Mugunda
18. Johnson Awour
19. Salah Maalim Ali
20. Ann Wairimu Njogu

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Salome Muigai   | - | Rapporteur                  |
| 2. Comm. Nancy Baraza    | - | Rapporteur                  |
| 3. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |
| 8. John Wanyoike         | - | Clerk Assistant             |
| 9. Martina Odhiambo      | - | Verbatim Recorder           |

**PRAYER**

The meeting opened with a word of prayer.

**MIN. CCC/TWGB/61/03                      CONFIRMATION OF MINUTES**

Minutes of the Eighth sitting held on Monday, September 15, 2003 were proposed by delegate John Katumanga and seconded by delegate Pamela Mboya and signed by the Convenor

**MIN. CCC/TWGB/62/03                      MATTERS ARISING**

Delegates Bishop Ondiek, Lawrence Mute and Fahim Twaha were present on Monday morning and their names had been left out inadvertently.

**MIN. CCC/TWGB/63/03                      DELIBERATIONS**

**(iii)    Article 29**  
***Fundamental rights and freedom***

Sub-Article (1) was adopted without Amendments

Sub-Article (2)

After the word promote, the word “substantive” was inserted therein.

The Sub-Article was adopted with Amendments.

**(iv)    Sub-article 29 (3)**

After a protracted deliberation the Delegates resolved to differ the sub-Article (3) a, b, c, to another day; and

That the Commissioners input would be sought on the background Information for the way forward and also whether a new Sub-article “D” may be included for an individual right.

(v) **Article 30**  
***Duty of the State to promote rights and freedoms***

Article 30, Sub-article (1) was adopted without Amendment.

Article 30, Sub-article (2)  
After the word “it” the word “is” was deleted therein and the words “shall be” was inserted therein.

That Sub-Article (3) was adopted with Amendments.

Article 30  
Sub-Article (3) and (4) were deferred to another day as they were in relation to Articles 56-62 and all should be read and understood together. They were deferred to another day.

Article 30 Sub-Article (5)  
The Draftsman was mandated to redraft the Sub-Article (5) and choose the words facilitate an enabling environment as to where they should be inserted in.

**MIN. CCC/TWGB/64/03**    **DIVERGENT VIEWS**

Delegates M. L. Ole Sisika, Ali Wario, Jillo Onotto, Saleh Maalim Alio and Korir Sing’oei gave their minority views that:

The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and TRIBAL communities and to promote social injustice and the realization of the potential of all human beings.

There is need to clarify which “communities” Article 29 (2) refers to. Ethnic communities have become internationally recognized to collectiveness with a corpus of rights (see the Ogoni and Katange Secession Communities before the African Commission on Human and People’s Rights). In the absence of clear distinction as which “communities” are under reference.

**MIN. CCC/TWGB/65/03**    **ADJOURNMENT**

And the time being ten minutes past One O’clock, the Convenor adjourned the meeting until 2.00 p.m.

**AFTERNOON SITTING**

The delegates reconvened at 2.30 p.m.

**PRESENT:**

1. Suba Churchil Meshack - **Acting Convenor**
2. Bernadette Quadros
3. Bishop Stephen Ondiek
4. Ali Wario
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Florence Machayo
10. Francis N. Kaloki
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Lucas K. Chepkitony
17. Magugu Arthur
18. Moses Lengete Ole Sisika
19. Neera Kent Kapila
20. Pamela Mboya
21. Rose Olende
22. Rosemary Kinyanjui
23. Sahara Ahmed Hillow
24. Silvanus Ogari
25. Simeon Lesrima
26. Teresa Osunga
27. Lihanda Kemen Savai
28. Marie Therese Gachambi
29. Millie Odhiambo
30. Sabenzia N. Wekesa
31. Amina Zuberi
32. Nichasius Mugo
33. Lorna Laboso
34. Lorna Timanoi Tetu
35. Samson Ng'etich
36. Simeon Lesrima
37. Yusuf Wako
38. Peter O. Obwana
39. Joyce Umbima
40. Fahim Twaha
41. Kennedy Sanga (Aide)

**Absent with Apology**

Cecily Mbarire (Convenor)  
Bishop John Njue

Godfrey. O. Masanya

**ABSENT**

1. David Kigen
2. Kilonzo Charles Mutavi
3. Roselinder Simiyu
4. Sheikh Abdalla
5. Sudi David Kiprono Sutter
6. Wafula Wamunyinyi
7. Wilfred Kiboro
8. Lawrence Mute
9. Sing'oei Korir
10. J. W. Nyagah
11. Fatuma Ali Saman
12. Mburugu Florence Ruhui
13. Ann Okoth

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Elisha Godana
3. Mona Muthengi
4. Dr. J. K. Wanjeru
5. Solomon Kayia
6. Tim Gitau
7. Dr. Jacinta Muteshi
8. Ndinda Mutinda
9. Ali Galgalo
10. Ongoro Samwel
11. Dan Nunda
12. Justus M. Kivindyo
13. Penina Vulimu
14. Salah Maalim Ali
15. Ann Wairimu Njogu

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Salome Muigai   | - | Rapporteur                  |
| 2. Comm. Nancy Baraza    | - | Rapporteur                  |
| 3. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |

- 8. John Wanyoike - Clerk Assistant
- 9. Martina Odhiambo - Verbatim Recorder

**MIN. CCC/TWGB/66/03    ACTING CONVENOR**

A motion was made that Hon. delegate Suba Churchill be the acting Convenor in absence of Convenor Cecily Mbarire.

The question was proposed and agreed upon.

The Acting Convenor Hon. delegate Suba Churchill thereon took the Chair.

**MIN. CCC/TWGB/67/03    DELIBERATIONS**

The delegates resumed deliberations on the Bill of Rights.

**Article 30**

*Duty of the State to promote rights and freedoms.*

Sub-Article 6a was adopted without Amendments.

Sub-Article 6 b, c, d was deferred to another day.

The deliberations to be resumed.

**MIN. CCC/TWGB/68/03    ADJOURNMENT**

And the time being Five O'clock, the acting Convenor Suba Churchill, adjourned the sitting until Thursday, September 18, 2003 at 8.30 a.m.

**Signed:.....**  
**SUBA CHURCHILL (ACTING CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

17<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Thursday, September 18<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Apologies
3. Confirmation of Minutes
4. Matters Arising
5. General Comments
- 6. Main Agenda**
  - (i) Substantive discussions on Bill of Rights, from Article 30 –75**
7. Any Other Business
8. Date of Next Meeting

**Approved for circulation  
Convener  
SUBA CHURCHILL**

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, SEPTEMBER 18<sup>TH</sup>, 2003 AT 9.20 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Bishop Stephen Ondiek
4. Ali Wario
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Florence Machayo
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Kilonzo Charles Mutavi
18. Lucas K. Chepkitony
19. Magugu Arthur
20. Moses Lengete Ole Sisika
21. Neera Kent Kapila
22. Pamela Mboya
23. Peter O. Bwana
24. Rosemary Kinyanjui
25. Sahara Ahmed Hillow
26. Silvanus Ogari
27. Simeon Lesrima
28. Sudi David Kiprono Sutter
29. Teresa Osunga
30. Wafula Wamunyinyi
31. Lihanda K. Savai
32. John Njue
33. Marie Therese Gachambi
34. Joyce Umbima
35. Lawrence Mute

36. Millie Odhiambo
37. Sing'oei Korir
38. Sabenzia N. Wekesa
39. Amina Zuberi
40. Nichasius Mugo
41. Lorna Laboso
42. Lorna Timanoi Tetu
43. Samson Ng'etich
44. Yusuf Wako
45. Fahim Twaha
46. Ann Wairimu Njogu
47. Ann Okoth
48. Salah Maalim Ali
49. Kennedy Sanga (Aide)

**Absent with Apology**

Suba Churchill Meshack

Masanya Godfrey Okeri

**ABSENT**

1. David Kigen
2. Roselinder Simiyu
3. Rose Olende
4. Sheikh Abdalla
5. Wilfred Kiboro
6. J.W. Nyagah
7. Mburugu Florence Ruhui

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Moses Mwangi
3. Elisha Godana
4. Mona Muthengi
5. Solomon Kayia
6. Tim Gitau
7. Ndinda Mutinda
8. Nasra A. Abubakar
9. Penina Vulimu
10. Nakalo David Okuja
11. Halima Ismail Ahmed
12. Victor Mutumah
13. Justus M. Kivindyo

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome - Rapporteur

- |                       |   |                             |
|-----------------------|---|-----------------------------|
| 2. Comm.Salome Muigai | - | Rapporteur                  |
| 3. Comm.Nancy Baraza  | - | Rapporteur                  |
| 4. Jeremiah Nyegenye  | - | Draftsman                   |
| 5. Achieng Olende     | - | Programme Officer           |
| 6. Liz Kingi          | - | Assistant Programme Officer |
| 7. Selina Kandie      | - | Assistant Programme Officer |
| 8. John Wanyoike      | - | Clerk Assistant             |
| 9. Martina Adhiambo   | - | Verbatim Recorder           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/69/03 CONFIRMATION OF MINUTES**

Minutes of the Ninth sitting held on Wednesday September 17, 2003 were proposed by delegate Ann Njogu and proposed by Salah Maalim Ali and signed by the Convenor.

### **MIN. CCC/TWGB/70/03 MATTERS ARISING**

That delegates Salah Maalim Ali, Anne Wairimu Njogu and Joyce Majiwa had been recorded as observers while they were delegates from another Technical Committee. The members resolved that delegates from other Committees when they attend the meeting they should be indicated as other delegates.

### **MIN. CCC/TWGB/71/03 DELIBERATIONS**

The delegates resumed deliberations on Article 30, duty of the State to promote rights and freedom.

**(vi) Article 30**  
***Duty of the State the promote rights and freedoms.***

Sub-Article 6 (b)

After the word “for” deleted the words “two months” and inserted the words “reasonable time”.

The Sub-Article 6 (b) was adopted with Amendments.

**(vii) Divergent Views**  
**Minority opinion**

Hon. delegate Teresa Osunga, that the words “two months” should have stayed in the Article 30 Sub-Article 6 (b), than the amendment word “reasonable time” was not appropriate.

**(viii) Sub-Article 6C**

The Sub-Article 6 (c) was adopted without Amendments.

**(ix) Divergent Views  
Minority View**

Delegate Bishop Njue, Eliud P. Nakitare and Sahara Ahmed Hillow were of the contrary view that Sub-Article 6 C should have been amended.

**(x) Sub-Article 6 (d)**

Sub-Article 6 (d) was adopted without amendments.

**(xi) Article 30**

Article 30 was adopted with Amendments.

**(xii) Title of Article 30,  
“Duty of the state to promote rights and freedoms”.**

The title was adopted without Amendments.

**(xiii) Article 31  
Limitation of Rights**

Sub-Article 1 (a)  
Article 31 as whole was deferred to another day. For more explanation and understanding of the Article and Sub-Article in it, as a limitation of the Bill of Rights as to what extent.

**(xiv) Article 32  
Right to life**

Deliberation on Sub-Article (1) to continue.

**MIN. CCC/TWGB/72/03      ADJOURNMENT**

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

**AFTERNOON SITTING**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bernadette Quadros
3. Bishop Stephen Ondiek

4. Suba Churchill Meshack
5. Dorcas Mbelesia
6. Eliud Nakitare
7. Esther Keino
8. Evelia Rebecca
9. Fatuma Ali Saman
10. Florence Machayo
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Kilonzo Charles Mutavi
18. Lucas K. Chepkitony
19. Moses Lengete Ole Sisika
20. Neera Kent Kapila
21. Pamela Mboya
22. Peter O. Bwana
23. Rose Olende
24. Rosemary Kinyanjui
25. Sahara Ahmed Hillow
26. Silvanus Ogari
27. Teresa Osunga
28. Lihanda Savai
29. John Njue
30. Marie Therese Gachambi
31. Joyce Umbima
32. Millie Odhiambo
33. Sabenzia N. Wekesa
34. Simeon Lesrima
35. Amina Zuberi
36. Wafula Wamunyinyi
37. Nichasius Mugo
38. Lorna Laboso
39. Lorna Timanoi Tetu
40. Yusuf Wako
41. Fahim Twaha
42. Joyce Majiwa
43. Victor Mukumah
44. Ann Wairimu Njogu
45. Salah Maalim Ali
46. Ann Okoth
47. Samson Ng'etich (Aide)
48. Kennedy Sanga (Aide)

**Absent with Apology**

Masanya Godfrey Okeri

**ABSENT**

1. David Kigen
2. Ali Wario
3. Roselinder Simiyu
4. Magugu Arthur
5. Sing'oei Korir
6. Sheikh Abdalla
7. Sudi David Kiprono Sutter
8. Lawrence Mute
9. Wilfred Kiboro
10. J.W. Nyagah

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Moses Mwangi
3. Elisha Godana
4. Mona Muthengi
5. Solomon Kayia
6. Tim Gitau
7. Ndinda Mutinda
8. Penina Vulimu
9. Victor Mutumah
10. Justus M. Kivindyo
11. Dr. J. K. Wanjeru
12. Ogella M. Tuka
13. Agnes
14. Kapel Sabina
15. Samuel Ongoro

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Comm. Nancy Baraza    | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |
| 8. John Wanyoike         | - | Clerk Assistant             |
| 9. Martina Adhiambo      | - | Verbatim Recorder           |

**MIN. CCC/TWGB/74/03    DELIBERATIONS**

**(i)    Article 32**  
***Right to life***

Sub-Article (1) was adopted without amendment.

A new Sub-Article 1 (a) was inserted before sub-Article (1) that “life means from conception to natural death”.

**(ii)    Divergent Views**  
***Minority Views***

The following delegates Joyce Umbima, Bernadette Quodros, Lorna Laboso, Neera Kent Kapila, Fahim Twaha, Yusuf Wako, Esther Keino, Esther Olende and Salah Maalim Alio, were of the view that a new Sub-Article 1 (a) should not be added to define life means “from conception to natural death”.

**(iii)    Sub-Article 2**

Sub-Article 2 was adopted without Amendments.

**(iv)    Article 33**  
***Equality***

Sub-Article 1 and 2 were adopted without Amendments.

**(v)    Article 34**  
***Freedom from Discrimination***

Article 34 Sub-Article (1) after the word “not” the word “unfairly” was deleted therein and after the word “martial status”, the word “health status” was inserted therein.

**(vi)    Minority View**

That delegate Lucas Chepkitony, moved an amendment to insert the word “tribe” after the word ethnic but the Amendment was defeated.

**MIN. CCC/TWGB/75/03    ADJOURNMENT**

And the time being twenty minutes past Five O’clock, the Convenor adjourned the sitting until Friday, September 19, 2003.

**Signed:.....**  
**CECILY MBARIRE (CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

18<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Friday, September 19<sup>th</sup>, 2003 at Tent No. 2 Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Apologies
3. Confirmation of Minutes
4. Matters Arising
5. General Comments
- 6. Main Agenda**
  - (i) Substantive discussion on Bill of Rights, from Article 34 - 75**
7. Any Other Business
8. Date of Next Meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date ..... Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE ELEVENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, SEPTEMBER 19<sup>TH</sup>, 2003 AT 9.30 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bishop Stephen Ondiek
3. Suba Churchill Meshack
4. Ali Wario
5. Dorcas Mbelesia
6. Esther Keino
7. Evelia Rebecca
8. Fatuma Ali Saman
9. Florence Machayo
10. Francis N. Kaloki
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Kilonzo Charles Mutavi
17. Lucas K. Chepkitony
18. Moses Lengete Ole Sisika
19. Neera Kent Kapila
20. Pamela Mboya
21. Peter O. Bwana
22. Rosemary Kinyanjui
23. Sahara Ahmed Hillow
24. Silvanus Ogari
25. Simeon Lesrima
26. Sudi David Kiprono Sutter
27. Teresa Osunga
28. Lihanda K. Savai
29. Joseph W. Nyagah
30. Joyce Umbima
31. Lawrence Mute
32. Millie Odhiambo
33. Sabenzia N. Wekesa
34. Amina Zuberi
35. Nichasius Mugo

36. Lorna Laboso
37. Lorna Timanoi Tetu
38. Samson Ng'etich
39. Ann Wairimu Njogu
40. Ann Okoth
41. Salah Maalim Ali
42. Rose Olende
43. Sheikh Abdalla
44. Joseph. W. Nyagah
45. A. A. Badaway
46. Kennedy Sanga (Aide)

**Absent with Apology**

Marie Therese Gathambi  
Sing'oei Korir  
Bernadette Quadros  
Yusuf Wako  
Fahim Twaha  
John Njue  
Wafula Wamunyinyi  
Eliud P. Nakitare

**ABSENT**

David Kigen  
Roselinder Simiyu  
Wilfred Kiboro  
Magugu Arthur

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Solomon Kayia
3. Tim Gitau
4. Ndinda Mutinda
5. Nasra A. Abubakar
6. Penina Vulimu
7. Halima Ismail Ahmed
8. Victor Mutumah
9. Johnson Awuor
10. Jacintah Nyokabi
11. Dr. J. K. Wanjeru
12. Nasra Aweis Abubakar
13. Murugi G. Mugo
14. Mona Muthengi

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Prof. Okoth Ogendo	-	Rapporteur General (Vice Chairman)
2.	Comm. Ibrahim Lethome	-	Rapporteur
3.	Comm. Salome Muigai	-	Rapporteur
4.	Comm. Nancy Baraza	-	Rapporteur
5.	Jeremiah Nyegenye	-	Draftsman
6.	Achieng Olende	-	Programme Officer
7.	Liz Kingi	-	Assistant Programme Officer
8.	Selina Kandie	-	Assistant Programme Officer
9.	John Wanyoike	-	Clerk Assistant
10.	Martina Adhiambo	-	Verbatim Recorder

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/76/03    GENERAL COMMENTS**

That delegates were taking the committees deliberations out of the tents contents and some insinuating unwarranted intentions to other delegates.

### **MIN. CCC/TWGB/77/03    REVIEW OF ARTICLE 32**

#### **(xv)    Article 32** ***Right to life***

Review of Article 32 (1) (a) and (b).

That a new Sub-Article 1 (c) be inserted after Sub-Article 1 (b).

The Draftsman was mandated to Draft in words defining that only when it is proved fatal that a life may be eliminated to save another (i.e. like where the mother's or the child's life is in total danger, and also definition of the word "child".

#### **(xvi)    Article 34** ***Freedom from Discrimination***

##### **(a)    New Article**

A new Sub-Article 2 (a) was inserted between Sub-Article 2 and 3 which defined discrimination.

The Sub-Article 2 (a) as inserted was adopted.

Sub-Article (1) and (2) remained as adopted earlier.

(b) Sub-Article (3)

The word “may” was deleted and the word “shall” was inserted therein; also after the word designed, the words “including but not limited to programme policies of affirmative action” were inserted therein.

The Sub-Article was adopted with Amendments.

(c) Renumbering of Article 34

Article 34, Sub-Articles 1, 2 and 2 (a) were renumbered as Sub-Articles (1) (a), (b) and (c) and Sub-Article 3 was renumbered as Sub-Article 2.

Sub-Article 2 (a) and (b) were deferred to another day (until disposing off Article 31, Limitations of Rights).

**MIN. CCC/TWGB/78/03**    **ADJOURNMENT**

And the time being thirty minutes past Noon, the Convenor adjourned the sittings until 2.30 p.m.

**AFTERNOON SITTING**

The delegates reconvened at 2.30 p.m.

**PRESENT:**

1. Cecily Mbarire                    -            **Convenor**
2. Bishop Stephen Ondiek
3. Suba Churchill Meshack
4. Bernadette Quadros
5. Ali Wario
6. Dorcas Mbelesia
7. Eliud Nakitare
8. Esther Keino
9. Evelia Rebecca
10. Fatuma Ali Saman
11. Florence Machayo
12. Francis N. Kaloki
13. Gaudentia Atonga
14. George Wesonga
15. Jane Mwende
16. Jillo Onotto

17. John Katumanga
18. Kilonzo Charles Mutavi
19. Lucas K. Chepkitony
20. Moses Lengete Ole Sisika
21. Neera Kent Kapila
22. Pamela Mboya
23. Peter O. Bwana
24. Rosemary Kinyanjui
25. Sahara Ahmed Hillow
26. Silvanus Ogari
27. Simeon Lesrima
28. Teresa Osunga
29. Lihanda K. Savai
30. Joyce Umbima
31. Lawrence Mute
32. Millie Odhiambo
33. Sabenzia N. Wekesa
34. Amina Zuberi
35. Nichasius Mugo
36. Lorna Laboso
37. Lorna Timanoi Tetu
38. Samson Ng'etich
39. Ann Wairimu Njogu
40. Ann Okoth
41. Salah Maalim Ali
42. Rose Olende
43. Sheikh Abdalla
44. Joseph. W. Nyagah
45. Fahim Twaha
46. Yusuf Wako
47. Kennedy Sanga (Aide)

**Absent with Apology**

Marie Therese Gathambi  
Sing'oei Korir  
Wafula Wamunyinyi  
Masanya Godfrey Okeri  
John Njue  
Sudi David Kiprono

**ABSENT:**

David Kigen  
Roselinder Simiyu  
Wilfred Kiboro  
Magugu Arthur

### **OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Mona Muthengi
3. Justus M. Kivindyo
4. Tim Gitau
5. Nasra A. Abubakar
6. Halima Ismail Ahmed
7. Jacintah Nyokabi
8. Dr. J. K. Wanjeru
9. Nasra Aweis Abubakar
10. Murugi G. Mugo
11. Samuel Ongoro
12. Elisha Godana

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Comm. Nancy Baraza    | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |
| 8. John Wanyoike         | - | Clerk Assistant             |
| 9. Martina Adhiambo      | - | Verbatim Recorder           |

### **MIN. CCC/TWGB/79/03    TEMPORARY CONVENOR**

The Hon. delegate John Katumanga was proposed by Hon. delegate Salah Maalim Ali and with an approval by consensus. The Hon. delegate Katumanga was mandated to be the Temporary Convenor.

Thereupon the Hon. delegate John Katumanga took the Chair.

### **MIN. CCC/TWGB/80/03    DELIBERATIONS**

After protracted discussion, the delegates deferred Article 34 **Sub-Article 2 (b)** until disposing of Article 31, upon being informed that the Bill of Rights has not been given to any committee for interpretation and that it was their onus to deal with it.

Deferred Article 31 deliberations resumed.

- (i) **Article 31**  
*Limitation of Rights*

Article 31 Sub-Article 1, 2, and 3 were adopted without Amendments.

(ii) Sub-Article (4) was adopted without Amendment.

(iii) **Title**

The title of Article 31 was adopted without Amendment.

(iv) **Minority View**

The Hon. delegate Millie Odhiambo and Hon. delegate Joyce Umbima were of the view that:

The Article should have been differently worded to indicate that “Islamic law and other personal law provides a higher standard for women than equality standards”.

**MIN. CCC/TWGB/81/03    ADJOURNMENT**

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

**Signed:**.....  
**CECILY MBARIRE (CONVENOR)**

**Date:**.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

19<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Monday, September 22<sup>nd</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Apologies
3. Confirmation of Minutes
4. Matters Arising
5. General Comments
- 6. Main Agenda**
  - (i) Substantive discussions on Bill of Rights, from Article 34 (2b) - 75**
7. Any Other Business
8. Date of Next Meeting

**Approved for circulation  
Convener  
CECILY MBARIRE**

Date .....

Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE TWELFTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON MONDAY, SEPTEMBER 22<sup>ND</sup>, 2003 AT 9.30 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bishop Stephen Ondiek
3. Suba Churchill Meshack
4. Ali Wario
5. Dorcas Mbelesia
6. Evelia Rebecca
7. Florence Machayo
8. Fatuma Ali Saman
9. Francis N. Kaloki
10. Gaudentia Atonga
11. George Wesonga
12. Jane Mwendu
13. Jillo Onotto
14. John Katumanga
15. Kilonzo Charles Mutavi
16. Lucas K. Chepkitony
17. Neera Kent Kapila
18. Pamela Mboya
19. Peter O. Bwana
20. Rosemary Kinyanjui
21. Sahara Ahmed Hillow
22. Silvanus Ogari
23. Simeon Lesrima
24. Teresa Osunga
25. Lihanda K. Savai
26. Joseph W. Nyagah
27. John Njue
28. Joyce Umbima
29. Lawrence Mute
30. Millie Odhiambo
31. Sabenzia N. Wekesa
32. Amina Zuberi
33. Nichasius Mugo
34. Lorna Laboso
35. Lorna Timanoi Tetu

36. Samson Ng'etich
37. Ann Wairimu Njogu
38. Salah Maalim Ali
39. Rose Olende
40. Sheikh Abdalla
41. Joseph. W. Nyagah
42. Eliud P. Nakitare
43. Magugu Arthur
44. Masanya Godfrey Okeri
45. Wafula Wamunyinyi
46. Marie Therese Gachambi
47. Ann Wairimu Njogu
48. Yusuf Wako
49. Kennedy Sanga (Aide)
50. Joyce Majiwa
51. Rita Katamu
52. Koitamet ole Kiya
53. Samuel Ongoro

**Absent with Apology**

Moses Lengete Ole Sisika  
Esther Keino

**ABSENT**

1. Sudi David Kiprono Sutter
2. David Kigen
3. Roselinder Simiyu
4. Wilfred Kiboro
5. Berneddette Quodros
6. Choge Jim
7. Mburugu Florence Ruhui
8. Sing'oei Korir
9. Fahim Twaha

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Davis Malombe
3. Rosemary Benzina
4. Solomon Kayia
5. Ndinda Mutinda
6. Nasra A. Abubakar
7. Penina Vulimo
8. Samuel Nyaga
9. Joyce M. Kaendi
10. Faith K. Mwirigi

11. Justus M. Kivindyo
12. Victor K. Mutuma
13. Tim Gitau
14. Jacintah Nyokabi
15. Mona Muthengi

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm.Salome Muigai    | - | Rapporteur                  |
| 3. Comm.Nancy Baraza     | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |
| 8. John Wanyoike         | - | Clerk Assistant             |
| 9. Martina Adhiambo      | - | Verbatim Recorder           |

**PRAYER**

The meeting opened with a word of prayer.

**MIN. CCC/TWGB/82/03 CONFIRMATION OF MINUTES**

Minutes of the tenth sitting held on Thursday, September 18, 2003 were proposed by delegate Sister Marie Theresa Gachambi, seconded by delegate Dorcas Mbelesia and signed by the Convenor.

Minutes of the eleventh sitting held on Friday, September 19, 2003 were proposed by delegate Pamela Mboya, seconded by delegate Sheikh Abdalla and also signed by the Convenor.

**MIN. CCC/TWGB/83/03 MATTERS ARISING**

That the eleventh sitting delegates Eliud P. Nakitare was left out inadvertently as present in the morning.

That delegate Sister Marie Theresa Gachambi, eleventh sitting her name Gachambi had been misspelt as Gathambi.

**MIN. CCC/TWGB/84/03 DELIBERATIONS**

**Article 32  
Right to life**

- (i) The delegates reviewed Article 32 and resolved that numbering of sub-Articles be renumbered numerically as 1, 2, 3, 4;

Sub-Article (1) was adopted without Amendments.

- (ii) Sub-Article (2), the word “natural” was deleted therein.

- (iii) New Sub-Article

New Sub-Article (3) was inserted before Sub-Article (4) (where delegates abolished abortion unless otherwise medically justified).

- (iv) Sub-Article (4) was adopted without Amendments.

- (v) Title

The title was adopted without Amendment.

- (vi) Article 32 was adopted with Amendments.

#### **MIN. CCC/TWGB/85/03    DIVERGENT VIEWS**

##### **Minority Views**

##### **Right to life**

##### **Article 32 (3)**

Delegates Eliud P. Nakitare, John Njue, Silvanus Ogari and Marie Theresa Gachambi were of the view that the new Sub-article (3) should be deleted as it didn't stop abortion fully.

#### **MIN. CCC/TWGB/86/03    REVIEW OF ARTICLE 31 (b)**

- (i) **Article 31 (b)**  
***Limitation of Rights***

Sub-Article (b)

The Sub-Article (b) was adopted without Amendments.

- (ii) **Article 35**  
***Women***

Sub-Article (1)

After the word treatment, the words “with men” were deleted therein.

After the word women, the word “and men” were inserted therein and after the word economic, the word “cultural” was inserted therein further;

- (iii) Sub-Article (1) was adopted with Amendment.
- (iv) Sub-Article (2) was adopted without Amendment.
- (v) Sub-Article (3) was adopted without Amendment.
- (vi) Sub-Article (4) was adopted without Amendment.
- (vii) Sub-Article (5) (a) and (b). All were adopted without Amendments.
- (viii) The Title was adopted without Amendment.
- (ix) Article 35 was adopted with Amendment.

### **Article 36**

#### ***Older members of the society***

Article (1)

### **MIN.CCC/TWGB/87/03 ELECTION OF TEMPORARY CONVENOR**

The Hon. Delegate John Katumanga was proposed by Delegate Francis Kaloki, and with a unanimous decision was elected the temporary Convenor.

Thereupon the Hon. delegate John Katumanga took the chair

(Deliberations to continue)

### **MIN. CCC/TWGB/88/03 ADJOURNMENT**

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

### **AFTERNOON SITTING**

#### **PRESENT:**

1. John Katumanga - **Acting Convenor**
2. Bishop Stephen Ondiek
3. Suba Churchill Meshack
4. Dorcas Mbelesia
5. Evelia Rebecca
6. Fatuma Ali Saman
7. Florence Machayo
8. Francis N. Kaloki

9. Gaudentia Atonga
10. George Wesonga
11. Jane Mwendu
12. Jillo Onotto
13. Kilonzo Charles Mutavi
14. Lucas K. Chepkitony
15. Neera Kent Kapila
16. Pamela Mboya
17. Peter O. Bwana
18. Rosemary Kinyanjui
19. Silvanus Ogari
20. Sahara Ahmed Hillow
21. Sheikh Abdalla
22. Sudi David Kiprono Sutter
23. Wafula Wamunyinyi
24. John Njue
25. Simeon Lesrima
26. Teresa Osunga
27. Lihanda K. Savai
28. Joseph W. Nyagah
29. Joyce Umbima
30. Lawrence Mute
31. Millie Odhiambo
32. Sabenzia N. Wekesa
33. Amina Zuberi
34. Nichasius Mugo
35. Lorna Laboso
36. Lorna Timanoi Tetu
37. Samson Ng'etich
38. Ann Wairimu Njogu
39. Ann Okoth
40. Salah Maalim Ali
41. Rose Olende
42. Sheikh Abdalla
43. Eliud P. Nakitare
44. Magugu Arthur
45. Masanya Godfrey Okeri
46. Marie Therese Gachambi
47. Fahim Twaha
48. Kennedy Sanga (Aide)
49. Nakalo David Okiya
50. Koitamet Ole Kiya
51. Rita Katamu
52. Joyce Majiwa
53. Ibrahim Ahmed
54. Samuel Ongoro

**Absent with Apology**

Cecily Mbarire (Convenor)

Moses Lengete Ole Sisika

Esther Keino

**ABSENT**

1. Ali Wario
2. David Kigen
3. Roselinder Simiyu
4. Sahara Ahmed Hillow
5. Wilfred Kiboro
6. Choge Jim
7. Mburugu Florence Ruhiu
8. Sing'oei Korir

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Davis Malombe
3. Rosemary Benzina
4. Solomon Kayia
5. Ndinda Mutinda
6. Nasra A. Abubakar
7. Penina Vulimo
8. Samuel Nyaga
9. Joyce M. Kaendi
10. Faith K. Mwirigi
11. Victor K. Mutuma
12. Tim Gitau
13. Jacintah Nyokabi
14. Mona Muthengi

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Comm. Nancy Baraza    | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. Achieng Olende        | - | Programme Officer           |
| 6. Liz Kingi             | - | Assistant Programme Officer |
| 7. Selina Kandie         | - | Assistant Programme Officer |
| 8. John Wanyoike         | - | Clerk Assistant             |
| 9. Martina Adhiambo      | - | Verbatim Recorder           |

Deliberations resumed at 2.20 p.m.

**Article 36**

**Older members of society**

- (i) Article 36 Sub-article (1) and (2) were deleted and new Sub-Articles (1) and (2) were inserted therein.
- (ii) Sub-Article (3) the Draftman was mandated to reword the Article.
- (iii) Sub-Article (4) the words “equip themselves to understand and” were deleted therein.
- (iv) Sub-Article (4) was adopted with Amendments.

**MIN. CCC/TWGB/89/03    NEW ARTICLE ON YOUTH**

That a new Article on youth be inserted between Article 36 and 37.

**(i) New Article**  
*Youth*

That a new Article “on youth” be inserted between Article 36 and 37. (The Hon. delegate Suba Churchill to give all delegates a copy of the new proposed Article)

**(ii) Article 37**  
*Children*

(Deliberations to resume tomorrow)

**MIN. CCC/TWGB/90/03    ADJOURNMENT**

And the time being Five O’clock, the acting convenor Hon. delegate John Katumanga adjourned the sitting until Tuesday, September 23, 2003 at 8.30 a.m.

**Signed:**.....  
**CECILY MBARIRE (CONVENOR)**

**Date:**.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

22<sup>nd</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Tuesday, September 23<sup>rd</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. **Main Agenda**
  - (i) **Substantive discussions on Bill of Rights, from Article 37 – 75**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
JOHN KATUMANGA (Acting Convener)**

Date .....

Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE THIRTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, SEPTEMBER 23<sup>RD</sup>, 2003 AT 9.30 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bishop Stephen Ondiek
3. Suba Churchill Meshack
4. Ali Wario
5. Dorcas Mbelesia
6. Evelia Rebecca
7. Esther Keino
8. Florence Machayo
9. Fatuma Ali Saman
10. Francis N. Kaloki
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Moses Lengete Ole Sisika
17. Neera Kent Kapila
18. Pamela Mboya
19. Peter O. Bwana
20. Rosemary Kinyanjui
21. Sahara Ahmed Hillow
22. Silvanus Ogari
23. Simeon Lesrima
24. Sing'oei Korir
25. Fahim Twaha
26. Teresa Osunga
27. Lihanda K. Savai
28. Joseph W. Nyagah
29. John Njue
30. Joyce Umbima
31. Lawrence Mute
32. Millie Odhiambo
33. Sabenzia N. Wekesa
34. Amina Zuberi

35. Nichasius Mugo
36. Lorna Laboso
37. Lorna Timanoi Tetu
38. Samson Ng'etich
39. Ann Wairimu Njogu
40. Salah Maalim Ali
41. Rose Olende
42. Sheikh Abdalla
43. Joseph. W. Nyagah
44. Eliud P. Nakitare
45. Magugu Arthur
46. Masanya Godfrey Okeri
47. Wafula Wamunyinyi
48. Marie Therese Gachambi
49. Ann Wairimu Njogu
50. Yusuf Wako
51. Kennedy Sanga (Aide)
52. Joyce Majiwa
53. Ann Okoth
54. Nakalo D. Okiya
55. Wandati Abdurahaman Mirimo

**Absent with Apology**

Comm. Ibrahim Lethome (Rapporteur)

**ABSENT**

56. Sudi David Kiprono Sutter
57. David Kigen
58. Kilonzo Charles Mutavi
59. Lucas K. Chepkitony
60. Roselinder Simiyu
61. Wilfred Kiboro
62. Berneddette Quodros
63. Choge Jim
64. Mburugu Florence Ruhui

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Rosemary Benzina
3. Ndinda Mutinda
4. Nasra A. Abubakar
5. Penina Vulimo
6. Samuel Nyaga
7. Faith K. Mwirigi

8. Justus M. Kivindyo
9. Tim Gitau
10. Mona Muthengi
11. Sarah Wavomba
12. Moses Mwangi
13. Samuel Ongoro
14. Joyce M. Kaendi
15. Agnes Mcantony
16. Elisha D. Godana
17. Isaak derow Ibrahim
18. Denzel Washington Ouma
19. Denis Odhiambo
20. Derrick Omondi
21. Darlene Akoth
22. Daisy Akinyi
23. Johnson Awuor
24. Wairimu Munka

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |          |                   |   |                             |
|----------|-------------------|---|-----------------------------|
| 1. Comm. | Nancy Baraza      | - | Rapporteur                  |
| 2. Comm. | Salome Muigai     | - | Rapporteur                  |
| 3.       | Jeremiah Nyegenye | - | Draftsman                   |
| 4.       | John Wanyoike     | - | Clerk Assistant             |
| 5.       | Achieng Olende    | - | Programme Officer           |
| 6.       | Liz Kingi         | - | Assistant Programme Officer |
| 7.       | Selina Kandie     | - | Assistant Programme Officer |
| 8.       | Martina Adhiambo  | - | Verbatim Recorder           |

**PRAYER**

The meeting opened with a word of prayer.

**MIN. CCC/TWGB/91/03 MARGINALISED COMMUNITIES**

**Motion**

A motion to bring a New Article on Marginalized communities was agreed upon.

**Dual Citizenship Discussion and Sub-Committee**

The Delegates were informed by the Convenor that a professional on Dual Citizenship would discuss with committee at its own discretion.

The Sub-Committee on dual citizenship was requested to hold its meeting and chart its sitting programme.

**MIN. CCC/TWGB/92/03    DELIBERATIONS**

**Article 37  
Children**

- (i) In Sub-Article (1), the word “emotionally” was deleted therein and inserted the word “physiologically” thereon.

The Sub-Article (1) was adopted with Amendment.

- (ii) Sub-Article (2) was adopted without Amendment.
- (iii) Sub-Article (3) after the word “interest” the words “are” was deleted therein and the words “shall be” were inserted therein.
- (iv) Sub-Article (3) was adopted with Amendments.
- (v) Sub-Article (4) was adopted without Amendments.
- (vi) Sub-Article 5 (a)(b),(c), (d), (e), (f), (g), (h) were adopted without Amendment.
- (vii) Sub-Article (i)(i), (ii), (iii), (iv), (v) (j), were deferred till this afternoon and the draftsman was mandated to redraft.
- (viii) Sub-Article (6) was adopted without Amendment.
- (ix) Sub-Article (7) was adopted without Amendment.
- (x) Sub-Article (8) the words “in this Article” were deleted and the words “in this constitution a” were inserted thereon.
- (xi) Sub-Article (8) was adopted with Amendments.

**MIN. CCC/TWGB/93/03    DIVERGENT VIEWS**

**Minority View  
Article 37  
Sub-Article (4)**

Hon. Lengete ole Sisika was of the view that Article 37 Sub-Article (4) should have been deleted.

**MIN. CCC/TWGB/94/03    ADJOURNMENT**

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

**AFTERNOON SITTING**

Delegates reassembled at 2.30 p.m.

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Bishop Stephen Ondiek
3. Bernaddette Quodros
4. Suba Churchill Meshack
5. Ali Wario
6. Esther Keino
7. Dorcas Mbelesia
8. Evelia Rebecca
9. Florence Machayo
10. Fatuma Ali Saman
11. Francis N. Kaloki
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Moses Lengete ole Sisika
18. Neera Kent Kapila
19. Pamela Mboya
20. Peter O. Bwana
21. Rosemary Kinyanjui
22. Sahara Ahmed Hillow
23. Silvanus Ogari
24. Simeon Lesrima
25. Sing'oei Korir
26. Fahim Twaha
27. Teresa Osunga
28. Lihanda K. Savai
29. Joseph W. Nyagah
30. John Njue
31. Joyce Umbima
32. Lawrence Mute
33. Millie Odhiambo
34. Sabenzia N. Wekesa
35. Amina Zuberi

36. Nichasius Mugo
37. Lorna Laboso
38. Lorna Timanoi Tetu
39. Samson Ng'etich
40. Ann Wairimu Njogu
41. Rose Olende
42. Sheikh Abdalla
43. Joseph. W. Nyagah
44. Eliud P. Nakitare
45. Magugu Arthur
46. Masanya Godfrey Okeri
47. Wafula Wamunyinyi
48. Marie Therese Gachambi
49. Ann Wairimu Njogu
50. Yusuf Wako
51. Kennedy Sanga (Aide)
52. Joyce Majiwa
53. Wandati Abdurahaman Mirimo

**Absent with Apology**

Comm. Ibrahim Lethome (Rapporteur)  
Salah Maalim Ali

**ABSENT**

1. Sudi David Kiprono Sutter
2. David Kigen
3. Kilonzo Charles Mutavi
4. Lucas K. Chepkitony
5. Roselinder Simiyu
6. Wilfred Kiboro
7. Choge Jim
8. Mburugu Florence Ruhiu
9. Sing'oei Korir
10. Ann Okoth

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Rosemary Benzina
3. Ndinda Mutinda
4. Nasra A. Abubakar
5. Penina Vulimo
6. Samuel Nyaga
7. Faith K. Mwirigi
8. Justus M. Kivindyo

9. Tim Gitau
10. Mona Muthengi
11. Sarah Wavomba
12. Moses Mwangi
13. Samuel Ongoro
14. Joyce M. Kaendi
15. Agnes Mcantony
16. Elisha D. Godana
17. Isaak Derow Ibrahim
18. Denzel Washington Ouma
19. Denis Odhiambo
20. Derrick Omondi
21. Darlene Akoth
22. Daisy Akinyi
23. Johnson Awuor
24. Wairimu Munka

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Comm. Nancy Baraza  | - | Rapporteur                  |
| 2. Comm. Salome Muigai | - | Rapporteur                  |
| 3. Jeremiah Nyegenye   | - | Draftsman                   |
| 4. John Wanyoike       | - | Clerk Assistant             |
| 5. Achieng Olende      | - | Programme Officer           |
| 6. Liz Kingi           | - | Assistant Programme Officer |
| 7. Selina Kandie       | - | Assistant Programme Officer |
| 8. Martina Adhiambo    | - | Verbatim Recorder           |

**MIN. CCC/TWGB/95/03 RENUMBERING OF ARTICLE 37 (5i)**

Sub-Article 5 (i), was deleted a new Sub-Article 5 (i) was therein.

Deferred Article 37 Sub-Article (5)(i) (i), (ii), (iii), (iv), (v), (j), were renumbered in Alphabetical order from (i)two i.e. (i) – j, (ii) – k, (iii) – l, (iv) – m, (v) – n, (j) – o.

The renumbering Alphabetically of the Sub-Articles were adopted.

The Sub-Articles 5 (j), (k), (l), (m), (o), were adopted without Amendments.

Sub-Article 5 (i)

Sub-Article 5 (i) after the word detained the following words were inserted thereof “ to be treated in a manner that promotes the child dignity and self worth and that plays special attention to the child rights, including but not limited to”

Sub-Article 5(i) was adopted with Amendments.

That the Sub-Article 5 (n):

After the word child the words “if injustice would otherwise result” were deleted therein.

Sub-Article 5 (n) was adopted with Amendment.

Sub-Article 5 (m) inserted the words “disability” after the word gender and also after the word age “status” was inserted therein.

Sub-Article 5 (m) was adopted with Amendment.

Sub-Article (6) was adopted without Amendments.

Sub-Article (7) was adopted without Amendments

Sub-Article (8)

The words “in this article” were deleted and the words “in this constitution a“ were inserted therein.

The title was adopted without Amendment.

Sub-Article (8) was adopted with Amendments

Salah Maalim Ali

### **MIN. CCC/TWGB/96/03    REWORDED ARTICLE 36**

#### **Article 36**

#### **Older Members of Society**

Deferred Sub-Article (3) inserted the word “the state “ before the word older and also after the word others inserted the word “member” therein

Deferred Sub-Article (3} was adopted with amendments.

A new Sub-Article (5) was inserted to define older members of society after Sub-Article (4).

### **MIN. CCC/TWGB/97/03    NEW ARTICLE 36 A – YOUTH**

#### **New Article 36 A**

#### **The Youth**

(i) Sub-Article 3 (e), the word “unhindered” was deleted therein.

Sub-Article 3 (e) was adopted with Amendments.

- (ii) The New Article 36 A was adopted with Amendments Sub-Article (5) after the word “age of”, the word “thirty” was deleted therein and the word “twenty” was inserted therein.

Sub-Article 5 was adopted with amendments.

- (iii) TITLE

The title “Youth” was adopted without amendments.

**VOTING: NEW ARTICLE 36 A SUB-ARTICLES (5)**

**New Article 36 A**

Sub-Article 5 question put that the words age of “thirty five” be deleted and the words age of “twenty five” be inserted therein.

Motion proposed for division and question put for division. Thereupon the delegates proceeded to vote as under:

The Ayes were:

1. Bernadette Quadros
2. Evalia Rebecca
3. Florence Machayo
4. Guadentia Atonga
5. George Wesonga
6. Jillo Onotto
7. John Katumanga
8. Magugu Arthur
9. Moses Lengete Ole Sisika
10. Neera Kent Kapila
11. Pamela Mboya
12. Peter O. Bwana
13. Rose Olende
14. Silvanus Ogari
15. Teresa Osunga
16. Nichasus Mugo
17. Lorna Timanoi Tetu

**AYES TOTAL - 17**

The noes were:

1. Amina Zuberi
2. Suba Churchill Meshack

3. Jane Mwendu
4. Rosemary Kinyanjui
5. Marie Theresa Gachambi
6. Joyce Umbima
7. Lawrence mute
8. Millie Odhiambo
9. Lorna Laboso
10. Fahim Twaha
11. Ann Njogu

**NOES TOTAL        -        11**

There upon the age of “twenty five” as the age of youth was adopted from eighteen to twenty five years as the ayes were 17 and noes 11, without any ostentations.

**MIN. CCC/TWGB/98/03    ADJOURNMENT**

And the time being fifty minutes past Four O’clock, the Convenor adjourned the sitting until Wednesday, September 24, 2003 at 8.30 a.m.

**Signed:.....**  
**CECILY MBARIRE (CONVENOR)**

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

23<sup>rd</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, September 24<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. **Main Agenda**
  - (i) **Substantive discussion on Bill of Rights, from Article 38 – 75**
5. New Articles
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
CECILY MBARIRE**

Date .....

Time .....

**NATIONAL CONSTITUTIONAL CONFERENCE**

**MINUTES OF THE FOURTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, SEPTEMBER 24<sup>TH</sup>, 2003 AT 9.30 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Ali Wario
3. Bishop Stephen Ondiek
4. Suba Churchill Meshack
5. Berneddette Quodros
6. Dorcas Mbelesia
7. Kilonzo Charles Mutavi
8. Evelia Rebecca
9. Esther Keino
10. Florence Machayo
11. Fatuma Ali Saman
12. Gaudentia Atonga
13. George Wesonga
14. Jane Mwendu
15. Jillo Onotto
16. John Katumanga
17. Moses Lengete Ole Sisika
18. Neera Kent Kapila
19. Pamela Mboya
20. Peter O. Bwana
21. Rosemary Kinyanjui
22. Lucas K. Chepkitony
23. Sahara Ahmed Hillow
24. Silvanus Ogari
25. Simeon Lesrima
26. Sing'oei Korir
27. Fahim Twaha
28. Teresa Osunga
29. Lihanda K. Savai
30. Joseph W. Nyagah
31. Joyce Umbima
32. Lawrence Mute
33. Millie Odhiambo
34. Sabenzia N. Wekesa
35. Amina Zuberi

36. Sudi David Kiprono Sutter
37. Nichasius Mugo
38. Lorna Laboso
39. Lorna Timanoi Tetu
40. Samson Ng'etich
41. Ann Wairimu Njogu
42. Salah Maalim Ali
43. Rose Olende
44. Sheikh Abdalla
45. Joseph. W. Nyagah
46. Magugu Arthur
47. Masanya Godfrey Okeri
48. Wafula Wamunyinyi
49. Marie Therese Gachambi
50. Kennedy Sanga (Aide)
51. Joyce Majiwa
52. Ann Okoth
53. Nakalo D. Okiya

**Absent with Apology**

Francis N. Kaloki  
Eliud P. Nakitare  
John Njue

**ABSENT**

David Kigen  
Roselinder Simiyu  
Wilfred Kiboro  
Choge Jim  
Yusuf Wako

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Ndinda Mutinda
3. Penina Vulimo
4. Samuel Nyaga
5. Davis Malombe
6. Faith K. Mwirigi
7. Justus M. Kivindyo
8. Mona Muthengi
9. Samuel Ongoro
10. Joyce M. Kaendi
11. Elisha D. Godana

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Nancy Baraza    | - | Rapporteur                  |
| 3. Comm. Salome Muigai   | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. John Wanyoike         | - | Clerk Assistant             |
| 6. Achieng Olende        | - | Programme Officer           |
| 7. Liz Kingi             | - | Assistant Programme Officer |
| 8. Selina Kandie         | - | Assistant Programme Officer |
| 9. Martina Adhiambo      | - | Verbatim                    |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/99/03**

### **CONFIRMATION OF MINUTES**

Minutes of the Eleventh sitting held on Monday, September 22, 2003 were proposed by the Hon. delegate Peter O. Bwana, seconded by the Hon. Delegate Sabenzia N. Wekesa and were signed by the Convenor.

Minutes of the Twelfth sitting held on Tuesday, September 23, 2003 were proposed by the Delegate Ann Wairimu Njogu, seconded by Hon. delegate Esther Keino and were signed by the Convenor.

### **MIN. CCC/TWGB/100/03**

### **MATTERS ARISING**

- (i) Eleventh sitting minutes, Samuel Ongoro an Observer was indicated as a member of the Committee member. That Hon. Delegate Bishop Njue was absent with apology.
- (ii) Twelfth sitting minutes, Hon. delegate Lucas Chepketony was absent with apology.
- (iii) That delegate Florence Mburugu was no longer a member of the Committee.

### **MIN. CCC/TWGB/101/03**

### **DELIBERATIONS**

#### **Article 38**

#### **The Family**

- (i) Sub-Article (1)  
Sub-Article (1) was adopted without Amendment.  
  
Sub-Article (2) was adopted without Amendment.
- (ii) Sub-Article (3) was adopted without Amendment.

(iii) Sub-Article (3) (a)

The following words were inserted after the word marry “a person of the opposite sex” were inserted therein.

Sub-Article (3) (b) was adopted without Amendment.

(iv) Sub-Article (4)

Sub-Article (4), the words “in the marriage” were deleted and the following words “as to marriage” were inserted therein.

Sub-Article (4) was adopted with Amendment.

(v) Sub-Article 5 (a) (b) all were adopted without amendments.

(vi) Title

The title was adopted without Amendment.

(vii) Article 38 was adopted with Amendments.

**MIN. CCC/TWGB/102/03**

**DIVERGENT VIEWS**

**Minority View**

**Article 38 (Sub-Article 4)**

The Hon. delegates Moses Lengete Ole Sisika, Nichasius Mugo and Lucas K. Chepkitony were of the view that Sub-Article (4) should be deleted.

**MIN.CCC/TWGB/103/03**

**ELECTION OF TEMPORARY  
CONVENOR**

The Hon. Suba Churchill Meshack was proposed by Hon. Delegate Silvanus Ogari and with a consensus was elected the acting convenor as the main convenor was going for an official engagement.

The Hon. Suba Churchil Meshack thereon took the chair.

**MIN. CCC/TWGB/104/03**

**ADJOURNMENT**

And the time being twenty minutes past One O'clock, the Acting Convenor Suba Churchill Meshack adjourned the sittings until Thursday, September 25, at 8.30 a.m.

**Signed:**.....  
**CECILY MBARIRE (CONVENOR)**

**Date:**.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

24<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Thursday, September 25<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 8.30 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. **Main Agenda**
  - (i) **Substantive discussions on Bill of rights, from Article 39 – 75**
5. New Articles
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill Meshack**

Date .....

Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE FIFTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, SEPTEMBER 25<sup>TH</sup>, 2003 AT 10.00 A.M.**

**PRESENT:**

1. Suba Churchill Meshack - **Acting Convenor**
2. Ali Wario
3. Bishop Stephen Ondiek
4. Berneddette Quodros
5. Dorcas Mbelesia
6. Kilonzo Charles Mutavi
7. Evelia Rebecca
8. Esther Keino
9. Florence Machayo
10. Fatuma Ali Saman
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Moses Lengete Ole Sisika
17. Neera Kent Kapila
18. Pamela Mboya
19. Peter O. Bwana
20. Rosemary Kinyanjui
21. Lucas K. Chepkitony
22. Sahara Ahmed Hillow
23. Silvanus Ogari
24. Simeon Lesrima
25. Sing'oei Korir
26. Fahim Twaha
27. Teresa Osunga
28. Lihanda K. Savai
29. Joyce Umbima
30. Lawrence Mute
31. Millie Odhiambo
32. Sabenzia N. Wekesa
33. Amina Zuberi
34. Sudi David Kiprono Sutter

35. Nichasius Mugo
36. Lorna Laboso
37. Lorna Timanoi Tetu
38. Samson Ng'etich
39. Ann Wairimu Njogu
40. Salah Maalim Ali
41. Rose Olende
42. Yusuf Wako
43. Sheikh Abdalla
44. Joseph. W. Nyagah
45. Magugu Arthur
46. Marie Therese Gachambi
47. Kennedy Sanga (Aide)
48. Joyce Majiwa
49. Ann Okoth
50. Francis N. Kaloki

**Absent with Apology**

Cecily Mbarire (Convenor)  
George O. Maranya  
John Njue  
Wafula Wamunyinyi

**ABSENT**

David Kigen  
Masanya Godfrey Okeri  
Wilfred Kiboro  
Choge Jim

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Ndinda Mutinda
3. Samuel Nyaga
4. Davis Malombe
5. Faith K. Mwirigi
6. Justus M. Kivindyo
7. Mona Muthengi
8. Samuel Ongoro
9. Joyce M. Kaendi
10. Elisha D. Godana
11. Mary Benzina
12. E. D. Godana
13. Nasra A. Abubakar
14. Wairimu Mwangi

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Prof. Okoth-Ogendo	-	Rapporteur General
2. Comm. Ibrahim Lethome	-	Rapporteur
3. Comm.Nancy Baraza	-	Rapporteur
4. Comm.Salome Muigai	-	Rapporteur
5. Jeremiah Nyegenye	-	Draftsman
6. Achieng Olende	-	Programme Officer
7. John Wanyoike	-	Clerk Assistant
8. Liz Kingi	-	Assistant Programme Officer
9. Selina Kandie	-	Assistant Programme Officer
10. Martina Adhiambo	-	Verbatim

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/105/03**

### **CONFIRMATION OF MINUTES**

Minutes of the fourteenth sitting held on Wednesday, September 24, 2003 were proposed by the Hon. delegate Mugo Njoka, seconded by the Hon. Evelia Rebecca and were signed by the Acting Convenor.

### **MIN. CCC/TWGB/106/03**

### **MATTERS ARISING**

1. The Hon. delegate Yusuf Wako was present and his name had been inadvertently left out.
2. Hon. delegate Paul Nakitare was no longer a member of the committee as he joined Culture Committee and him being absent should not arise.
3. That Min.CCC/TWGB/103/03 should have been indicated earlier, than MIN. CCC/TWGB/101/03 as the Acting Convenor was elected before the committees substantive business deliberations.

### **MIN. CCC/TWGB/107/03**

### **DELIBERATIONS**

#### **Article 39**

#### **Persons with Disabilities**

- (i) Sub-Article (1)  
All the words after the words “and to” were deleted and inserted the words “participate as fully in society as they are able”.

Sub-Article (1) was adopted with Amendments.

Sub-Article 2 was adopted without Amendment.

(ii) Sub-Article 2 (a)  
Sub-Article 2 (a) was adopted without Amendment.

(iii) Sub-Article 2 (b)  
Sub-Article 2 (b) was adopted without Amendment.

(iv) Sub-Article 2 (c)  
Deleted the word “disabled persons” persons before the word “for”, and the word “the” after the word “with” and before the word interest and inserted the word “their” after the word with and before the word interest.

Sub-Article 2 (c) was adopted with Amendment.

(v) Sub-Article 2 (d)  
Inserted the words “to housing for use by the public”, before the word “places” and after the word to public.

Sub-Article 2 (d) was adopted with Amendments.

(vi) Sub-Article 2 (e)  
Sub-Article 2 (e) deleted the words “encourage the development” and thereof and the word “develop was substituted thereof. Also the words “ensure the” were inserted after the word use, and before the word use of signs.

(vii) Sub-Article 2 (e) was adopted with Amendments.  
Sub-Article 39 (f)

Deleted the word “require” and inserted the word “encourage” after the word to, and before the word “the same”.

Sub-Article 39 (f) was adopted with Amendments.

(viii) The delegates resolved to finalize Article 39 before embarking on the pending Article and issues.

### **MIN. CCC/TWGB/108/03**

### **ADJOURNMENT**

And the time being Ten minutes past One O'clock the Acting Convenor adjourned the sitting until 2.00 p.m.

### **AFTERNOON SITTING**

Delegates reassembled at 2.00 p.m.

**PRESENT:**

1. Suba Churchill Meshack - **Acting Convenor**
2. Ali Wario
3. Amina Zuberi
4. Berneddette Quodros
5. Dorcas Mbelesia
6. Evelia Rebecca
7. Esther Keino
8. Gaudentia Atonga
9. George Wesonga
10. Fahim Twaha
11. Jane Mwendu
12. Jillo Onotto
13. John Katumanga
14. Moses Lengete Ole Sisika
15. Neera Kent Kapila
16. Pamela Mboya
17. Peter O. Bwana
18. Rosemary Kinyanjui
19. Lucas K. Chepkitony
20. Sahara Ahmed Hillow
21. Silvanus Ogari
22. Simeon Lesrima
23. Sing'oei Korir
24. Teresa Osunga
25. Joyce Umbima
26. Lawrence Mute
27. Millie Odhiambo
28. Sabenzia N. Wekesa
29. Amina Zuberi
30. Nichasius Mugo
31. Lorna Laboso
32. Samson Ng'etich
33. Ann Wairimu Njogu
34. Salah Maalim Ali
35. Yusuf Wako
36. Sheikh Abdalla
37. Joseph. W. Nyagah
38. Bishop Stephen Ondiek
39. Fatuma Ali Saman
40. Joseph W. Nyagah
41. Sudi David Kiprono Sutter

42. Magugu Arthur
43. Marie Therese Gachambi
44. Kennedy Sanga (Aide)
45. Joyce Majiwa
46. Ann Okoth
47. Kennedy Sanga
48. Francis N. Kaloki

**Absent with Apology**

Cecily Mbarire (Convenor)  
George O. Maranya  
John Njue  
Florence Machayo  
Lihanda K. Savai  
Masanya Godfrey Okeri  
Lorna Tetu  
Kilonzo Charles Mutavi

**ABSENT**

David Kigen  
Rose Olende  
Wafula Wamunyinyi  
Wilfred Kiboro  
Choge Jim

**OBSERVERS PRESENT:**

1. Joseph K. Waweru
2. Ndinda Mutinda
3. Samuel Nyaga
4. Davis Malombe
5. Faith K. Mwirigi
6. Justus M. Kivindyo
7. Mona Muthengi
8. Samuel Ongoro
9. Joyce M. Kaendi
10. Elisha D. Godana
11. Mary Benzina
12. E. D. Godana
13. Nasra A. Abubakar
14. Wairimu Mungai

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                       |   |                             |
|----|-----------------------|---|-----------------------------|
| 1. | Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. | Comm. Nancy Baraza    | - | Rapporteur                  |
| 3. | Comm. Salome Muigai   | - | Rapporteur                  |
| 4. | Jeremiah Nyegenye     | - | Draftsman                   |
| 5. | Achieng Olende        | - | Programme Officer           |
| 6. | John Wanyoike         | - | Clerk Assistant             |
| 7. | Liz Kingi             | - | Assistant Programme Officer |
| 8. | Selina Kandie         | - | Assistant Programme Officer |
| 9. | Martina Adhiambo      | - | Verbatim                    |

Deliberations resumed at 2.20 p.m.

### **MIN. CCC/TWGB/109/03**

### **DELIBERATIONS**

#### **Article 39**

#### **Persons with disabilities**

- (i) Sub-Article 2 (g)  
Sub-Article 2 (g), deleted the words “disabled persons” and inserted the word “inclusion and”. After the words “provide for” and before the word the participation of and inserted the words “persons with disability” after the word participation of and before the word in decision.

Sub-Article 2 (g) was adopted with Amendments.

- (ii) Sub-Article 2 (h)  
Sub-Article 2 (h) deleted the words “the disabled” before the word enable and before the word to overcome and inserted the words “facilities” after the word materials and before the word and. Also inserted the words “persons with disability at the end of word enable”

Sub-Article (h) was adopted with Amendments.

- (iii) Sub-Article (3)  
Sub-Article (3) the words “whenever appropriate” before the word “shall” were deleted therein.

Sub-Article (3) was adopted with Amendment.

#### Sub-Article 4

- (iv) Sub-Article (4) deleted the word “Article” before the word this and inserted the word “physiological” after the word mental.

Sub-Article (4) was adopted with Amendments.

- Sub-Article 4 (a)
- (v) Sub-Article 4 (a) deleted the word “normal” before words carry out and inserted the word “ordinary”.

Sub-Article 4 (a) was adopted with Amendment.

- (vi) Sub-Article 4 (b)  
Sub-Article 4 (b) deleted the word “fair” before the word discrimination.

Sub-Article 4 (b) was adopted with Amendment.

**MIN. CCC/TWGB/110/03**

**NEW SUB-ARTICLES 2 (i) & 2 (j)**

- (i) New Sub-Article 2 (i)  
A new Sub-Article was inserted after Sub-Article (h) giving persons with disability equal rights as other persons.  
New Sub-Article 2 (i) was adopted.
- (ii) New Sub-Article 2 (j)  
A new Sub-Article 2 (j) was inserted after New Sub-Article 2 (i), enumerating the equal rights and opportunities for persons with disabilities and how they should have equal treatment.  
New Article 2 (j) was adopted.

**Article 39**  
**Persons with disability**

Question not put on Article 39 as Amended with title deferred to another day. (A new Sub-Article to be introduced, motion made and agreed upon)

Motion to introduce a new Sub-article 7A was dropped

**MIN. CCC/TWGB/111/03 ARTICLE 36, NEW SUB-ARTICLE**

**New Sub-Article (3A)**

Motion made and question proposed that a new Sub-Article, be inserted in article 36 that; one year of coming into force of the Draft Constitution, Parliament shall enact legislation to bring provisions of this Article 36 into operation.

**Question put and agreed upon**

As a new Sub-Article (5) was agreed on as part of a new Article 39 to be part of the Draft Bill.

Debate arose, and after due consideration the New Article 5 was agreed upon.  
The new Article (5) was adopted.

**MIN. CCC/TWGB/112/03**

**NEW ARTICLE 36 (3a)**

**Notice of Motion**

Notice of a Substantive Motion by delegate Pamela Mboya was agreed upon to include a new Sub-Article on Article 37 on children was agreed upon.

**MIN. CCC/TWGB/113/03**

**QUORUM**

Hon. delegate Lucas Chepkitony drew the attention of the Convenor that there was lack of Quorum and all delegates present didn't constitute a quorum.

After ascertaining that there was no quorum, the Convenor adjourned the sitting.

**MIN. CCC/TWGB/114/03**

**ADJOURNMENT**

And the time being twenty minutes past Five O'clock, the Acting Convenor Hon. Suba Churchill Meshack adjourned the sitting until Friday, September 26<sup>th</sup>, 2003 at 9.00 a.m.

**Signed:**.....  
**SUBA CHURCHILL MESHACK**  
**(ACTING CONVENOR)**

**Date:**.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

25<sup>th</sup> September 2003

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Friday, September 26<sup>th</sup>, 2003 at Tent No. 2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Disposing off pending issues
- 5. Main Agenda**
  - (i) Substantive discussions on Bill of Rights, from Article 40 -75**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill Meshack**

Date .....

Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE SIXTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, SEPTEMBER 26<sup>TH</sup>, 2003 AT 9.00 A.M.**

**PRESENT:**

1. Suba Churchill Meshack - **Acting Convenor**
2. Ali Wario
3. Bishop Stephen Ondiek
4. Berneddette Quodros
5. Dorcas Mbelesia
6. Kilonzo Charles Mutavi
7. Evelia Rebecca
8. Esther Keino
9. Florence Machayo
10. Fatuma Ali Saman
11. Gaudentia Atonga
12. George Wesonga
13. Jane Mwendu
14. Jillo Onotto
15. John Katumanga
16. Moses Lengete Ole Sisika
17. Neera Kent Kapila
18. Pamela Mboya
19. Peter O. Bwana
20. Rosemary Kinyanjui
21. Lucas K. Chepkitony
22. Sahara Ahmed Hillow
23. Silvanus Ogari
24. Simeon Lesrima
25. Sing'oei Korir
26. Fahim Twaha
27. Teresa Osunga
28. Lihanda K. Savai
29. Joyce Umbima
30. Lawrence Mute
31. Millie Odhiambo
32. Sabenzia N. Wekesa
33. Amina Zuberi
34. Sudi David Kiprono Sutter

35. Nichasius Mugo
36. Lorna Laboso
37. Lorna Timanoi Tetu
38. Samson Ng'etich
39. Ann Wairimu Njogu
40. Salah Maalim Ali
41. Rose Olende
42. Yusuf Wako
43. Sheikh Abdalla
44. Joseph. W. Nyagah
45. Magugu Arthur
46. Marie Therese Gachambi
47. Kennedy Sanga (Aide)
48. Joyce Majiwa
49. Ann Okoth
50. Francis N. Kaloki
51. David Kigen
52. Masanya Godfrey Okeri
53. Wilfred Kiboro
54. Choge Jim
55. George O. Maranya
56. John Njue
57. Wafula Wamunyinyi
58. Wandati Abdulrahman Mirimo
59. Ibrahim Ahmed

**Absent with Apology**

Cecily Mbarire (Convenor)

**OBSERVERS PRESENT:**

1. Samuel Ongoro
2. Benson M. Ng'ang'a
3. Penina Vulimu
4. Solomon Kayia
5. Joseph K. Waweru
6. Dr. Jacinta Muteshi
7. Ndinda Mutinda
8. Mona Muthengi
9. Joyce M. Kaendi
10. Faith K. Mwirigi
11. Samuel Nyaga
12. Rosemary Benzina
13. Justus M. Kivindyo
14. Nasia A. Abubakar
15. Dr. J. K. Wanyeru

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Prof. Okoth-Ogendo    | - | Rapporteur General          |
| 2. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 3. Comm.Nancy Baraza     | - | Rapporteur                  |
| 4. Comm.Salome Muigai    | - | Rapporteur                  |
| 5. Jeremiah Nyegenye     | - | Draftsman                   |
| 6. Achieng Olende        | - | Programme Officer           |
| 7. John Wanyoike         | - | Clerk Assistant             |
| 8. Liz Kingi             | - | Assistant Programme Officer |
| 9. Selina Kandie         | - | Assistant Programme Officer |
| 10. Martina Adhiambo     | - | Verbatim                    |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/115/03 CONFIRMATION OF MINUTES**

Minutes of the Fifteenth sitting held on Thursday September 25, 2003 were proposed by Hon. Delegates Ann Njogu, seconded by Hon. Delegate Dorcas Mbelesia and signed by the acting Convenor Hon. Suba Churchill Meshack.

### **MIN. CCC/TWGB/116/03**

### **MATTERS ARISING**

- MIN. CCC/TWGB/107/03 (i), that the words “participate as fully in society as they are able” should read “to be full participants in society”.
- MIN. CCC/TWGB/107/03 (iv), it should read in part deleted the words “disabled persons” wherever they appear in the Sub-Article and substitute with the word “persons with disability”.
- MIN. CCC/TWGB/107/03 (iv), the word Physiological should read psychological.
- MIN. CCC/TWGB/109/03 (vi), the word fair should read unfair
- MIN. CCC/TWGB/111/03, the word one year should read two years.
- MIN. CCC/TWGB/112/03, should read that the substantive motion was withdrawn by the mover.

### **MIN.CCC/TWGB/117/03 NEW ARTICLE MINORITIES AND OTHER MARGINALIZED GROUPS**

- (i) Motion made and question put  
That an Article stipulating the rights of minorities and other marginalized groups be inserted in the Draft Bill was adopted.



**NATIONAL CONSTITUTIONAL CONFERENCE**

January 12, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Tuesday, January 13, 2004 at Tent No. 2, Bomas of Kenya at 11.00 am.**

**AGENDA**

1. Prayers
2. Adoption of Agenda
3. Confirmation of Minutes
4. **Matters Arising**
  - (i) **Substantive discussions on Bill of Rights and Citizenship Articles 40 – 75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Hon. Cecily Mbarire (Convener)**

Date ..... Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE SEVENTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, JANUARY 13<sup>TH</sup>, 2004 AT 11.30 A.M.**

**PRESENT:**

1. Cecily Mbarire - **Convenor**
2. Abdulrahaman Wandati
3. Ali Wario
4. Amina Zuberi
5. Ann Okoth
6. Ann Wairimu Njogu
7. Berneddette Quodros
8. Bishop Stephen Ondiek
9. Dorcas Mbelesia
10. Esther Keino
11. Evelia Rebecca
12. Fahim Twaha
13. Florence Machayo
14. Francis N. Kaloki
15. Gaudentia Atonga
16. George O. Maranya
17. George Wesonga
18. Ibrahim Ahmed
19. Jillo Onotto
20. John Njue
21. Joseph. W. Nyagah
22. Joyce Majiwa
23. Joyce Umbima
24. Kennedy Sanga (Aide)
25. Lawrence Mute
26. Lihanda K. Savai
27. Lorna Timanoi Tetu
28. Lucas K. Chepkitony
29. Magugu Arthur
30. Marie Therese Gachambi
31. Millie Odhiambo
32. Moses Lengete Ole Sisika
33. Neera Kent Kapila
34. Nichasius Mugo

35. Pamela Mboya
36. Peter O. Bwana
37. Rose Olende
38. Rosemary Kinyanjui
39. Sabenzia N. Wekesa
40. Sahara Ahmed Hillow
41. Samson Ng'etich
42. Simeon Lesrima
43. Sudi David Kiprono Sutter
44. Teresa Osunga
45. Wafula Wamunyinyi
46. Wilfred Kiboro

**ABSENT WITH APOLOGY**

1. Comm.Nancy Baraza - Rapporteur
2. Jane Mwendu

**ABSENT**

1. Choge Jim
2. J.W. Nyaga
3. John Katumanga
4. Kilonzo Charles Mutavi
5. Lorna Laboso
6. Masanya Godfrey Okeri
7. Salah Maalim Alio
8. Sheikh Abdalla
9. Silvanus Ogari
10. Sudi David Kiprono Sutter
11. Yusuf Wako

**OBSERVERS PRESENT:**

1. Kennedy Sangoi
2. Diana Imali Akivaga
3. Samuel Ongoro
4. Davis Malombe
5. Mary Ndinda
6. Peninnah Vulimu
7. Firdausi Wanjiku
8. Mona

Muthengi

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

13. Comm. Ibrahim Lethome - Rapporteur

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 14. Comm. Salome Muigai | - | Rapporteur                  |
| 15. P.R.O. Lumumba      | - | Secretary CKRC              |
| 16. Jeremiah Nyegenye   | - | Draftsman                   |
| 17. Achieng Olende      | - | Programme Officer           |
| 18. John Wanyoike       | - | Clerk Assistant             |
| 19. Carol Ndindi        | - | Assistant Programme Officer |
| 20. Hellen Namisi       | - | Assistant Programme Officer |
| 21. Martina Adhiambo    | - | Verbatim Recorder           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/01/04 ELECTION OF TEMPORARY CONVENOR**

Rapporteur Ibrahim Lethome called the meeting to order and requested for proposals for acting Convenor. The Hon. Delegate Suba Churchill was proposed by the Hon. Delegate Rebecca Evelia and seconded by Hon. Delegate Teresa Osuga. There upon the Acting Convenor took the Chair.

But before any business could start the convenor assumed the Chair.

### **MIN.CCC/TWGB/02/04 ADOPTION OF AGENDA**

The Convenor read the Agenda and was proposed by the Hon. Delegate Florence Machayo and seconded by Hon. Delegate Hon. John Njue. The agenda was adopted.

### **MIN. CCC/TWGB/03/04 CONFIRMATION OF MINUTES**

Minutes of the Sixteenth sitting held on Friday, September 26, 2003 were proposed by Hon. Delegate Milly Odhiambo, seconded by Hon. Delegate Theresa Gachambi and signed by the Convenor.

### **MIN. CCC/TWGB/04/04 DELIBERATIONS ON CITIZENSHIP AND THE BILL OF RIGHTS**

#### **Article 40 Human and dignity**

Article 40 was adopted without Amendments.

#### **Article 41 Freedom and Security of the person**

Article 41 was adopted without Amendments.

**Article 42**  
**Slavery, servitude and forced labour**

Article 42 was adopted without Amendments.

**Article 43**  
**Privacy**

Article 43 was adopted without Amendments.

**Article 44**  
**Freedom of Religion, Believe and Opinion**

Article 44, sub article 1 and 2 were adopted without amendments

**MIN. CCC/TWGB/05/04    MINORITY VIEWS**

**Article 44**  
**Freedom of Religion, Believe and Opinion**

The Hon. Delegate Mary Teresia had a contrary view on sub Article 1.

**Article 44 sub Article 2**

Hon. Delegates Peter Bwana and Jillo Onotto had a contrary view on sub article 2.

**MIN. CCC/TWGB/06/04                      ADJOURNMENT**

And the time being thirty minutes past one O'clock, the Convenor adjourned the sitting until 2.30p.m.this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

- |    |                        |   |                        |
|----|------------------------|---|------------------------|
| 1. | Suba Churchill Meshack | - | <b>Acting Convenor</b> |
| 2. | Abdulrahman Wandati    |   |                        |
| 3. | Amina Zuberi           |   |                        |
| 4. | Ann Okoth              |   |                        |
| 5. | Ann Wairimu Njogu      |   |                        |
| 6. | Bishop Stephen Ondiek  |   |                        |
| 7. | Dorcas Mbelesia        |   |                        |

8. Esther Keino
9. Evelia Rebecca
10. Fatuma Ali Saman
11. Florence Machayo
12. Francis N. Kaloki
13. Gaudentia Atonga
14. George Wesonga
15. Jillo Onotto
16. John Njue
17. Joyce Majiwa
18. Joyce Umbima
19. Kennedy Sanga (Aide)
20. Lawrence Mute
21. Lihanda K. Savai
22. Lorna Timanoi Tetu
23. Lucas K. Chepkitony
24. Marie Therese Gachambi
25. Magugu Arthur
26. Milly Odhiambo
27. Moses Lengete Ole Sisika
28. Neera Kent Kapila
29. Pamela Mboya
30. Peter O. Bwana
31. Rose Olende
32. Rosemary Kinyanjui
33. Sabenzia N. Wekesa
34. Sahara Ahmed Hillow
35. Silvanus Ogari
36. Simeon Lesrima
37. Sudi David Kiprono Sutter
38. Teresa Osunga
39. Wilfred Kiboro
40. Yusuf Wako

**ABSENT**

1. Ali Wario
2. Fahim Twaha
3. J.W. Nyaga
4. Jane Mwendu
5. John Katumanga
6. Lorna Laboso
7. Masanya Godfrey Okeri
8. Nichasius Mugo
9. Salah Maalim Alio
10. Sheikh Abdalla
11. Sing'oei Korir

## **ABSENT WITH APOLOGY**

1. Wafula Wamunyinyi
2. Lihanda K. Savai
3. Comm. Nancy Baraza - Rapporteur

## **OBSERVERS PRESENT:**

1. Kennedy Sangoi
2. Diana Imali Akivaga
3. Samuel Ongoro
4. Davis Malombe
5. Mary Ndinda
6. Peninnah Vulimu
7. Firdausi Wanjiku
8. Mona Muthengi
9. Joseph K. Waweru
10. Pius S. Achola

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome - Rapporteur
2. Comm. Salome Muigai - Rapporteur
3. Jeremiah Nyegenye - Draftsman
4. Achieng Olende - Programme Officer
5. John Wanyoike - Clerk Assistant
6. Carol Ndindi - Assistant Programme Officer
7. Hellen Namisi - Assistant Programme Officer
8. Martina Adhiambo - Verbatim Recorder

The Committee resumed at 2.30p.m.

## **MIN. CCC/TWGB/07/04**

## **DELIBERATION ON CITIZENSHIP AND BILL OF RIGHTS**

### **Article 44**

#### **Freedom of religion, belief and opinion**

Sub articles 3,4 and 5 were adopted without amendments.

Sub article 6, a,b,c,e were adopted without amendments.

Sub article 6 (d) the word “private or” were inserted before the word “public” and the word “a”.

Sub article 6 (d) was adopted with amendments.

### **Article 45**

#### **Freedom of expression**

Article 45 (1) sub articles a and b were adopted without amendments.

**MIN. CCC/TWGB/08/04**

**ADJOURNMENT**

And the time being fifty past four O'clock, the Acting Convenor, Hon. Suba Churchill adjourned the sitting until Wednesday January 14, 2004 at 9:00a.m.

Signed:.....

Date:.....

**SUBA CHURCHILL MESHACK  
(ACTING CONVENOR)**

NATIONAL CONSTITUTIONAL CONFERENCE

January 13, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, January 14, 2004 at Tent No. 2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Substantive discussions on Bill of Rights and Citizenship, Articles 45 1c – 75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE EIGHTEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, JANUARY 14<sup>TH</sup>, 2004 AT 11.30 A.M.**

**PRESENT:**

1. Suba Churchill Meshack - Acting Convenor
2. Ali Wario
3. Amina Zuberi
4. Ann Okoth
5. Ann Wairimu Njogu
6. Berneddette Quodros
7. Bishop Stephen Ondiek
8. Dorcas Mbelesia
9. Esther Keino
10. Evelia Rebecca
11. Fatuma Ali Saman
12. Florence Machayo
13. Francis N. Kaloki
14. Gaudentia Atonga
15. George Wesonga
16. J.W. Nyagah
17. Jane Mwende
18. Jillo Onotto
19. John Katumanga
20. John Njue
21. Joyce Umbima
22. Lawrence Mute
23. Lihanda K. Savai
24. Lorna Timanoi Tetu
25. Lucas K. Chepkitony
26. Magugu Arthur
27. Marie Therese Gachambi
28. Masanya Godfrey Okeri
29. Milly Odhiambo
30. Moses Lengete Ole Sisika
31. Neera Kent Kapila
32. Nichasius Mugo
33. Pamela Mboya
34. Peter O. Bwana

35. Rose Olende
36. Rosemary Kinyanjui
37. Sabenzia N. Wekesa
38. Sahara Ahmed Hillow
39. Salah Maalim Alio
40. Sheikh Abdalla
41. Silvanus Ogari
42. Sudi David Kiprono Sutter
43. Teresa Osunga
44. Wandati Abdulrahaman Mirimo
45. Wilfred Kiboro
46. Yusuf Wako

**ABSENT WITH APOLOGY**

1. Cecily Mbarire - Convenor
2. Kilonzo Charles Mutavi
3. Fahim Twaha

**ABSENT**

1. Choge Jim
2. Simeon Lesrima
3. Lorna Laboso
4. Wafula Wamunyinyi
5. Songoei Korir

**OBSERVERS PRESENT:**

1. Kennedy Sanga (Aide)
2. Diana Imali Akivaga
3. Joseph K. Waweru
4. Ndinda Mutinda
5. Samuel Ongoro
6. Davis Malombe
7. Peninnah Vulimu
8. Firdausi Wanjiku

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                       |   |                        |
|----|-----------------------|---|------------------------|
| 1. | Comm. Ibrahim Lethome | - | Rapporteur             |
| 2. | Comm. Salome Muigai   | - | Rapporteur             |
| 3. | Comm. Nancy Baraza    | - | Rapporteur             |
| 4. | Jeremiah Nyegenye     | - | Draftsman              |
| 5. | Achieng Olende        | - | Programme Officer      |
| 6. | John Wanyoike         | - | Clerk                  |
| 7. | Hellen Namisi         | - | Ass. Programme Officer |

8. Carol Ndindi - Assistant Programme Officer  
9. Tina Odhiambo - Verbatim Recorder

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/09/04 ADOPTION OF AGENDA**

The Agenda was adopted unanimously.

### **MIN. CCC/TWGB/10/04 CONFIRMATION OF MINUTES**

Minutes of the seventeenth sitting held on Tuesday, January 13, 2004 were proposed by Hon. Delegate Silvanus Ogari, seconded by Hon. Delegate Neera Kent Kapila and signed by the Acting Convenor.

### **MIN.CCC/TWGB/11/04 MATTERS ARISING**

- (i) Hon. Delegates Silvanus Ogari, Hon. Sheikh Abdalla, were present but their names were marked absent.
- (ii) That Hon. Delegate Jim Choge always appears absent, as he never attends.
- (iii) The Hon. Delegate Joseph Nyaga was inadvertently marked as absent in the morning and afternoon sittings while he was present in the afternoon.
- (iv) The Hon. Delegate Jane Mwendu was inadvertently marked as absent but was absent with apology.
- (v) Hon. Delegate Abdulrahman Wandati was inadvertently marked present twice in the morning.
- (vi) Under Min.CCC/TWGB/01/04, the name of Hon. Delegate Teresa Osunga was inadvertently misspelled as Osuga.
- (vii) Under Min.CCC/TWGB/05/04 and Min.CCC /TWGB/ 07 /04.
- (viii) The title of Article 44 should read “freedom of religion, belief and opinion”, and not “freedom of religion, believe and opinion”.
- (ix) The afternoon sitting the name of the Acting Convenor Hon. Delegate Suba Churchill was inadvertently misspelled as Suba Curchill.
- (x) The name of Kennedy Sanga an Aide should always appear as an observer present and not as a delegate.

**MIN.CCC/TWGB/12/04    DELIBERATIONS ON CITIZENSHIP AND BILL OF RIGHTS**

**Article 45  
Freedom of expression**

Sub-Article c and d were adopted without amendments

**MIN. CCC/TWGB/13/04    NEW SUB ARTICLE 45 1 (e)**

**New Sub Article 45 1 (e)**

A new Sub-Article 45 1(e) was inserted to read “Freedom of Dress”.

The New Sub Article (e) was adopted.

**MIN. CCC/TWGB/14/04    DELETED SUB-ARTICLE 45 (2)**

**Sub Article 45 (2)**

Sub Article 45 (2) as a whole was deleted.

**MIN. CCC/TWGB/15/04    Article 45 (1) RE-NUMBERING**

After deleting Article 45 (2) Article 45 (1) was renumbered as Article 45.

Article 45 as amended was adopted.

**MIN. CCC/TWGB/16/04    MINORITY VIEWS ON ARTICLE 45 1 (e)  
NEW SUB-CLAUSE.**

The following delegates were of the contrary view:-

The Hon. Delegate Nicaus Mugo, Silvanus Ogari, John Njue, Masanya Godfrey Okari, George Wesonga, Jillo Onotto, that no new Sub clause (e) should not be inserted.

**MIN. CCC/TWGB/17/04    Article 46**

**Publication of opinion**

Article 46 (1) deleted the words after the word electronic “and” before the word print and also before the word media “of all types” were deleted therein.

Sub Article 46 (1) was amended.

Sub-Article 46(1) as amended was adopted.

**MIN. CCC/TWGB/18/04    ADJOURNMENT**

And the time being fifteen minutes past one O'clock, the Acting Convenor adjourned the sitting until 2.00 p.m. afternoon.

**AFTERNOON SITTING**

**PRESENT:**

- |     |                            |   |                        |
|-----|----------------------------|---|------------------------|
| 1.  | Suba Churchill Meshack     | - | <b>Acting Convenor</b> |
| 2.  | Wandati Abdulrahman Mirimo |   |                        |
| 3.  | Amina Zuberi               |   |                        |
| 4.  | Bermadette Quadros         |   |                        |
| 5.  | Bishop Stephen Ondiek      |   |                        |
| 6.  | Esther Keino               |   |                        |
| 7.  | Evelia Rebecca             |   |                        |
| 8.  | Fatuma Ali Saman           |   |                        |
| 9.  | Florence Machayo           |   |                        |
| 10. | Francis N. Kaloki          |   |                        |
| 11. | Gaudentia Atonga           |   |                        |
| 12. | George Wesonga             |   |                        |
| 13. | George Wesonga             |   |                        |
| 14. | Jane Mwendu                |   |                        |
| 15. | Jillo Onotto               |   |                        |
| 16. | John Katumanga             |   |                        |
| 17. | Joyce Umbima               |   |                        |
| 18. | Lawrence Mute              |   |                        |
| 19. | Lihanda K. Savai           |   |                        |
| 20. | Marie Therese Gachambi     |   |                        |
| 21. | Masanya Godfrey Okeri      |   |                        |
| 22. | Milly Odhiambo             |   |                        |
| 23. | Moses Lengete Ole Sisika   |   |                        |
| 24. | Neera Kent Kapila          |   |                        |
| 25. | Nichasius Mugo             |   |                        |
| 26. | Peter O. Bwana             |   |                        |
| 27. | Rose Olende                |   |                        |
| 28. | Rosemary Kinyanjui         |   |                        |
| 29. | Sahara Ahmed Hillow        |   |                        |
| 30. | Salah Maalim Alio          |   |                        |
| 31. | Silvanus Ogari             |   |                        |
| 32. | Sudi David Kiprono Sutter  |   |                        |
| 33. | Wilfred Kiboro             |   |                        |
| 34. | Yusuf Wako                 |   |                        |

## **ABSENT**

1. Sheikh Abdalla
2. Sing'oei Korir
3. Lucas K. Chepkitony
4. Magugu Arthur
5. Sabenzia N. Wekesa
6. Simeon Lesrima
7. Wafula Wamunyinyi
8. Choge Jim

## **ABSENT WITH APOLOGY**

- |     |                        |   |            |
|-----|------------------------|---|------------|
| 1.  | Cecily Mbarire         | - | Convenor   |
| 2.  | Teresa Osunga          |   |            |
| 3.  | Lorna Timanoi Tetu     |   |            |
| 4.  | Pamela Mboya           |   |            |
| 5.  | Ali Wario              |   |            |
| 6.  | Comm. Nancy Baraza     | - | Rapporteur |
| 7.  | Comm. Salome Muigai    | - | Rapporteur |
| 8.  | Ann Okoth              |   |            |
| 9.  | Ann Njogu              |   |            |
| 10. | Dorcas Mbelersia       |   |            |
| 11. | Fahim Twaha            |   |            |
| 12. | J.W. Nyagah            |   |            |
| 13. | Kilonzo Charles Mutavi |   |            |
| 14. | Lorna Laboso           |   |            |

## **OBSERVERS PRESENT:**

1. Diana Imali Akivaga (Aide)
2. J.K. Wanjeru
3. Peninnah Vulimu
4. Mona Muthengi
5. Joseph K. Waweru

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                       |   |                             |
|----|-----------------------|---|-----------------------------|
| 1. | Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. | Jeremiah Nyegenye     | - | Draftsman                   |
| 3. | John Wanyoike         |   | Clerk Assistant             |
| 4. | Carol Ndindi          |   | Assistant Programme Officer |
| 5. | Hellen Namisi         |   | Assistant Programme Officer |
| 6. | Martina Odhiambo      |   | Verbatim Recorder           |

The Committee resumed deliberations at twenty minutes past three O' clock.

**MIN. CCC/TWGB/19/04**

**DELIBERATION ON CITIZENSHIP  
AND BILL OF RIGHTS**

**Article 46  
Publication of opinion**

**Article 46 2 (a) and (b)**

Were deferred to Thursday January 15, 2004, (to facilitate the draft-man to come out with more appropriate words indicating the delegates' sentiments to curtail the police harassing Newspaper venders (how they can be protected).

**Sub-Article 3 (a)**

The words "Any other form of signal distribution" were inserted immediately after the word "airwaves and before the word "and"

Sub Clause 3(a) was adopted with amendments.  
Sub clause 3(b) was adopted without amendments.  
Sub-Article 4 was adopted without amendments.

Sub-Article 5 (a) and (b) were adopted without amendments.  
Sub-Article 6 (a) motion made and question proposed for amendments.  
A question on quorum was raised, and after ascertaining there was no quorum, the Acting Convenor interrupted the deliberation and the committee adjourned

(deliberations to continue)

**MIN. CCC/TWGB/20/04**

**ADJOURNMENT**

And the time being twenty minutes past five O'clock the Acting Convenor, Hon. Delegate Suba Churchill adjourned the sitting until Thursday January 15, 2004 at 9:00a.m.

Signed:.....  
**SUBA CHURCHILL MESHACK**  
**(ACTING CONVENOR)**

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

January, 14<sup>th</sup> 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Wednesday, 15<sup>th</sup> January 2004 in Tent No. 2, Bomas of Kenya at 9. 00 am**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Substantive discussions on Bill of Rights and citizenship, Articles 46 6 (a) - 75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Date .....

Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE NINETEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, JANUARY 15<sup>TH</sup>, 2004 AT 9:25 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

<b><u>PRESENT:</u></b>	<b>DELEGATES NUMBERS</b>
1. Suba Churchill Meshack	<b>Acting Convenor</b>
2. Ali Wario	206
3. Anne Njogu	475
4. Amina Zuberi	227
5. Anne Okoth	474
6. Bernadette Quadros	622
7. Dorcas Mbelersia	378
8. Esther Keino	214
9. Fatuma Ali Saman	505
10. Florence Machayo	512
11. Francis N. Kaloki	292
12. Gaudentia Atonga	417
13. George Wesonga	398
14. Jane Mwendu	291
15. John Katumanga	435
16. John Njue	439
17. Joshua Jillo Onotto	237
18. Joyce Umbima	466
19. Lawrence Mute	455
20. Lihanda K. Savai	608
21. Lorna Timanoi	360
22. Lucas K. Chepkitony	20
23. Magugu Arthur	88
24. Marie Therese Gachambi	519
25. Masanya Godfrey Okeri	97
26. Millie Odhiambo	451
27. Moses Leng'ete Ole Sisika	365
28. Neera Kent Kapila	524
29. Nichasius Mugo	287
30. Pamela Mboya	473
31. Peter O. Bwana	516
32. Rebecca Evelia Jandeka	384
33. Rose Arungu-Olende	502

34.	Rosemary Kinyanjui	526
35.	Sabenzia N. Wekesa	478
36.	Sahara Ahmed Hillo	257
37.	Salah Maalim Alio	259
38.	Sheikh Abdalla	243
39.	Sylvanus Ogari	425
40.	Stephen Ondiek	168
41.	Sudi David Kiprono Sutter	192
42.	Teresa Osunga	411
43.	Wafula Wamunyinyi	203
44.	Wandati Abdulrahaman Mirimo	547
45.	Wilfred Kiboro	619
46.	Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1.	Cecily Mbarire	-	Convenor
2.	Nancy Baraza	-	Rapporteur

### **ABSENT**

1.	Choge Jim
2.	Simeon Lesrima
3.	Lorna Laboso
4.	Sing'oei Korir
5.	Anne Njogu
6.	J.W. Nyagah
7.	Kilonzo Charles Mutavi
8.	Fahim Twaha
9.	Bernadete Quadros

### **OBSERVERS PRESENT:**

1.	Abdu Hamid		
2.	Davis Malombe		
3.	Diana Imali Akivaga	-	Aide
4.	Firdausi Wanjiku		
5.	J.K. Wanjeru		
6.	Joseph K. Waweru		
7.	Kennedy Sanga	-	Aide
8.	Moses H.E. Mwalei		
9.	Ndinda Mutinda		
10.	Peninnah Vulimu		
11.	Samuel Ongoro		

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                       |   |                             |
|----|-----------------------|---|-----------------------------|
| 1. | Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. | Comm. Salome Muigai   | - | Rapporteur                  |
| 3. | Jeremiah Nyegenye     | - | Draftsman                   |
| 4. | Achieng Olende        | - | Programme Officer           |
| 5. | John Wanyoike         | - | Clerk                       |
| 6. | Helene Namisi         | - | Assistant Programme Officer |
| 7. | Carol Ndindi          | - | Assistant Programme Officer |
| 8. | Martina Odhiambo      | - | Verbatim Recorder           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/21/04 ADOPTION OF AGENDA**

The Agenda for the day was proposed by the Hon. Delegate Jane Mwendu, seconded by Hon. Delegate Dorcas Mbelersia and was adopted by the Committee.

### **MIN. CCC/TWGB/22/04 CONFIRMATION OF MINUTES**

Minutes of the Eighteenth Sitting held on Wednesday January 14, 2004 were proposed by the Hon. Delegate Amina Zuberi, seconded by Hon. Delegate Kent Neera Kapila and signed by the Acting Convenor.

### **MIN.CCC/TWGB/23/04 MATTERS ARISING**

Under Min. CCC/TWGB/11/04 the numbering (viii) was deleted and subsequent Articles renumbered.

Hon delegate Nichasius Mugo was misspelt as Nicasius and Under Minute CCC/TWGB/16/04 the word “not” was deleted.

### **MIN.CCC/TWGB/24/04 DELIBERATIONS ON CITIZENSHIP AND BILL OF RIGHTS**

#### **Sub-Article 46 2 (a) and (b) Publication of opinion**

#### **Sub-Article 46 2 Sub-Article (a)**

Deleted all the words after the words “with any” and inserted the “words broadcasting or production or circulation of any publication or in the dissemination of information by any other medium”.

Article 46 2 Sub-Article 2 (a) was adopted with amendments.

**Sub Article (b)**

Deleted the words “editorial” after the word “any” and inserted the word “institution” after the word “person” and also inserted the word “broadcast” after the word “such”.

Article 46 2 Sub-Article (b) was adopted with Amendments.

**MIN.CCC/TWGB/25/04     DEFERRED ARTICLE 46 SUB-ARTICLE 6 a**

**Article 46, Sub-Article 6a**

**Sub Article 6 (a)**

The Sub-Article was referred to the Draft-man to redraft and reword it after a vote on its deletion was defeated

The Delegates resolved that the Draft-man should redraft and reword Sub-Article 6(a) to include the delegates’ sentiments.

**MIN.CCC/TWGB/26/04     DELETION OF ARTICLE 46 SUB ARTICLE 6(a) AND (c)  
**MINORITY VIEWS****

(i) The following delegates were of the view that Sub-Article 6 (a) should have been deleted, The Hon.

1. Wandati Abdurahman
2. Rosemary Kinyanjui
3. Moses Leng’ete Ole Sisika
4. Lawrence Mute
5. Joyce Umbima
6. Salah Maalim Ali
7. Dorcas Mbelesia
8. Neera Kent Kapila
9. Lihanda K. Savai

**Sub-Article 6(b)**

(ii) Sub-Article 6 (b) was adopted without amendments.

**MIN.CCC/TWGB/27 /04     MINORITY VIEW, ARTICLE 46 6 SUB-ARTICLE c**

**Sub-Article 6 (c)**

Motion made and question was proposed to delete Sub-Article 6 c

The Minority views to delete Sub-Article 6 (c) were the Hon. Delegates:-

1. Salah Maalim Ali
2. Nichasius Mugo
3. Rose Olende
4. Yusuf Wako
5. John Katumanga
6. Wilfred Kiboro
7. Sisika Leng'ete
8. Wandati Abduraham Mirimo
9. Wesonga George Ojwang

The question having been put and negotiated, the Committee resumed to the Amendments of the Sub-Article 6 c.

Motion made for Amendment.

#### **MIN.CCC/TWGB/28/04 ADJOURNMENT**

And the time being twenty minutes past one O'clock, the Acting Convenor adjourned the sitting until 2:00p.m. this afternoon.

#### **AFTERNOON SITTING**

#### **PRESENT:**

1.	Suba Churchill Meshack - <b>Acting Convenor</b>	
2.	Ali Wario	206
3.	Amina Zuberi	227
4.	Ann Njogu	475
5.	Ann Okoth	474
6.	Dorcas Mbelersia	378
7.	Esther Keino	214
8.	Fatma Ali Saman	505
9.	Florence Machayo	512
10.	Francis N. Kaloki	292
11.	Gaudentia Atonga	417
12.	George Wesonga	398
13.	J.W. Nyagah	151
14.	Jane Mwendu	291
15.	John Katumanga	435
16.	John Njue	539
17.	Joshua Jillo Onotto	237
18.	Joyce Umbima	466
19.	Lihanda K. Savai	608

20.	Lorna Timanoi	360
21.	Lucas K. Chepkitony	20
22.	Magugu Arthur	88
23.	Marie Therese Gachambi	519
24.	Masanya Godfrey Okeri	97
25.	Millie Odhiambo	451
26.	Moses Leng'ete Ole Sisika	365
27.	Neera Kent Kapila	524
28.	Nichasius Mugo	287
29.	Pamela Mboya	473
30.	Peter O. Bwana	516
31.	Rebecca Evelia Jandeka	384
32.	Rose Olende	502
33.	Rosemary Kinyanjui	526
34.	Sabenzia N. Wekesa	478
35.	Sahara Ahmed Hillo	257
36.	Sylvanus Ogari	425
37.	Stephen Ondiek	168
38.	Teresa Osunga	411
39.	Wafula Wamunyinyi	203
40.	Wandati Abdulrahaman Mirimo	547
41.	Wilfred Kiboro	619
42.	Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1.	Cecily Mbarire	-	Convenor
2.	Lawrence Mute	-	455
3.	Salah Maalim Ali	-	259

### **ABSENT**

1. Choge Jim
2. Simeon Lesrima
3. Lorna Laboso
4. Sing'oei Korir
5. Fahim Twaha
6. Bernadete Quadros
7. Kilonzo Charles Mutavi
8. Sheikh Abdallan
9. Sudi David Kiprono Sutter

### **OBSERVERS PRESENT:**

1. Davis Malombe
2. Firdausi Wanjiku

3. J.K. Wanjeru
4. Joseph K. Waweru
5. Kennedy Sanga - Aide
6. Ndinda Mutinda
7. Samuel Ongoro
8. Mona Muthengi

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome - Rapporteur
2. Comm. Salome Muigai - Rapporteur
3. Comm. Nancy Baraza - Rapporteur
4. Jeremiah Nyegenye - Draftsman
5. John Wanyoike - Clerk
6. Helene Namisi - Ass. Programme Officer
7. Carol Ndindi - Assistant Programme Officer
8. Tina Odhiambo - Verbatim Recorder

The Committee reassembled at 2:30 p.m. and deliberations resumed.

**MIN.CCC/TWGB/29 /04 DELIBERATION ON CITIZENSHIP AND BILL OF RIGHTS ( DEFERRED ARTICLE 46 6 c AND 7)**

Article 46 6 (c) and 7

Publication of opinion

**Motion made and question proposed that Sub-Article 6 (c) 7 be deferred to another.**

**Question put and agreed on.**

**Sub-Article 6 (c) and 7 were deferred to another day (to facilitate the delegates understand and interpret the film and stage plays Act Cap. 222)**

**MIN.CCC/TWGB/30/04 – ARTICLE 47**

Article 47

Access to information

**Sub-Article 47 1 (a) and (b)**

**Sub-Article 47 1 (a) and (b) was adopted without amendments.**

**Sub-Article 47 2**

**Sub-Article 47 2 was adopted without amendments.**

**Sub-Article 4**

**Sub-Article 4 was adopted without amendments**

**Article 47 was adopted without amendments.**

**MIN.CCC/TWGB/31/04 - MINORITY VIEW**

Hon. Delegate Nichasius Mugo was of the view that Article 47 Sub-Article 4 should be deleted.

**MIN.CCC/TWGB/32/04 - ARTICLE 48**

Article 48  
Freedom of Association  
**Sub-Article 1**

Sub-Article 1 was adopted without amendments.  
Sub-Article 2

Sub-Article 2 was adopted without amendments.

Sub-Article 3

Sub-Article 3 was adopted without amendments.

Sub-Article 4

Sub-Article 4 was adopted without amendments.

Sub-Article 5, (a),(b),(c),(d),(e), and (f)

Sub-Article 5, (a),(b),(c),(d),(e), and (f) were adopted without amendments.

Article 48 was adopted without amendments.

**MIN.CCC/TWGB/33/04 - ARTICLE 49**

**Article 49**

**Assembly, demonstration, picketing and petition**

Article 49 was adopted without amendments.

**MIN.CCC/TWGB/34/04 - MINORITY VIEW ARTICLE 49**

The Hon. Delegate Florence Machayo was of the contrary view.

**MIN.CCC/TWGB/35/04 - ADJOURNMENT**

And the time being forty minutes past four O'clock, the Acting Convenor adjourned the sitting until Friday January 16, 2004 at 9:00 a.m.

Signed:..... Date:.....  
**SUBA CHURCHILL MESHACK (ACTING CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 15<sup>th</sup>, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Friday, January, 16<sup>th</sup> 2004 at Tent No. 2, Bomas of Kenya at 9.00am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Substantive discussions on Bill of Rights and Citizenship, Articles 50 –75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Date ..... Time.....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE NINETEENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, JANUARY 16<sup>TH</sup>, 2004 AT 9:25 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

		<b>Acting Convenor</b>
1.	Suba Churchill Meshack	
2.	Anne Njogu	475
3.	Amina Zuberi	227
4.	Anne Okoth	474
5.	Bernadette Quadros	622
6.	Dorcas Mbelersia	378
7.	Esther Keino	214
8.	Fatuma Ali Saman	505
9.	Florence Machayo	512
10.	Francis N. Kaloki	292
11.	Gaudentia Atonga	417
12.	George Wesonga	398
13.	John Katumanga	435
14.	Joshua Jillo Onotto	237
15.	Joyce Umbima	466
16.	Lawrence Mute	455
17.	Lihanda K. Savai	608
18.	Lorna Timanoi	360
19.	Lucas K. Chepkitony	20
20.	Magugu Arthur	88
21.	Marie Therese Gachambi	519
22.	Masanya Godfrey Okeri	97
23.	Millie Odhiambo	451
24.	Moses Leng'ete Ole Sisika	365
25.	Neera Kent Kapila	524
26.	Nichasius Mugo	287
27.	Pamela Mboya	473
28.	Peter O. Bwana	516
29.	Rebecca Evelia Jandeka	384
30.	Rose Arungu-Olende	502
31.	Rosemary Kinyanjui	526
32.	Sabenzia N. Wekesa	478
33.	Sahara Ahmed Hillow	257
34.	Sheikh Abdalla	243

35.	Salah Maalim Alio	259
36.	Sylvanus Ogari	425
37.	Stephen Ondiek	168
38.	Teresa Osunga	411
39.	Wandati Abdulrahman Mirimo	547
40.	Wilfred Kiboro	619
41.	Yusuf Wako	269
42.	J.W. Nyagah	151

**ABSENT WITH APOLOGY**

1.	Cecily Mbarire	-	Convenor
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**ABSENT**

1. Ali Wario
2. Jane Mwendu
3. John Njue
4. Choge Jim
5. Simeon Lesrima
6. Lorna Laboso
7. Sing'oei Korir
9. Kilonzo Charles Mutavi
10. Fahim Twaha
11. Sudi David Kiprono Sutter
12. Wafula Wamunyinyi

**OBSERVERS PRESENT:**

1.	Diana Imali Akivaga	-	455B(Aide)
2.	Monah Muthengi		
3.	Peterson Nyandonyi	-	189
4.	J.K. Wanjeru		
5.	Joseph K. Waweru	-	
6.	Kennedy Sanga	-	411B(Aide)
7.	Ndinda Mutinda	-	001
8.	Samuel Ongoro	-	097

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Ibrahim Lethome	-	Rapporteur
2.	Comm. Salome Muigai	-	Rapporteur
3.	Nancy Baraza	-	Rapporteur
4.	Jeremiah Nyegenye	-	Draftsman

- |                     |   |                             |
|---------------------|---|-----------------------------|
| 5. John Wanyoike    | - | Clerk                       |
| 6. Achieng' Olende  | - | Program Officer             |
| 7. Helene Namisi    | - | Assistant Programme Officer |
| 8. Carol Ndindi     | - | Assistant Programme Officer |
| 9. Martina Odhiambo | - | Verbatim Recorder           |

**PRAYER**

The meeting opened with a word of prayer.

**MIN. CCC/TWGB/36/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Abdulrahman Wandati seconded by Hon. Marie Theresa Gachambi and was adopted by the Committee.

**MIN. CCC/TWGB/37/04 DELIBERATIONS ON CITIZENSHIP AND BILL OF RIGHTS**

**Article 50**

**Political Rights**

**Sub Article 1, (a), (b) and (c)**

Sub Article 1, (a), (b) and (c) were adopted without amendments.

**Sub Article 3 (a)**

Sub Article 3 (a) was adopted without amendments.

**MIN.CCC/TWGB/38/04 MINORITY VIEW ON ARTICLE 50 3 (b)**

The Hon. Delegates Pamela Mboya and Joyce Umbima had contrary view.

**MIN. CCC/TWGB/39/04 ELECTION OF TEMPORARY CONVENOR**

Comm. Salome Muigai called the meeting to order and called for proposals for an Acting Convenor. The Hon. Delegate Neera Kent Kapila was proposed by the Hon. Delegate Esther Keino, seconded by the Hon. Lorna Timanoi and was unanimously elected the Acting Convenor.

Thereupon Hon. Neera Kent Kapila thanked the delegates and took the Chair.

**MIN. CCC/TWGB/40/04 CONFIRMATION OF MINUTES**

Minutes of the Nineteenth Sitting held on Thursday January 15, 2004 were proposed by the Hon. Delegate John Katumanga, seconded by the Hon. Delegate Rebecca Evelia Jandeka and were signed by the Acting Convenor, Hon. Neera Kent Kapila.

(Thereupon the Acting Convenor Suba Churchill took the Chair).

**MIN. CCC/TWGB/41/04**

**MATTERS ARISING**

The following Delegates had their names corrected:-

- (i) Fatma Ali Saman to read Fatuma Ali Saman
- (ii) Wandati Abdirahman Mirimo to Wandati Abdulrahman Mirimo.
- (iii) Rose Olende to Rose Arungu Olende

The proposer of the Minutes was Hon. Gaudentia Atonga and not Jane Mwende.

Under Min.CCC/TWGB/29/04

Inserted the words “and” after (c) and 7 and after the word another “day”.  
Under Min.CCC/TWGB/30/04

Inserted “Sub Article 47, 3 was inserted without amendment.

**MIN. CCC/TWGB/42/04**

**DELIBERATIONS RESUMED**

**Article 51**

**Freedom of Movement and Residence**

Sub-Article 1,2 and 3 were adopted without amendments.

**MIN.CCC/TWGB/43/04**

**MINORITY VIEWS ON ARTICLE 5 SUB  
ARTICLE 3**

The Hon. Delegates Gaudentia Atonga, Moses Leng’ete Ole Sisika and Teresa Osunga were of the contrary view.

**MIN. CCC/TWGB/44/04**

**ADJOURNMENT**

And the time being forty minutes past twelve O’clock the Acting Convenor adjourned the sitting until Monday January 19, 2004 at 9:00 a.m.

Signed:..... Date:.....  
**SUBA CHURCHILL MESHACK (ACTING CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 16, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Monday, January 19, 2004 at Tent No. 2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Substantive discussions on Bill of Rights and Citizenship, Articles 52 – 75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Date .....

Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTIETH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON MONDAY, JANUARY 19<sup>TH</sup>, 2004 AT 9:40 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

<b><u>PRESENT:</u></b>	<b>DELEGATES NUMBERS</b>
	<b>Acting Convenor</b>
1. Suba Churchill Meshack	475
2. Anne Njogu	227
3. Amina Zuberi	474
4. Anne Okoth	622
5. Bernadette Quadros	378
6. Dorcas Mbelersia	214
7. Esther Keino	200
8. Fahim Twaha	505
9. Fatuma Ali Saman	512
10. Florence Machayo	292
11. Francis N. Kaloki	417
12. Gaudentia Atonga	291
13. Jane Mwendu	435
14. John Katumanga	237
15. Joshua Jillo Onotto	466
16. Joyce Umbima	151
17. J.W. Nyagah	127
18. Kilonzo Charles Mutavi	455
19. Lawrence Mute	608
20. Lihanda K. Savai	360
21. Lorna Timanoi	20
22. Lucas K. Chepkitony	88
23. Magugu Arthur	519
24. Marie Therese Gachambi	97
25. Masanya Godfrey Okeri	451
26. Millie Odhiambo	365
27. Moses Leng'ete Ole Sisika	524
28. Neera Kent Kapila	473
29. Pamela Mboya	516
30. Peter O. Bwana	384
31. Rebecca Evelia Jandeka	502
32. Rose Arungu-Olende	526
33. Rosemary Kinyanjui	478
34. Sabenzia N. Wekesa	

35.	Sahara Ahmed Hillow	257
36.	Sheikh Abdalla	243
37.	Salah Maalim Alio	259
38.	Sylvanus Ogari	425
39.	Stephen Ondiek	168
40.	Simeon Lesrima	82
41.	Sing'oei Korir	464
42.	Teresa Osunga	411
43.	Wandati Abdulrahman Mirimo	547
44.	Wilfred Kiboro	619
45.	Yusuf Wako	269

**ABSENT WITH APOLOGY**

1.	Cecily Mbarire	-	Convenor
2.	Comm. Ibrahim Lethome	-	Rapporteur
3.	Nichasius Mugo		

**ABSENT**

1.	Ali Wario
2.	John Njue
3.	Choge Jim
4.	Lorna Laboso
5.	George Wesonga
6.	Sudi David Kiprono Sutter
7.	Wafula Wamunyinyi

**OBSERVERS PRESENT:**

1.	Diana Imali Akivaga	-	455B(Aide)
2.	Peterson Nyandonyi	-	189
3.	J.K. Wanjeru	-	68
4.	Joseph K. Waweru	-	69
5.	Kennedy Sanga	-	411B(Aide)
6.	Samuel Ongoro	-	097
7.	Davis Malombe	-	012
8.	Peninnah Vulimu	-	T204
9.	Moses Mwangi Mukami		

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Salome Muigai	-	Rapporteur
2.	Comm. Nancy Baraza	-	Rapporteur
3.	Jeremiah Nyegenye	-	Draftsman
4.	John Wanyoike	-	Clerk

- |    |                    |   |                             |
|----|--------------------|---|-----------------------------|
| 5. | Helene Namisi      | - | Assistant Programme Officer |
| 6. | Carol Ndindi       | - | Assistant Programme Officer |
| 7. | Martina Odhiambo   | - | Verbatim Recorder           |
| 8. | Michele Washington | - | Programme Officer           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/45/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Esther Keino, seconded by Hon. Marie Theresa Gachambi and was adopted by the Committee.

### **MIN. CCC/TWGB/46/04 CONFIRMATION OF MINUTES**

Minutes of the Nineteenth Sitting held on Friday January 16, 2004 were proposed by the Hon. Delegate Sabenzia N. Wekesa, seconded by the Hon. Yusuf Wako and were confirmed and signed by the Acting Convenor.

### **MIN. CCC/TWGB/47/04 MATTERS ARISING**

- (i) The Committee was informed that the Hon. Delegate Jim Choge attends another Committee meeting despite him appearing absent in his relevant Committee. (The issue had been raised with the Rapporteur General for updating of the Delegates list).
- (ii) Under Min.CCC/TWGB/37/04 inserted that "Sub Article 3 (b) was adopted without Amendments".
- (iii) Under Min.CCC/TWGB/40/04 the words "Thereupon the Acting Convenor Suba Churchill took the Chair, was inserted at the end of all the issues under Min.CCC/TWGB/41/04.
- (iv) (Under Min.CCC/TWGB/43/04 Article 5, was corrected to read Article 51, Sub-Article (3)

### **MIN. CCC/TWGB/48/04 DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

#### **Article 52 Refugees and Asylums.**

Article 52, Sub-Article 1 was adopted without amendments.

### **MIN.CCC/TWGB/49/04 MINORITY VIEW ON ARTICLE 52 SUB ARTICLE 1**

The Hon. Delegate Lihanda K. Savai was of the contrary view.

**MIN. CCC/TWGB/50/04**

**ARTICLE 53**

**Article 53**

**Freedom of trade, occupation and profession**

Article 53 Sub-Article 1 and 2 were adopted without amendments.

**Article 54**

**Property**

Article 54 Sub Article (1) at the end of the word “others” inserted the words “in any part of the Republic”.

Article 54 Sub-Article 1 was adopted with amendments.

**Article 54 Sub Article 2 (a) and (b)**

**Sub Article 2**

The word “to arbitrarily” was deleted.

Sub Article 2 was adopted with amendments.

**Sub Article 2(a) and (b)**

Sub-Article 2 (a) and (b) the word “to arbitrarily” was inserted in Sub-Article (a) before the word “deprive and in Sub-Article (b) before the word “deprive”.

Sub-Articles 2, (a) and (b) were adopted with amendments

**MIN.CCC/TWGB/51/04 MINORITY VIEW ON ARTICLE 54 SUB ARTICLE 1**

The Hon. Delegates, Anne Njogu, Dorcas Mbelersia, Pamela Mboya, Fatuma Ali Saman, Salah Maalim Alio and Lihanda K. Savai were of contrary view.

**MIN.CCC/TWGB/52/04 ARTICLE 54 NEW SUB ARTICLE(c)**

**New Sub-Article (c)**

A new Sub-Article (c) “limit in anyway restrict the enjoyment of any right under this Article or any of the Grounds under Article 34 Sub-Clause (1)” was inserted.

A New Sub-Clause 2 (c) was adopted.

**Article 54 Sub-Article 3 (a)**

Sub-Article 3(a)

Sub-Article 3 (a) was adopted without amendments.

**MIN. CCC/TWGB/53/04**

**DEFERRED ARTICLE 54 SUB ARTICLE 3 (b) (i)**

Sub-Article 3 (b) (i)

Sub-Article 3 (b) (i) was deferred to another day to facilitate the draftsman to redraft and reword the Sub-Article and the word “fair” to be replaced with a much more appropriate word.

Sub-Article 3 (b) (ii)

Sub-Article 3 b(ii) was adopted without amendments.

Sub-Article 4

Sub-Article 4 was adopted without amendments.

**MIN.CCC/TWGB/54/04**

**MINORITY VIEWS ARTICLE 54 SUB ARTICLE 3**

**b (ii)**

The Hon. Delegate Lihanda K. Savani was of the contrary view.

**MIN. CCC/TWGB/55/04**

**ADJOURNMENT**

And the time being fifteen minutes past one O'clock the Acting Convenor adjourned the sitting until 2.00 p.m. this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

**DELEGATES  
NUMBERS**

	<b>Acting Convenor</b>
1. Suba Churchill Meshack	
2. Cecily Mbarire	
3. Anne Njogu	475
4. Amina Zuberi	227
5. Anne Okoth	474
6. Bernadette Quadros	622
7. Dorcas Mbelersia	378

8.	Esther Keino	214
9.	Fahim Twaha	200
10.	Fatuma Ali Saman	505
11.	Florence Machayo	512
12.	Francis N. Kaloki	292
13.	Gaudentia Atonga	417
14.	Jane Mwendu	291
15.	John Katumanga	435
16.	Joshua Jillo Onotto	237
17.	Joyce Umbima	466
18.	Lawrence Mute	455
19.	Lihanda K. Savai	608
20.	Lorna Timanoi	360
21.	Lucas K. Chepkitony	20
22.	Marie Therese Gachambi	519
23.	Masanya Godfrey Okeri	97
24.	Millie Odhiambo	451
25.	Moses Leng'ete Ole Sisika	365
26.	Neera Kent Kapila	524
27.	Pamela Mboya	473
28.	Peter O. Bwana	516
29.	Rebecca Evelia Jandeka	384
30.	Rose Arungu-Olende	502
31.	Rosemary Kinyanjui	526
32.	Sabenzia N. Wekesa	257
33.	Sheikh Abdalla	243
34.	Sylvanus Ogari	425
35.	Stephen Ondiek	168
36.	Teresa Osunga	411
37.	Wandati Abdulrahman Mirimo	547
38.	Wilfred Kiboro	619
39.	Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1.	Comm. Ibrahim Lethome	-	Rapporteur
2.	Nichasius Mugo		
3.	Simeon Lesrima		
4.	Salah Maalim Alio		

### **ABSENT**

1.	Ali Wario
2.	John Njue
3.	Choge Jim
4.	Lorna Laboso

5. George Wesonga
6. Sudi David Kiprono Sutter
7. Wafula Wamunyinyi
8. Kilonzo Charles Mutavi
9. Magugu Arthur
10. Sing'oei Korir
11. J.W. Nyagah

**OBSERVERS PRESENT:**

- |    |                     |   |            |
|----|---------------------|---|------------|
| 1. | Diana Imali Akivaga | - | 455B(Aide) |
| 2. | Peterson Nyandonyi  | - | 189        |
| 3. | J.K. Wanjeru        | - | 68         |
| 4. | Joseph K. Waweru    | - | 69         |
| 5. | Kennedy Sanga       | - | 411B(Aide) |
| 6. | Samuel Ongoro       | - | 097        |
| 7. | Davis Malombe       | - | 012        |
| 8. | Peninnah Vulimu     | - | T204       |
| 9. | Moses Mwangi Mukami |   |            |

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                     |   |                             |
|----|---------------------|---|-----------------------------|
| 1. | Comm. Salome Muigai | - | Rapporteur                  |
| 2. | Comm. Nancy Baraza  | - | Rapporteur                  |
| 3. | Jeremiah Nyegenye   | - | Draftsman                   |
| 4. | John Wanyoike       | - | Clerk                       |
| 5. | Helene Namisi       | - | Assistant Programme Officer |
| 6. | Carol Ndindi        | - | Assistant Programme Officer |
| 7. | Martina Odhiambo    | - | Verbatim Recorder           |
| 8. | Michele Washington  | - | Programme Officer           |

The Committee reassembled and resumed deliberations at 2:00 p.m.

**MIN. CCC/TWGB/56/04**

**DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

Article 55  
Labour relations

Article 55 Sub-Article 1 was adopted without amendments.

Sub-Articles 2, (a), (b), (c) and (d)

Sub-Articles 2, (a), (b), (c) and (d) were adopted without amendments.

Sub-Article 3 (a) and (b)

Sub-Article 3 (a) and (b) were adopted without amendments

Sub-Article 4, (a), (b) and (c)

Sub-Article 4, (a), (b) and (c) were adopted without amendments.

Sub-Article 5

Sub-Article 5 was adopted without amendments

**MIN. CCC/TWGB/57/04**

**ARTICLE 55 NEW SUB ARTICLE (6)**

A New Sub-Article 6

A new Sub-Article 6 “within two years of coming into force of this constitution parliament shall enact legislation giving full effect to this Article” was inserted

A New Sub-Article 6, was adopted.

**MIN. CCC/TWGB/58/04**

**ARTICLE 56**

**Article 56**  
**Social Security**

Article 56, deleted all the words after the word “Social Security”.

Article 56 as amended was adopted.

New Sub Articles 56 (i) and (ii)

A New Sub-Articles 56(i) “The state shall provide appropriate Social Security assistance to persons who are unable to support themselves and their dependants was inserted

The New Sub-Article (i) was adopted

New Sub-Article 56 (ii)

A new Sub-Article 56(ii) “within 3 years of coming into force of this constitution Parliament shall enact Legislation giving full effect to this article was inserted.

The New Sub-Article (ii) was adopted

**MIN. CCC/TWGB/59/04 RENUMBERING OF ARTICLE 56**

Article 56 was renumbered as New Sub-Article 56 (i) and (ii)

**MIN. CCC/TWGB/60/04 ARTICLE 57**

**Article 57**

**Health**

Article 57 Sub-Articles 1 and 2 were adopted without amendments.

**MIN. CCC/TWGB/61/04**

**MINORITY VOTE ARTICLE 57 SUB ARTICLE 1**

The Hon. Delegates Teresa Gachambi and Bishop Ondiek were of the contrary view.

**MIN. CCC/TWGB/62/04**

**ADJOURNMENT**

And the time being twenty minutes past five O'clock the Acting Convenor adjourned the Sitting until Tuesday January 20, 2004 at 9:00 a.m.

Signed:..... Date:.....  
**SUBA CHURCHILL MESHACK (ACTING CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 19, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Tuesday, January 20, 2004 at Tent No. 2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Substantive discussion on Bill of Rights and Citizenship, Articles 58 -75**
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time.....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTY FIRST SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, JANUARY 20<sup>TH</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convenor
2. Suba Churchill Meshack		463
3. Anne Njogu		475
4. Amina Zuberi		227
5. Anne Okoth		474
6. Dorcas Mbelersia		378
7. Esther Keino		214
8. Fahim Twaha		200
9. Fatuma Ali Saman		505
10. Florence Machayo		512
11. Francis N. Kaloki		292
12. Gaudentia Atonga		417
13. George Wesonga		398
14. Jane Mwendu		291
15. John Katumanga		435
16. John Njue		539
17. Joshua Jillo Onotto		237
18. Joyce Umbima		466
19. J.W. Nyagah		151
20. Kilonzo Charles Mutavi		127
21. Lawrence Mute		455
22. Lihada K. Savai		608
23. Lucas K. Chepkitony		020
24. Marie Terese Gachambi		519
25. Masanya Godfrey Okeri		97
26. Millie Odhiambo		451
27. Moses Leng'ete Ole Sisika		365
28. Neera Kent Kapila		524
29. Pamela Mboya		473
30. Peter O. Bwana		516
31. Rebecca Evelia Jandeka		384
32. Rosemary Kinyanjui		526
33. Sabenzia N. Wekesa		478
34. Sahara Ahmed Hillow		257

35. Sheikh Abdalla	243
36. Salah Maalim Alio	259
37. Sylvanus Ogari	425
38. Simeon Lesrima	082
39. Stephen Ondiek	168
40. Sing'oei Korir	464
41. Teresa Osunga	411
42. Wandati Abdulrahman Mirimo	547
43. Wilfred Kiboro	619
44. Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1. Nichasius Mugo

### **ABSENT**

1. Ali Wario
2. Choge Jim
3. Lorna Laboso
4. Lorna Timanoi
5. Sudi David Kiprono Sutter
6. Wafula Wamunyinyi
7. Bernadette Quadros
8. Magugu Arthur
9. Rose Arungu-Olende

### **OBSERVERS PRESENT:**

1. Diana Imali Akivaga	-	455B(Aide)
2. Joseph K. Waweru	-	69
3. Kennedy Sanga	-	411B(Aide)
4. Samuel Ongoro	-	097
5. Davis Malombe	-	012
6. Peninnah Vulimu	-	T204
7. Tim Gitau		

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome	-	Rapporteur
2. Comm. Salome Muigai	-	Rapporteur
3. Comm. Nancy Baraza	-	Rapporteur
4. Jeremiah Nyegenye	-	Draftsman
5. John Wanyoike	-	Clerk

- |    |                    |   |                                 |
|----|--------------------|---|---------------------------------|
| 6. | Helene Namisi      | - | Assistant Programme Officer     |
| 7. | Carol Ndindi       | - | Assistant Programme Officer     |
| 8. | Martina Odhiambo   | - | Verbatim Recorder               |
| 9. | Michele Washington | - | SPD Asst. to Rapporteur General |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/63/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Peter O. Bwana, seconded by Hon. Delegate Neera Kent Kapila and was adopted by the Committee.

### **MIN. CCC/TWGB/64/04 CONFIRMATION OF MINUTES**

Minutes of the Twentieth Sitting held on Monday January 19, 2004 were proposed by the Hon. Delegate Rebecca Evelia Jandeka, seconded by the Hon. Pamela Mboya, were confirmed and signed by the Convenor.

### **MIN. CCC/TWGB/65/04 MATTERS ARISING**

- (i) Under Min.CCC/TWGB/48/04, Article 52 Refugees and Asylum inserted:-
- “Sub-Article 2 to 3
- Sub-Article 2 to 3 were adopted without amendments.
- (ii) Under Min.CCC/TWGB/54/04, the name Lihand Savani should read Lihanda Savai.
- (iii) Inserted under Min.CCC/TWGB/57/04, the Hon. Delegate Teresa Osunga was of the contrary view on Article 55 Sub-Article 6.
- (iv) Under Min.CCC/TWGB/61/04, the Hon. Delegates Teresa Gachambi and Bishop Ondiek should read Terese Gachambi and Bishop Ondiek.
- (v) Under Min.CCCTWGB/54/04, the Hon. Delegate Lihanda Savani should read Lihada Savai.
- (vi) Under Min.CCC/TWGB/58/04, New Sub-Article 56 (i) and (ii) where ever appears, it should read New Sub-Article 56(ii) and (iii).

### **MIN. CCC/TWGB/66/04 NOTICE OF MOTION MATTERS OF NATIONAL IMPORTANCE**

The Hon. Delegate John Katumanga gave a notice of motion to discuss a matter of National importance, as the Delegates had been called “an unhonourable name”.

Motion made and question put.

Debate arising

Question put and agreed on

The Committee resolved that it won't be cowed or intimidated by outside utterances as the onus of the Constitution had been bestowed upon them by Kenyans.

#### **MIN. CCC/TWGB/67/04**

#### **DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

#### **Article 54 Property**

Article 54 Sub-Article 3 b (i)

Sub-Article 3 b (i) was amended to read “requires prompt payment in full, of a just compensation to the person, before the property is taken”; and deleted the words “of fair and adequate” after the word “payment” and before the word “compensation” and inserted the words “in full of a just” therein.

Sub-Article 3 b (i) was adopted with amendments.

#### **MIN.CCC/TWGB/68/04 ARTICLE 58 SUBSTANTIVE MOTION**

The Hon. Delegates Suba Churchill, Meshack Moved a substantive motion to revoke an earlier decision made on Article 58, Education Sub-Articles 1 and 2.

Motion made and question put.

Debate arising

Question put and agreed on

The delegates resolved and rescinded the earlier decision on Article 58 and adopted Article 58 as indicated below.

## **Article 58**

### **Education**

Article 58 Sub Article 1

Sub-Article 1 deleted all the words after the word “education”  
Sub-Article 1 was adopted with amendments

Sub Article 2

Sub Article 2 inserted the word “pre-primary” before the word “primary” and after the word “compulsory”.

Sub Article 2 was adopted with amendments.

Sub Article 3

Sub Article 3 inserted the word “secondary” before the word “and” and after the word “available”.

Sub Article 3 was adopted with amendments.

Sub Article 4

Sub Article 4 was adopted without amendments

## **MIN. CCC/TWGB/69/04**

## **ARTICLE 59**

### **Article 59 Housing**

Article 59, Sub Article 1

Sub Article 1, deleted the words “have access to adequate” before the word “to” and after the word “housing” inserted the words “adequate and accessible” therein.

Sub Article 1 was adopted with amendments.

Sub Article 2

Sub Article 2 was adopted without amendments.

Sub Article 3

Sub Article 3 was adopted without amendments.

*(The draftsman to reword the Sub Article to reflect that Parliament shall not enact any law to Authorizes Arbitrary eviction).*

**Article 60**  
**Food**

Article 60

Article 60 deleted all the words from “food in adequate quantities and of adequate up to the end and inserted the words “adequate, quantity, quality and cultural acceptable food” thereof.

Article 60 was adopted with amendments.

**Article 61**  
**Water**

Article 61

Article 61 inserted the words “access” before the word “water”, and after the word “to”.

Article 61 was adopted with amendments.

**Article 62**  
**Sanitation**

Article 62

Article 62 was adopted without amendments.

**MIN. CCC/TWGB/70/04**

**NEW ARTICLE**

Motion made that:-

A new Article on Clothing be inserted after Article 62.

Motion made and question put.

Debate arising

Question put and agreed on

The Committee resolved that a new Article on Clothing be inserted after Article 62.

**MIN. CCC/TWGB/71/04****ADJOURNMENT**

And the time being one O'clock the Convenor adjourned the sitting until 2.00 p.m. this afternoon.

**AFTERNOON SITTING****PRESENT:****DELEGATES  
NUMBERS**

1.	Cecily Mbarire	-	Convenor
2.	Suba Churchill Meshack		463
3.	Anne Njogu		227
4.	Anne Okoth		474
5.	Dorcas Mbelersia		378
6.	Esther Keino		214
7.	Florence Machayo		512
8.	Francis N. Kaloki		292
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19.	Moses Leng'ete Ole Sisika		365
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21.	Nichasius Mugo		287
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30.	Sylvanus Ogari		425
31.	Stephen Ondiek		168
32.	Teresa Osunga		411
33.	Wilfred Kiboro		619
34.	Yusuf Wako		269

### **ABSENT WITH APOLOGY**

1. Lawrence Mute
2. John Njue
3. Fatuma Ali Saman
4. Simeon Lesrima
5. Salah Maalim Alio
6. Masanya Godfrey Okeri

### **ABSENT**

1. Ali Wario
2. Choge Jim
3. Lorna Laboso
4. Sudi David Kiprono Sutter
5. Wafula Wamunyinyi
6. Kilonzo Charles Mutavi
7. Magugu Arthur
8. Sing'oei Korir
9. J.W. Nyagah
10. Bernadette Quadros
11. Fahim Twaha
12. Lucas K. Chepkitony
13. Wandati Abdulrahman Mirimo

### **OBSERVERS PRESENT:**

- |                       |   |            |
|-----------------------|---|------------|
| 1. Peterson Nyandonyi | - | 189        |
| 2. Joseph K. Waweru   | - | 69         |
| 3. Kennedy Sanga      | - | 411B(Aide) |
| 4. Samuel Ongoro      | - | 097        |
| 5. Davis Malombe      | - | 012        |

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Comm. Nancy Baraza    | - | Rapporteur                  |
| 4. Jeremiah Nyegenye     | - | Draftsman                   |
| 5. John Wanyoike         | - | Clerk                       |
| 6. Helene Namisi         | - | Assistant Programme Officer |
| 7. Carol Ndingi          | - | Assistant Programme Officer |
| 8. Martina Odhiambo      | - | Verbatim Recorder           |
| 9. Michele Washington    | - | Programme Officer           |

The Committee reassembled and resumed deliberations at 2:25 p.m.

**MIN. CCC/TWGB/72/04**

**DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

**Article 63  
Environment**

Article 63, Sub Article (a)

Article 63, Sub Article (a) was adopted without amendments.

Sub Article (b) (i), (ii) and (iii)

Sub Article (b) (i), (ii) and (iii) were adopted without amendments.

Sub Article (c)

Sub Article (c) was adopted without amendments.

**Article 63 A  
Language and Culture**

Article 63 A Sub Article (1)

Article 63 A Sub Article (1) was adopted without amendments.

Sub Article 2 (a) and (b)

Sub Article 2 (a) and (b) were adopted without amendments.

Sub Article 3

Sub Article 3 was adopted without amendments

Sub Article 4

Sub Article 4 was adopted without amendments.

**MIN. CCC/TWGB/73/04 ARTICLE 64**

**Article 64  
Consumer rights**

Article 64 Sub Article 1, (a) and (b) (c) and (d)

Sub Article 1, (a) (b) (c) and (d) were adopted without amendments.

Sub Article 2

Sub-Article 2 inserted the words “and goods” before the word “shall” and after the word “services”

Sub Article 2 was adopted with amendments.

Sub Article 3

Sub Article 3 was adopted without amendments.

Sub Article 4

Sub Article 4 was adopted without amendments.

Sub Article 5

Sub Article 5 inserted the words “within three years of coming into force of this constitution” before the words “to give” and before the word “Legislation” therein.

Sub Article 5 was adopted with amendments.

Sub Article 5 (a) and (b)

Sub Article 5 (a) and (b) were adopted without amendments.

**MIN. CCC/TWGB/74/04 ARTICLE 65**

**Article 65**

**Fair Administration**

Article 65 Sub Article 1

Sub Article 1 was adopted without amendments

Sub Article 2

Sub Article 2 was adopted without amendments.

Sub Article 3

Sub Article 3 was adopted without amendments.

**Article 66**  
**Right not to obey Unlawful Instructions**

Article 66 Sub Article 1 and 2

Article 66 Sub Article 1 and 2 were adopted without amendments.

**Article 67**  
**Access to Courts**

Article 67 Sub Article 1

Article 67 Sub Article 1 was adopted without amendments.

**Article 68**  
**Rights of arrested persons**

Article 68 Sub Article 1 (a), (b), (c), (d), (e) (i) (ii) (f), (g) and 2

Article 68 Sub Article 1 (a), (b), (c), (d), (e) (i) (ii) (f), (g) and 2

Were adopted without amendments.

**MIN. CCC/TWGB/75/04 MINORITY VIEW ON ARTICLE 68 SUB ARTICLE**  
**(e ii)**

The Hon. Delegates Nichasius Mugo and George Wesonga were of the contrary view.

**MIN. CCC/TWGB/76/04 ARTICLE 69**

**Article 69**  
**Fair trial**

Article 69  
Article 69 Sub Articles 1, (a) to (q)

Sub Articles 1, (a) (b) (c) (d) )e) (f) (g) and (h) were adopted without amendments.

Sub Articles (i) to (n)

Sub Articles (i) (j) (k) (l) (m) and (n) were adopted without amendments.

Sub Articles (o) and (p)

Sub Articles (o) and (p) were adopted without amendments

Sub Articles 2-6

Sub Articles 2,3,4,5 and 6 were adopted without amendments.

**MIN. CCC/TWGB/77/04 RENUMBERING OF ARTICLE 69 Sub Articles (p) and (q)**

Sub Article (p) and (q)

Sub Article (p) and (q) were renumbered as “o” and “p” respectively.

**MIN. CCC/TWGB/78/04 MINORITY VIEW ARTICLE 69 SUB ARTICLE (h)**

Sub Article (h).

The Hon. Delegates Terese Gachambi and Joyce Umbima were of the contrary view.

**MIN. CCC/TWGB/79/04**

**ADJOURNMENT**

And the time being five O'clock the Convenor adjourned the Sitting until Wednesday January 21, 2004 at 9:00 a.m.

Signed:.....

Date:.....

**CECILY MBARIRE (CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 20, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, January 21, 2004 at Tent No. 2, Bomas of Kenya at 9.00 am**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Substantive discussions on Bill of Rights and Citizenship, Articles 70 –75
5. Disposing off pending issues
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire**

Signed .....

Date ..... Time.....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYSECOND SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, JANUARY 21<sup>ST</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convenor
2. Suba Churchill Meshack		463
3. Anne Njogu		475
4. Amina Zuberi		227
5. Anne Okoth		474
6. Dorcas Mbelesia		378
7. Esther Keino		214
8. Fatuma Ali Saman		505
9. Florence Machayo		512
10. Francis N. Kaloki		292
11. Gaudentia Atonga		417
12. George Wesonga		398
13. Jane Mwendu		291
14. John Katumanga		435
15. Joshua Jillo Onotto		237
16. Joyce Umbima		466
17. Lawrence Mute		455
18. Lihada Kemen Savai		608
19. Lorna Timanoi		360
20. Lucas K. Chepkitony		020
21. Marie Therese Gachambi		519
22. Masanya Godfrey Okeri		97
23. Millie Odhiambo		451
24. Moses Leng'ete Ole Sisika		365
25. Neera Kent Kapila		524
26. Nichasius Mugo		287
27. Pamela Mboya		473
28. Peter O. Bwana		516
29. Rebecca Evelia Jandeka		384
30. Rosemary Kinyanjui		526
31. Rose Arungu-Olende		502
32. Sabenzia N. Wekesa		478
33. Sahara Ahmed Hillow		257
34. Sheikh Abdalla		243

35. Sylvanus Onyambu Ogari	425
36. Sing'oei Korir	464
37. Teresa Osunga	411
38. Wilfred Kiboro	619
39. Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1. Comm. Ibrahim Lethome	-	Rapporteur
2. Comm. Salome Muigai	-	Rapporteur
3. John Njue		
4. Stephen Ondiek		
5. Wandati Abdulrahman Mirimo		
6. Simeon Lesrima		

### **ABSENT**

1. Ali Wario
2. Choge Jim
3. Lorna Laboso
4. Sudi David Kiprono Sutter
5. Wafula Wamunyinyi
6. Bernadette Quadros
7. Magugu Arthur
8. Fahim Twaha
9. Kilonzo Charles Mutavi
10. Salah Maalim Alio
11. J.W. Nyagah

### **OBSERVERS PRESENT:**

1. Diana Imali Akivaga	-	455B(Aide)
2. Joseph K. Waweru	-	69
3. J.K. Wanjera	-	068
4. Kennedy Sanga	-	411B(Aide)
5. Samuel Ongoro	-	097
6. Davis Malombe	-	012
7. Peninnah Vulimu	-	T204
8. Tim Gitau		
9. Peterson Nyandonyi	-	189
10. Mwangi M.M. Mukami		
11. Moses Njuguna		

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                       |   |                                 |
|-----------------------|---|---------------------------------|
| 1. Comm. Nancy Baraza | - | Rapporteur                      |
| 2. Jeremiah Nyegenye  | - | Draftsman                       |
| 3. John Wanyoike      | - | Clerk                           |
| 4. Helene Namisi      | - | Assistant Programme Officer     |
| 5. Carol Ndindi       | - | Assistant Programme Officer     |
| 6. Martina Odhiambo   | - | Verbatim Recorder               |
| 7. Michele Washington | - | SPD Asst. to Rapporteur General |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/80/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Gaudentia Atonga, seconded by Hon. Delegate George Wesonga and was adopted by the Committee.

### **MIN. CCC/TWGB/81/04 CONFIRMATION OF MINUTES**

Minutes of the Twenty first Sitting held on Tuesday January 20, 2004 were proposed by the Hon. Delegate Amina Zuberi, seconded by the Hon. Dorcas Mbelersia, were confirmed and signed by the Convenor.

### **MIN. CCC/TWGB/82/04 MATTERS ARISING**

- a. The name Marie Terese wherever it appears should read Marie Therese Gachambi.
- (ii) Sylvanus Ogari should read Sylvanus Onyambu Ogari
- (iii) Lorna Timanoi was inadvertently marked absent but was present.
- (iv) Lihanda K. Savai should read Lihada Kemen Savai
- (v) Dorcas Mbelersia should read Dorcas Mbelesia.
- (vi) Under Min.CCC/TWGB/66/04 the word "unhonourable" should read "dishonourable".
- (vii) Under Min.CCC/TWGB/69/04, insert Minority view of Hon. Delegates, Sahara Ahmed Hillow, Jillo Onotto and Moses Leng'ete Sisika on Article 58, Education.
- (viii) The Hon. Delegates Sahara Ahmed Hillow and Lorna Timanoi moved a motion to revisit Article 58, Education, to insert the words nomad/patriolists.

Motion made and question put.

The Committee resolved to revert to Article 58 Education.

**MIN. CCC/TWGB/83/04**

**DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

(i) **Article 70**  
**Rights of Persons held in Custody**

Article 70, Sub Article 1, 2 (a) (b) (c) (d) (e) (f) (g) (h) (l) (m) (n) and 3 were adopted without amendments.

(ii) Sub Article 2 (i)

Sub Article 2 (i) deleted the word “prison” before the word “dispute” and after the word “and”.

Sub Article 2 (i) was adopted with amendments.

(iii) Sub Article 2 (j)

Sub Article 2 (j) inserted the words “by Authorised persons” before the word “informed” and after the word “of the”.

Sub Article 2 (j) was adopted with amendments.

(iv) Sub Article 2 (k)

Sub Article 2 (k) deleted the words “prison before the word “disciplinary” and after the word “in any”.

Sub Article 2 (k) was adopted with amendments.

(v) Sub Article 2 (n)

Sub Article 2 (n) deleted all the words after the words “to vote”.

Sub Article 2 (n) was adopted with amendments.

**MIN.CCC/TWGB/84/04 NEW SUB ARTICLE 2(o)**

New Sub Article 2 (o)

Motion made that a new Sub Article be inserted after Sub Article 2 (n).

Motion made

*That “in the case of a person with disabilities to facilities modified as necessary to fit the circumstances of such persons disabilities”*

Question put and agreed on.

The new Sub Article 2 (o) was inserted after Sub Article 2 (n)

**MIN. CCC/TWGB/85/04**

**MINORITY VIEW ARTICLE 70 SUB ARTICLE 2(c)**

The Hon. Delegate Lihada Kemen Savai was of the contrary view on Article 2(c).

**MIN. CCC/TWGB/86/04**

**ARTICLE 71**

**Article 71  
State of emergency**

Article 71, Sub Article 1 (a) and (b)

Sub Article 1 (a) and (b) were adopted without amendments.

Sub Article 2 (a)

Sub Article 2 (a) was adopted without amendments.

Sub Article 2 (b)

Sub Article 2 (b) deleted the words “twenty one” and inserted the words “Fourteen” before the word “days” and after the word “than”.

Sub Article 2 (b) was adopted with amendments.

Sub Article 3 (a) (i) (ii) and (b)

Sub Article 3 (a) (i) (ii) and (b) were adopted without amendments.  
Sub Article 4

Sub Article 4 was adopted without amendments.

Sub Article 5 (a) (b) (c)

Sub Article 5 (a) (b) (c) were adopted without amendments.

Sub Article 6

Sub Article 6 (a) and (b)

Sub Article 6 (a) (b) (i) (ii) and (iii) were adopted without amendments.

Sub Article 7

Sub Article 7 was adopted without amendments.

**MIN. CCC/TWGB/87/04**

**MINORITY VIEW SUB ARTICLE 2(b)**

The Hon. Delegates John Katumanga and George Wesonga were of the contrary view.

**MIN. CCC/TWGB/88/04**

**ARTICLE 72**

**Article 72**

**Application of the Bill of Rights**

Article 72, Sub Article 1, 3. 4, (a) (b) and (c)

Sub Articles 1,3,4,(a) (b) and (c) were adopted without amendments.

Sub Article 2

Sub Article 2 deleted the words “A” before the word “person” and the word “any” before the word “repute” and after the word “of”

Inserted the word “every” before the word “person”, the word “shall” before the word “enjoy” and also after the word “enjoy” and further inserted the word “the” before the word “right” and after the word “of”.

Sub Article 2 was adopted with amendments.

**MIN. CCC/TWGB/89/04**

**ADJOURNMENT**

And the time being ten minutes past one O'clock, the Convenor adjourned the sitting until 2.30 p.m. this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convenor
2. Suba Churchill Meshack		463
3. Anne Njogu		475
4. Amina Zuberi		227
5. Anne Okoth		474

6.	Bernadette Quadros	622
7.	Dorcas Mbelesia	378
8.	Esther Keino	214
9.	Fatuma Ali Saman	505
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36.	Sylvanus Onyambu Ogari	425
37.	Teresa Osunga	411
38.	Wilfred Kiboro	619
39.	Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1.	Comm. Ibrahim Lethome	-	Rapporteur
2.	Comm. Salome Muigai	-	Rapporteur
3.	Lawrence Mute		
4.	John Njue		
5.	Simeon Lesrima		
6.	Stephen Ondiek		
7.	Wandati Abdulrahman Mirimo		
8.	Salah Maalim Alio		

## **ABSENT**

1. Ali Wario
2. Choge Jim
3. Lorna Laboso
4. Sudi David Kiprono Sutter
5. Wafula Wamunyinyi
6. Magugu Arthur
7. Sing'oei Korir
8. Fahim Twaha
9. Masanya Godfrey Okeri

## **OBSERVERS PRESENT:**

- |                       |   |            |
|-----------------------|---|------------|
| 1. Peterson Nyandonyi | - | 189        |
| 2. Joseph K. Waweru   | - | 69         |
| 3. Kennedy Sanga      | - | 411B(Aide) |
| 4. Samuel Ongoro      | - | 097        |
| 5. Davis Malombe      | - | 012        |

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                       |   |                             |
|-----------------------|---|-----------------------------|
| 1. Comm. Nancy Baraza | - | Rapporteur                  |
| 2. Jeremiah Nyegenye  | - | Draftsman                   |
| 3. John Wanyoike      | - | Clerk                       |
| 4. Helene Namisi      | - | Assistant Programme Officer |
| 5. Carol Ndingi       | - | Assistant Programme Officer |
| 6. Martina Odhiambo   | - | Verbatim Recorder           |

The Committee reassembled and resumed deliberations at 2:25 p.m.

### **MIN. CCC/TWGB/90/04**

### **DELIBERATION CITIZENSHIP AND BILL OF RIGHTS**

#### **Article 73**

**Right to ask the Commission on Human rights and Administrative Justice or court to uphold the Bill of rights.**

Article 73 Sub Article 1 (a) (b) (c) (d) and (e)

Sub Article 1 (a) (b) (c) (d) and (e) were adopted without amendments.

Sub Article 2, (a) and (b)

Sub Article 2, (a) and (b) were adopted without amendments.

Sub Article 3, (a) (b) (c) (d) and (e)

Sub Article 3, (a) (b) (c) (d) and (e) were adopted without amendments.

**Article 74**

**Authority of the court to uphold the Bill of Rights**

Article 74, Sub Articles 1,2,3,(a) (b) (c) (d), 4 and 5

Sub Articles 1,2,3,(a) (b) (c) (d), 4 and 5 were adopted without amendments.

**Article 75**

**Interpretation of the Bill of Rights**

Article 75 Sub Article 1 (a)

Sub Article 1 (a) inserted the word “equity” before the words “and freedom” and after the word “equality”.

Sub Article 1 (a) was adopted with amendments.

Sub Articles 1, (b) and (c)

Sub Article 1, (b) and (c) were adopted without amendments.

Sub Article 2

Sub Article 2 was adopted without amendment.

Sub Article 3

Sub Article 3, was adopted without amendments.

Sub Article 4 (a) (b) and (c)

Sub Article 4 (a) (b) and (c) were adopted without amendments.

**MIN. CCC/TWGB/91/04 MINORITY VIEW ARTICLE 75 SUB ARTICLE 2**

The Hon. Delegate Anne Njogu was of the contrary view on Article 75 Sub Article 2.

**MIN. CCC/TWGB/92/04**

**ADJOURNMENT**

Motion made for adjournment

That the Committee do adjourn until tomorrow Thursday January 22, 2003

Debate arising  
Question put and agreed on.

And the time being forty minutes past three O'clock the Convenor adjourned the Sitting until Thursday January 22, 2004 at 9:00 a.m.

Signed:.....

Date:.....

**CECILY MBARIRE (CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 21, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Thursday, January 22, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Disposing off pending issues (Bill of Rights and Citizenship)**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire (Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYTHIRD SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, JANUARY 22<sup>ND</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convenor
2. Suba Churchill Meshack		463
3. Amina Zuberi		227
4. Anne Okoth		474
5. Bernadette Quadros		622
6. Dorcas Mbelesia		378
7. Esther Keino		214
8. Fatuma Ali Saman		505
9. Florence Machayo		512
10. Francis N. Kaloki		292
11. Gaudentia Atonga		417
12. George Wesonga		398
13. J.W. Nyagah		151
14. Jane Mwende		291
15. John Katumanga		435
16. Joshua Jillo Onotto		237
17. Joyce Umbima		466
18. Kilonzo Charles Mutavi		127
19. Lihada Kemen Savai		608
20. Lorna Timanoi		360
21. Lucas K. Chepkitony		020
22. Marie Therese Gachambi		519
23. Masanya Godfrey Okeri		97
24. Magugu Arthur		088
25. Millie Odhiambo		451
26. Moses Leng'ete Ole Sisika		365
27. Neera Kent Kapila		524
28. Nichasius Mugo		287
29. Pamela Mboya		473
30. Peter O. Bwana		516
31. Rebecca Evelia Jandeka		384
32. Rosemary Kinyanjui		526
33. Rose Arungu-Olende		502
34. Sabenzia N. Wekesa		478

35. Sahara Ahmed Hillow	257
36. Salah Maalim Alio	259
37. Sheikh Abdalla	243
38. Sylvanus Onyambu Ogari	425
39. Sing'oei Korir	464
40. Teresa Osunga	411
41. Wilfred Kiboro	619

### **ABSENT WITH APOLOGY**

1. Comm. Nancy Baraza - Rapporteur
2. John Njue
3. Stephen Ondiek
4. Wandati Abdulrahman Mirimo
5. Sudi David Kiprono Sutter
6. Anne Njogu
7. Fahim Twaha
8. Lawrence Mute

### **ABSENT**

1. Ali Wario
2. Wafula Wamunyinyi
3. Lorna Laboso
4. Yusuf Wako
5. Simeon Lesrima

### **OBSERVERS PRESENT:**

- |                     |   |            |
|---------------------|---|------------|
| 1. Joseph K. Waweru | - | 69         |
| 2. Kennedy Sanga    | - | 411B(Aide) |
| 3. Samuel Ongoro    | - | 097        |
| 4. Peninnah Vulimu  | - | T204       |
| 5. Tim Gitau        | - | 176        |
| 6. Patrick Maiba    |   |            |
| 7. Jane Ogot        | - | 015        |

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur                  |
| 2. Comm. Salome Muigai   | - | Rapporteur                  |
| 3. Jeremiah Nyegenye     | - | Draftsman                   |
| 4. John Wanyoike         | - | Clerk                       |
| 5. Helene Namisi         | - | Assistant Programme Officer |
| 6. Carol Ndindi          | - | Assistant Programme Officer |
| 7. Martina Odhiambo      | - | Verbatim Recorder           |

## **PRAYER**

The meeting opened with a word of prayer.

## **MIN. CCC/TWGB/93/04      ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Joshua Jillo Onotto, seconded by Hon. Delegate Lorna Timanoi and was adopted by the Committee.

## **MIN. CCC/TWGB/94/04                      CONFIRMATION OF MINUTES**

Minutes of the Twentysecond Sitting held on Wednesday January 21, 2004 were proposed by the Hon. Delegate Neera Kent Kapila, seconded by the Hon. Delegate Pamela Mboya, were confirmed and signed by the Convenor.

## **MIN. CCC/TWGB/95/04                      MATTERS ARISING**

(i)                      Committee resolved that since the Hon. Delegate Choge Jim was a member of another committee, his name should be deleted from the Members list.

(ii)                     The Hon. Delegate Jane Ogot an observer had not been signing the attendance list and had her name not appearing as present. The committee resolved that she was always present from Monday 19<sup>th</sup> January to Thursday 22<sup>nd</sup>, 2004.

(iii)                    The Hon. Delegate Lihada Kemen Savai should read Lihanda Kemeni Savai.

(iv)                    Under Min.CCC/TWGB/82/04 (vii) inserted the name Hon. Delegate Lorna Timanoi which had been left out inadvertently and also inserted the words "37 Children" and deleted the words "58 Education".

## **MIN. CCC/TWGB/96/04                      DELIBERATION CITIZENSHIP AND BILL OF RIGHTS, PENDING ISSUES**

### **(i)      Article 23 Dual Citizenship**

Article 23 Sub Article 1, 2 and 3

Sub Article 1,2 and 3 were deferred to another day.

## **MIN. CCC/TWGB/97/04                      ARTICLE 17**

### **Article 17 Retention of existing Citizenship**

Article 17 Sub Article 2

Sub Article 2 was renumbered as new Article 17 A.

The New Article 17 A was adopted

The title of the new Article 17 A Citizenship of Persons who would have been Citizenship of Kenya was adopted.

**MIN.CCC/TWGB/98/04 ARTICLE 25**

**Article 25  
Citizenship of a Parent dying before birth of a Person**

Article 25 Sub Article (1)

Sub Article (1) deleted the word “refers” before the words “in relation” and the words “that person”

Sub Article (1) was adopted with amendments.

**MIN.CCC/TWGB/99/04 ARTICLE 27**

**Article  
Powers of Parliament**

27

Article 27 Sub Articles (a) (b) (c) (d) (e) and (f)

In pre able Sub Article that Parliament may enact legislation the word “may” was deleted therein and inserted the word “shall”.

The pre able Sub Article was adopted with amendments.

Sub Articles (a),(b), (c), (d), (e) and (f)

Sub Articles (a), (b), (c), (d), (e), and (f) were adopted without amendments.

**MIN.CCC/TWGB/100/04 ARTICLE 29**

**Article 29  
Fundamental rights and freedom**

Articles 29 Sub Articles 3, (a), (b) and (c)

Sub Articles 3 (a) inserted the word “community” before the word “and” and after the word “individual”.

Sub Article 3 (a) was adopted with amendments.

Sub Article 3 (b)

Sub Article 3 (b) was adopted without amendments.

Sub Article 3 (c)

Sub Article 3 (c) was adopted without amendments

**MIN. CCC/TWGB/101/04**

**MINORITY VIEW ARTICLE 29 SUB ARTICLE  
3(b)**

The Hon. Delegates Nichasius Mugo, Millie Odhiambo, Moses Leng'ete Ole Sisika and Rebecca Evelia Jandeka were of the contrary view.

**MIN.CCC/TWGB/102/04 ARTICLE 30**

**Article 30**

**Duty of the state to promote rights and freedoms.**

Article 30 Sub Articles 6, (a)

Sub Article 6(a) inserted the words “and other instruments” after the word “treaties”.

Sub Article 6 (a) was adopted with amendments.

**MIN. CCC/TWGB/103/04**

**PAPER LAID ON SEPTEMBER 12, 2003**

Motion made to expunge paper laid by the Hon. Lihanda Kemen Savai was proposed by the Hon. Salah Maalim Alio, seconded by the Hon. Delegate Nichasius Mugo.

Debate arising

Question put and agreed on

The paper laid by the Hon. Lihanda Kemen Savai on September 12, 2003 was expunged from the records of the Committee.

**MIN. CCC/TWGB/104/04**

**MINORITY VIEW ON PAPER LAID ON  
SEPTEMBER 12, 2003**

The Hon. Delegates Teresa Osunga and Lihand Kemen Savai were of the contrary view.

**MIN. CCC/TWGB/105/04**

**REQUIEM MASS**

Motion made that the Committee to adjourn until Thursday January 22, 2004 at 9:00a.m. to facilitate the Members attend the late Hon. Delegate Job Onyango Omino requiem mass.

Debate arising

Question put and agreed on

The Committee then adjourned.

**MIN. CCC/TWGB/106/04**

**ADJOURNMENT**

And the time being forty minutes past noon, the Convenor adjourned the sitting until Friday January 23, 2004 at 9:00a.m.

Signed:.....  
**CECILY MBARIRE (CONVENOR)**

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 22, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Friday, January 23, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Disposing off pending issues (Bill of Rights and Citizenship)**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire (Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYTHIRD SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, JANUARY 23<sup>ND</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convenor
2. Suba Churchill Meshack		463
3. Amina Zuberi		227
4. Anne Okoth		474
5. Anne Njogu		475
6. Bernadette Quadros		622
7. Dorcas Mbelesia		378
8. Esther Keino		214
9. Fatuma Ali Saman		505
10. Francis N. Kaloki		292
11. Gaudentia Atonga		417
12. George Wesonga		398
13. Jane Mwendu		291
14. John Katumanga		435
15. John Njue		539
16. Joshua Jillo Onotto		237
17. Joyce Umbima		466
18. Lawrence Mute		455
19. Lihada Kemeni Savai		608
20. Lorna Laboso		499
21. Lorna Timanoi		360
22. Lucas K. Chepkitony		020
23. Marie Therese Gachambi		519
24. Masanya Godfrey Okeri		97
25. Millie Odhiambo		451
26. Moses Leng'ete Ole Sisika		365
27. Neera Kent Kapila		524
28. Nichasius Mugo		287
29. Peter O. Bwana		516
30. Rebecca Evelia Jandeka		384
31. Rosemary Kinyanjui		526
32. Rose Arungu-Olende		502
33. Sabenzia N. Wekesa		478
34. Sahara Ahmed Hillow		257

35. Stephen Ondiek	464
36. Sheikh Abdalla	243
37. Sylvanus Onyambu Ogari	425
38. Teresa Osunga	411
39. Wilfred Kiboro	619
40. Yusuf Wako	

### **ABSENT WITH APOLOGY**

1. Comm. Nancy Baraza - Rapporteur
2. Wandati Abdulrahman Mirimo
3. Sudi David Kiprono Sutter
4. Ali Wario

### **ABSENT**

1. Wafula Wamunyinyi
2. Simeon Lesrima
3. Florence Machayo
4. J.W. Nyagah
5. Kilonzo Charles Mutavi
6. Magugu Arthur
7. Salah Maalim Alio
8. Pamela Mboya
9. Sing'oei Korir
10. Fahim Twaha

### **OBSERVERS PRESENT:**

- |                        |   |            |
|------------------------|---|------------|
| 1. Joseph K. Waweru    | - | 69         |
| 2. Monah Muthengi      |   |            |
| 3. Kennedy Sanga       | - | 411B(Aide) |
| 4. Samuel Ongoro       | - | 097        |
| 5. Peninnah Vulimu     | - | T204       |
| 6. Davis Malombe       | - | 012        |
| 7. Jane Ogot           | - | 015        |
| 8. Diana Imali Akivaga | - | 455B       |
| 9. H.E. Mwangi Mukami  | - |            |

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                          |   |            |
|--------------------------|---|------------|
| 1. Comm. Ibrahim Lethome | - | Rapporteur |
| 2. Comm. Adede           | - | Rapporteur |
| 3. Comm. Salome Muigai   | - | Rapporteur |
| 4. Jeremiah Nyegenye     | - | Draftsman  |
| 5. John Wanyoike         | - | Clerk      |

- |                      |   |                             |
|----------------------|---|-----------------------------|
| 22. Ochieng Olende   | - | Programme Officer           |
| 23. Helene Namisi    | - | Assistant Programme Officer |
| 24. Carol Ndindi     | - | Assistant Programme Officer |
| 25. Martina Odhiambo | - | Verbatim Recorder           |

## **PRAYER**

The meeting opened with a word of prayer.

## **MIN. CCC/TWGB/107/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Francis N. Kaloki, seconded by Hon. Delegate Geroge Wesonga and was adopted by the Committee.

## **MIN. CCC/TWGB/108/04 CONFIRMATION OF MINUTES**

Minutes of the Twentythird Sitting held on Thursday January 22 2004 were proposed by the Hon. Delegate John Katumanga, seconded by the Hon. Delegate Rebecca Evelia Jandeka, were confirmed and signed by the Convenor.

## **MIN. CCC/TWGB/109/04 MATTERS ARISING**

- (i) The name Lihanda Kemen Savani should read Lihanda Kameni Savani.
- (ii) Under Min.CCC/TWGB/98/04, insert Article 25, Sub Article 2 was deleted therein.

## **MIN. CCC/TWGB/110/04 DELIBERATION CITIZENSHIP AND BILL OF RIGHTS, DISPOSING OFF PENDING ISSUES**

### **Article 46 Publication of Opinion**

Sub Article 6 (a)

Sub Article 6 (a) deleted the words "based on proven popular support" after the word "parties" and before the word "either", also inserted the words "provision for equitable" before the word "allocation" and after the word "reasonable" and further inserted the words "by state owned and other specified categories of" before the word "all" and after the word "by"

Sub Article 6 (a) was adopted with amendments.

Sub Article 6(c)

Motion made that Sub Article 6 (c) be deleted

Debate arising

Question put and agreed on

*(With the understanding that the draftsman to rewrite and reword the Sub Article 6 (c) covering the delegates view and to be agreed on by the committee for insertion as a new Sub Article)*

### **MIN. CCC/TWGB/111/04 ELECTION OF TEMPORARY CONVENOR**

The Comm. Salome Muigai Rapporteur conducted the election of a temporary Convenor and the Hon. Delegate Bernadette Quadros was proposed by Amina Zuberi to be the Acting Convenor, seconded by Esther Gachambi and there being no other proposal, the Hon. Delegate Bernadette Quadros thereupon took the Chair.

### **MIN. CCC/TWGB/112/04**

### **DELIBERATION CITIZENSHIP AND BILL OF RIGHTS, DISPOSING OFF PENDING ISSUES**

#### **Article 39**

#### **Persons with disabilities**

Article 39 Sub Article 2 (a) (c) (h) and 4 (a)

Sub Article 2 (a)

Sub Article 2 (a) the words “persons with disabilities should be effected through out the Bill”, was inserted below Sub Article 2(a).

Sub Article 2 (a) was adopted with **further** amendments

Sub Article 2 (c)

Sub Article 2 (c) deleted the word “education” before the word “institutions” and after the word “education” and inserted the word “educational” therein

Sub Article 2 (c) was adopted with **further** amendment.

Sub Article 2 (h)

Sub Article 2(h) deleted the words “due to” after the word “constraints” and before the words “ arising from the disability”

Sub Article 2(h) was adopted with **further** amendments.

Sub Article 4 (a)

Sub Article 4 (a) deleted the word “or” after the word “activities” thereof:-

Sub Article 4(a) was adopted with **further** amendments.

Sub Article 4 (b)

Sub Article 4 (b) was **deleted**.

**MIN. CCC/TWGB/113/04**

**MINORITY VIEW ARTICLE 39 SUB ARTICLE  
2(a)**

Article 39 Sub Article 2 (a)

The Hon. Delegate Teresa Osunga was of the contrary view. (persons with disabilities should be throughout the draft bill).

**MIN. CCC/TWGB/114/04**

**ARTICLE 23, TALK ON DUAL CITIZENSHIP**

**(i) Article 23  
Dual Citizenship**

Article 23

The Hon. Comm. Dr. Odede gave the Members a talk on Article 25 Dual Citizenship.

**(ii) COMMUNICATION FROM THE CONVENOR**

The Acting Convenor Bernadette Quadros informed the Members that another resource person would give them a talk on Monday morning on Article 23, Dual Citizenship, to facilitate them understand the Article better.

The Members resolved not to conclude Article 25 until Monday’s talk.

**(iii) ADJOURNMENT MOTION**

Motion made that the committee do adjourn until Monday January 26, 2004 at 9.00 a.m.

Debate arising

Question put and agreed on

The Committee adjourned until Monday January 26, 2004.

**MIN. CCC/TWGB/115/04**

**ADJOURNMENT**

And the time being forty five minutes past noon the Acting Convenor Bernadette Quadros adjourned the sitting until Monday January 26, 2004 at 9:00 a.m.

Signed:.....  
**CECILY MBARIRE (CONVENOR)**

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 23, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Monday, January 25, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

Prayers

1. Confirmation of Minutes
2. Matters Arising
- 3. Disposing off pending issues (Bill of Rights and Citizenship)**
4. Any Other Business
5. Date of Next Meeting

**Approved for circulation**

**Suba Churchill Meshack (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYFOURTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON MONDAY, JANUARY 26<sup>TH</sup>, 2004 AT 9:35 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1.	Suba Churchill Meshack	-	Acting	Convenor
2.	Amina Zuberi		227	
3.	Anne Okoth		474	
4.	Anne Njogu		475	
5.	Bernadette Quadros		622	
6.	Dorcas Mbelesia		378	
7.	Esther Keino		214	
8.	Fatuma Ali Saman		505	
9.	Florence Machayo		512	
10.	Francis N. Kaloki		292	
11.	Gaudentia Atonga		417	
12.	George Wesonga		398	
13.	Jane Mwendu		291	
14.	John Katumanga		435	
15.	John Njue		539	
16.	Joshua Jillo Onotto		237	
17.	Joyce Umbima		466	
18.	Lawrence Mute		455	
19.	Lihada Kemeni Savai		608	
20.	Lorna Timanoi		360	
21.	Marie Therese Gachambi		519	
22.	Masanya Godfrey Okeri		97	
23.	Millie Odhiambo		451	
24.	Neera Kent Kapila		524	
25.	Pamela Mboya		473	
26.	Peter O. Bwana		516	
27.	Rebecca Evelia Jandeka		384	
28.	Rosemary Kinyanjui		526	
29.	Rose Arungu-Olende		502	
30.	Sabenzia N. Wekesa		478	
31.	Sahara Ahmed Hillow		257	
32.	Salah Maalim Alio		259	
33.	Simeon Lesrima		082	
34.	Stephen Ondiek		464	

35.	Sheikh Abdalla	243
36.	Sudi David Kiprono Sutter	192
37.	Sylvanus Onyambu Ogari	425
38.	Teresa Osunga	411
39.	Wilfred Kiboro	619

**OTHER DELEGATES**

1.	Wangari Mathai	084
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**ABSENT WITH APOLOGY**

2.	Cecily Mbarire	-	Convenor
3.	Wandati Abdulrahman Mirimo		
4.	Yusuf Wako		
5.	Ali Wario		
6.	Stephen Ondiek		
7.	Nichasius Mugo		
8.	Moses Leng'ete Ole Sisika		
9.	Magugu Arthur		
10.	J.W. Nyagah		
11.	Fahim Twaha		

**ABSENT**

1.	Wafula Wamunyinyi
2.	Lorna Laboso
3.	Kilonzo Charles Mutavi
4.	Lucas K. Chepkitony
5.	Sing'oei Korir

**OBSERVERS PRESENT:**

1.	Joseph K. Waweru	-	69
2.	Monah Muthengi		
3.	Kennedy Sanga	-	411B(Aide)
4.	Samuel Ongoro	-	097
5.	Davis Malombe	-	012
6.	Jane Ogot	-	015
7.	Diana Imali Akivaga	-	455B
8.	Mwangi H.E. Mukami	-	
9.	Peterson Nyanchongi	-	012
10.	Abdulaziz Ahmed Adam	-	225

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

i. Comm. Ibrahim Lethome	-	Rapporteur
ii. Comm. Nancy Baraza	-	Rapporteur
iii. Comm. Salome Muigai	-	Rapporteur
iv. Jeremiah Nyegenye	-	Draftsman
v. John Wanyoike	-	Clerk
vi. Achieng Olende	-	Programme Officer
vii. Helene Namisi	-	Assistant Programme Officer
viii. Carol Ndindi	-	Assistant Programme Officer
ix. Martina Odhiambo	-	Verbatim Recorder

## **PRAYER**

The meeting opened with a word of prayer.

## **MIN. CCC/TWGB/116/04                      ELECTION OF A TEMPORARY CONVENOR**

Comm. Salome Muigai conducted the election of a Temporary Convenor the Hon. Delegate Suba Churchill was proposed by the Hon. Delegate Gaudentia Atonga, seconded by the Hon. Delegate Dorcas Mbelesia and was unanimously elected the temporary Convenor. Thereupon the Acting Convenor took the Chair.

## **MIN. CCC/TWGB/117/04    ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Teresa Osunga, seconded by Hon. Delegate Sahara Ahmed Hillow and was adopted by the Committee.

## **MIN. CCC/TWGB/118/04                      CONFIRMATION OF MINUTES**

Minutes of the twenty third sitting held on Friday January 23, 2004 were proposed by the Hon. Delegate Rebecca Evelia Jandeka, seconded by the Hon. Delegate Francis Kaloki, was confirmed and signed by the Acting convenor.

## **MIN. CCC/TWGB/119/04                      MATTERS ARISING**

- (i) That Hon. Delegate Simeon Lesrima was inadvertently marked absent while he was absent with apology on, Wednesday, Thursday and Friday.
- (v) The Hon. Delegates Pamela Mboya, J.W. Nyaga, Arthur Magugu and Florence Machayo were inadvertently marked absent while they were absent with apology on Friday meeting.
- (vi) In Attendance Comm. Adede should have been marked as a resource person and not in attendance also that Achieng Olende was inadvertently written as Ochieng Olende.

- (vii) Under Min.CCC/TWGB/107/04, the Hon. Delegate George Wesonga was inadvertently written as Geroge Wesonga.
- (viii) Under Min.CCC/TWGB/109/04, the Hon. Delegate Lihanda Kemeni Savai was inadvertently written as Lihanda Kemeni Savani.
- (ix) Under Min.CCC/TWGB/111/04, the Hon. Delegate Esther Gachambi should read the Hon. Delegate Esther Keino.
- (x) Under Min.CCC/TWGB/114/04, the Hon. Comm. Dr. Adede was inadvertently written as Dr Odede..

**MIN. CCC/TWGB/120/04**

**NOTICE OF MOTION**

The Hon. Delegate Wangari Mathai gave a notice to move a motion for the Committee to review the following Articles.

**(i) Article 30,  
Duty of the state to promote rights and freedoms.**

Article 30 Sub Article (3) to include Article 63

**(ii) Article 54  
Property**

Article 55, A New Sub- Article 5 (a) and

**(iii) Article 75  
Interpretation of the Bill of rights.**

Article 75 (b)

Sub-Articles (1), (2) and (3)

**MIN. CCC/TWGB/121/04 ARTICLE 23 DUAL CITIZENSHIP TALK**

Professor John Maina of *Kenya Community Abroad (Washington)* and Mr. Gichane Muraguri gave the Delegates a talk on the merits and demerits of Dual Citizenship.

**MIN. CCC/TWGB/122/04**

**ADJOURNMENT**

And the time being fifty-five minutes past noon the Acting Convenor Hon. Delegate Suba Churchill adjourned the sitting until 2:00 p.m. this afternoon.

## **AFTERNOON SITTING**

### **PRESENT:**

### **DELEGATES NUMBERS**

1.	Suba Churchill Meshack	- Acting	Convenor
2.	Amina Zuberi		227
3.	Anne Okoth		474
4.	Bernadette Quadros		622
5.	Fatuma Ali Saman		505
6.	Florence Machayo		512
7.	Francis N. Kaloki		292
8.	Gaudentia Atonga		417
9.	George Wesonga		398
10.	Jane Mwendu		291
11.	John Katumanga		435
12.	John Njue		539
13.	Joshua Jillo Onotto		237
14.	Joyce Umbima		466
15.	Lawrence Mute		455
16.	Lihada Kemeni Savai		608
17.	Lucas K. Chepkitony		020
18.	Marie Therese Gachambi		519
19.	Millie Odhiambo		451
20.	Moses Leng'ete Ole Sisika		365
21.	Neera Kent Kapila		524
22.	Nichasius Mugo		287
23.	Pamela Mboya		473
24.	Peter O. Bwana		516
25.	Rebecca Evelia Jandeka		384
26.	Rosemary Kinyanjui		526
27.	Rose Arungu-Olende		502
28.	Sabenzia N. Wekesa		478
29.	Sahara Ahmed Hillow		257
30.	Simeon Lesrima		082
31.	Stephen Ondiek		464
32.	Sheikh Abdalla		243
33.	Sylvanus Onyambu Ogari		425
34.	Teresa Osunga		411
35.	Wilfred Kiboro		619

### **OTHER DELEGATES**

**ABSENT WITH APOLOGY**

- |     |                            |   |            |
|-----|----------------------------|---|------------|
| 1.  | Cecily Mbarire             | - | Convenor   |
| 2.  | Comm. Nancy Baraza         | - | Rapporteur |
| 3.  | Comm. Ibrahim Lethome      | - | Rapporteur |
| 4.  | Wandati Abdulrahman Mirimo |   |            |
| 5.  | Yusuf Wako                 |   |            |
| 6.  | Ali Wario                  |   |            |
| 7.  | Stephen Ondiek             |   |            |
| 8.  | J.W. Nyagah                |   |            |
| 9.  | Anne Njogu                 |   |            |
| 10. | Dorcas Mbelesia            |   |            |
| 11. | Fahim Twaha                |   |            |
| 12. | Esther Keino               |   |            |
| 13. | Magugu Arthur              |   |            |

**ABSENT**

1. Wafula Wamunyinyi
2. Lorna Laboso
3. Kilonzo Charles Mutavi
4. Sing'oei Korir
5. Salah Maalim Alio
6. Lorna Timanoi
7. Masanya Godfrey Okeri
8. Sudi David Kiprono Sutter

**OBSERVERS PRESENT:**

- |    |                     |   |             |
|----|---------------------|---|-------------|
| 1. | Joseph K. Waweru    | - | 069         |
| 2. | Monah Muthengi      |   |             |
| 3. | Kennedy Sanga       | - | 411B (Aide) |
| 4. | Samuel Ongoro       | - | 097         |
| 5. | Davis Malombe       | - | 012         |
| 6. | Diana Imali Akivaga | - | 455B        |
| 7. | Mwangi H.E. Mukami  | - |             |
| 8. | Peterson Nyanchongi | - | 189         |
| 9. | Peninnah Vulimu     | - | T204        |

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                          |   |                    |
|----|--------------------------|---|--------------------|
| 1. | Comm. Prof. Okoth-Ogendo | - | Rapporteur General |
| 2. | Comm. Salome Muigai      | - | Rapporteur         |
| 3. | Jeremiah Nyegenye        | - | Draftsman          |

- |                     |   |                             |
|---------------------|---|-----------------------------|
| 4. John Wanyoike    | - | Clerk                       |
| 5. Achieng Olende   | - | Programme Officer           |
| 6. Helene Namisi    | - | Assistant Programme Officer |
| 7. Carol Ndindi     | - | Assistant Programme Officer |
| 8. Martina Odhiambo | - | Verbatim Recorder           |

The Committee reassembled and resumed deliberations at 2:25 p.m.

**MIN. CCC/TWGB/123/04**                      **ARTICLE 46 6 (c)**

**Article 46 6 (c)**  
**Publication of Opinion**

A new Article 46 6 (c)

After a protracted discussion, the New Sub Article 6 (c) debate was deferred to another day.

**MIN. CCC/TWGB/124/04**                      **NEW ARTICLE 36 5 (a)**

**Article 36**  
**Older members of Society**

New Article 36 5(a)

A New Sub Article 5 (a) “the state shall establish a council which will define and advise on policies and programme for the care and protection of elder persons was adopted.

**The New Sub Article 5 (a) was adopted**

Article 37  
Children

**Sub- Article 6**

Sub Article 6 inserted the words “Nomadic Children” before the words “refugee children” and after the word “disabilities”

Sub Article 6 was adopted with **further** amendments

**MIN. CCC/TWGB/125/04**                      **MOTION FOR ADJOURNMENT**

Motion made that the committee do adjourn until Tuesday January 27, 2004 at 9.00 a.m.

Debate arising

Question put and agreed on

The committee adjourned until Tuesday January 27, 2004

**MIN. CCC/TWGB/126/04**

**ADJOURNMENT**

And the time being four O'clock the Acting Convenor adjourned the Sitting until Tuesday January 27, 2004 at 9.00 a.m.

Signed:..... Date:.....  
**SUBA CHURCHILL MESHACK (ACTING CONVENOR)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 26, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Tuesday, January 27, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

Prayers

1. Confirmation of Minutes
2. Matters Arising
- 3. Disposing off pending issues (Bill of Rights and Citizenship)**
4. Any Other Business
5. Date of Next Meeting

**Approved for circulation**

**Suba Churchill Meshack (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYFIFTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, JANUARY 27<sup>TH</sup> 2004 AT 9:35 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1.	Cecily Mbarire	-	Convenor
2.	Suba Churchill Meshack		463
3.	Amina Zuberi		227
4.	Anne Okoth		474
5.	Anne Njogu		475
6.	Bernadette Quadros		622
7.	Dorcas Mbelesia		378
8.	Esther Keino		214
9.	Fahim Twaha		200
10.	Fatuma Ali Saman		505
11.	Florence Machayo		512
12.	Francis N. Kaloki		292
13.	Gaudentia Atonga		417
14.	George Wesonga		398
15.	J.W. Nyagah		151
16.	Jane Mwendu		291
17.	John Katumanga		435
18.	John Njue		539
19.	Joshua Jillo Onotto		237
20.	Joyce Umbima		466
21.	Lawrence Mute		455
22.	Lihanda Kemeni Savai		608
23.	Lucas K. Chepkitony		020
24.	Magugu Arthur		088
25.	Marie Therese Gachambi		519
26.	Masanya Godfrey Okeri		97
27.	Millie Odhiambo		451
28.	Moses Leng'ete Ole Sisika		365
29.	Neera Kent Kapila		524
30.	Nichasius Mugo		287
31.	Pamela Mboya		473
32.	Peter O. Bwana		516
33.	Rebecca Evelia Jandeka		384
34.	Rosemary Kinyanjui		526

35.	Rose Arungu-Olende	502
36.	Sabenzia N. Wekesa	478
37.	Sahara Ahmed Hillow	257
38.	Salah Maalim Alio	259
39.	Simeon Lesrima	082
40.	Sing'oei Korir	464
41.	Stephen Ondiek	168
42.	Sheikh Abdalla	243
43.	Sudi David Kiprono Sutter	192
44.	Sylvanus Onyambu Ogari	425
45.	Teresa Osunga	411
46.	Yusuf Wako	269

### **ABSENT WITH APOLOGY**

1.	Comm. Nancy Baraza	-	Rapporteur
2.	Wandati Abdulrahman Mirimo		
3.	Ali Wario		
4.	Lorna Timanoi		
5.	Wilfred Kiboro		

### **ABSENT**

1.	Wafula Wamunyinyi
2.	Lorna Laboso
3.	Kilonzo Charles Mutavi

### **OBSERVERS PRESENT:**

1.	Joseph K. Waweru	-	69
2.	Kennedy Sanga	-	411B(Aide)
3.	Samuel Ongoro	-	097
4.	Davis Malombe	-	012
5.	Jane Ogot	-	015
6.	Diana Imali Akivaga	-	455B
7.	Peterson Nyanchongi	-	012
8.	Lyndah Litala	-	378 B
9.	Peninnah Vulimo	-	T204

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Prof. Okoth-Ogendo	-	Rapporteur General
2.	Comm. Ibrahim Lethome	-	Rapporteur
3.	Comm. Salome Muigai	-	Rapporteur
4.	Jeremiah Nyegenye	-	Draftsman

- |    |                  |   |                             |
|----|------------------|---|-----------------------------|
| 5. | John Wanyoike    | - | Clerk                       |
| 6. | Achieng Olende   | - | Programme Officer           |
| 7. | Helene Namisi    | - | Assistant Programme Officer |
| 8. | Carol Ndindi     | - | Assistant Programme Officer |
| 9. | Martina Odhiambo | - | Verbatim Recorder           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/127/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Sabenzia N. Wekesa, seconded by Hon. Delegate Sheikh Abdalla and was adopted by the Committee.

### **MIN. CCC/TWGB/128/04 CONFIRMATION OF MINUTES**

Minutes of the twenty fourth sitting held on Monday January 26, 2004 were proposed by the Hon. Delegate Amina Zuberi, Seconded by the Hon. Delegate Francis Kaloki, were confirmed and signed by the Convenor.

### **MIN. CCC/TWGB/129/04 MATTERS ARISING**

- a. The Hon. Delegate Stephen Ondiek was inadvertently marked present but was absent with apology.
- b. The Hon. Delegate Salah Maalim was inadvertently marked absent but was absent with apology.

(iii) The Hon. Delegate Lihanda Kemeni Savai was inadvertently written as Lihada Kemeni Savai.

### **MIN. CCC/TWGB/130/04 COMMUNICATION FROM THE CHAIR**

The Hon. Convenor welcomed Mr. Nicholas Taylor of the European Union and informed the delegates that he was a guest of the Committee and was welcome to listen to the Committee's deliberations.

### **MIN. CCC/TWGB/131/04 DISPOSING OF PENDING ISSUES CITIZENSHIP AND BILL OF RIGHTS**

#### **Article 23**

#### **Dual Citizenship**

Article 23 Sub Articles 1 and 2

Motion made that Sub Articles 1 and 2 be deleted.

Debate arising

Question put

When question put the delegates asked for a division.

The delegates proceeded to a division and the results were as under.

***The Ayes were nineteen. The Noes were seventeen and there were no abstentions.***

**The Ayes had it.**

The delegates voted as under:-

**The Ayes delegates**

- 1.Hon. Dorcas Mbelesia
- 2.Rebecca Evelia Jandeka
3. Florence Machayo
4. Francis N. Kaloki
5. Gaudentia Atonga
6. George Wesonga
7. John Katumanga
- 8.John Njue
9. Lawrence Mute
10. Lihanda Kemeni Savai
11. Marie Therese Gachambi
12. Masanya Godfrey Okeri
13. Moses Leng'ete Ole Sisika
14. Nichasius Mugo
15. Peter O. Bwana
16. Sabenzia N. Wekesa
17. Sylvanus Onyambu Ogari
18. Suba Churchill Meshack
19. Teresa Osunga

**The Noes Delegates**

- 1.Amina Zuberi
- 2.Esther Keino
- 3.Fahim Twaha
- 4.Fatuma Ali Saman
- 5.J.W. Nyagah
- 6.Joshua Jillo Onotto
- 7.Joyce Umbima

8. Magugu Arthur
9. Millie Odhiambo
10. Neera Kent Kapila
11. Pamela Mboya
12. Rose Arungu-Olende
13. Sahara Ahmed Hillow
14. Salah Maalim Alio
15. Sheikh Abdalla
16. Simeon Lesirma
17. Yusuf Wako

Sub-Article 3

The draftsman was mandated to redraft Sub-Article 3 for committee’s deliberation; and also that he may look at Article 27 Dual Citizenship and check whether it can be reviewed.

**MIN. CCC/TWGB/132/04**                      **MINORITY VIEW ARTICLE 25, DUAL CITIZENSHIP**

The Hon. Delegate Ann Njogu was of the contrary view.

**MIN. CCC/TWGB/133/04**                      **DELIBERATION ON CITIZENSHIP AND BILL OR RIGHTS**

**Article 46**  
**Publication of Opinion**

Article 46

Article 46 6 c and 7

Sub Article 6 c and 7 were deleted, and a New Sub Article 46 6 (c) and (d) were inserted thereof.

New Sub Article 6 (c) and (d)

6(c) “provides for the setting of media standards” and

6(d) “provides establishment of a body independent of government or political control, reflective of the interests of, and constituted by, all affected sections of the community and to regulate and monitor compliance with those standards”.

The New Sub Articles 6(c) and (d) were adopted.

Article 46 was adopted with **further** amendments

**Article 44**

## **Freedom of religion, belief and opinion**

Article 44

Article 44 Sub Article (2)

Sub Article 2 inserted the words “observance a day of worship” before the word “observance and after the word “practice”.

Sub Article 2 was adopted with **further** amendments.

Article 44 was adopted with **further** amendments.

### **New Article 36 (A)**

#### **Youth**

New Article 36 A deliberations to be resumed in the afternoon.

**MIN. CCC/TWGB/134/04**

**ADJOURNMENT**

And the time being twelve minutes past one O'clock the Convenor adjourned the Sitting until 2.30 p.m. this afternoon

#### **AFTERNOON SITTING**

##### **PRESENT:**

##### **DELEGATES NUMBERS**

1.	Cecily Mbarire	-	Covenor
2.	Suba Churchill Meshack		463
3.	Amina Zuberi		227
4.	Anne Okoth		474
5.	Anne Njogu		475
6.	Bernadette Quadros		622
7.	Dorcas Mbelesia		378
8.	Esther Keino		214
9.	Florence Machayo		512
10.	Francis N. Kaloki		292
11.	Gaudentia Atonga		417
12.	George Wesonga		398
13.	Jane Mwendu		291
14.	John Katumanga		435
15.	John Njue		539
16.	Joshua Jillo Onotto		237
17.	Lawrence Mute		455
18.	Lihanda Kemeni Savai		608

19.	Marie Therese Gachambi	519
20.	Masanya Godfrey Okeri	097
21.	Moses Leng'ete Ole Sisika	365
22.	Neera Kent Kapila	524
23.	Nichasius Mugo	287
24.	Pamela Mboya	473
25.	Peter O. Bwana	516
26.	Rebecca Evelia Jandeka	384
27.	Rose Arungu-Olende	502
28.	Sabenzia N. Wekesa	478
29.	Sahara Ahmed Hillow	257
30.	Salah Maalim Alio	259
31.	Stephen Ondiek	464
32.	Sylvanus Onyambu Ogari	425
33.	Teresa Osunga	411
34.	Wilfred Kiboro	619

### **OTHER DELEGATES**

1.	Wangari Mathai	084
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### **ABSENT WITH APOLOGY**

1.	Comm. Nancy Baraza	-	Rapporteur
2.	Wandati Abdulrahman Mirimo		
3.	Yusuf Wako		
4.	Ali Wario		
5.	J.W. Nyagah		
6.	Fahim Twaha		
7.	Magugu Arthur		
8.	Lorna Timanoi		
9.	Joyce Umbima		
10.	Millie Odhiambo		
11.	Rosemary Kinyanjui		
12.	Fatuma Ali Saman		

### **ABSENT**

1.	Wafula Wamunyinyi
2.	Lorna Laboso
3.	Kilonzo Charles Mutavi
4.	Sing'oei Korir
5.	Sheikh Abdalla
6.	Simeon Lesrima
7.	Sudi David Kiprono Sutter
8.	Lucas K. Chepkitony

**OBSERVERS PRESENT:**

1.	Joseph K. Waweru	-	069
2.	Monah Muthengi		
3.	J.K. Wanjeru	-	068
4.	Kennedy Sanga	-	411B (Aide)
5.	Samuel Ongoro	-	097
6.	Diana Imali Akivaga	-	455B
7.	Lynda Litala	-	378 B
8.	Peterson Nyanchongi	-	189
9.	Tim Gitau	-	176
10.	Abdulaziz Ahmed Adam	-	225

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Ibrahim Lethome	-	Rapporteur
2.	Comm. Salome Muigai	-	Rapporteur
3.	Jeremiah Nyegenye	-	Draftsman
4.	John Wanyoike	-	Clerk
5.	Achieng Olende	-	Programme Officer
6.	Helene Namisi	-	Assistant Programme Officer
7.	Carol Ndindi	-	Assistant Programme Officer
8.	Martina Odhiambo	-	Verbatim Recorder

**The Committee reassembled and resumed deliberations at 2:40 p.m.**

**MIN. CCC/TWGB/135/04**

**NEW ARTICLE 36 A**

**New Article 36 A  
The Youth**

New Article 36 A

New Article 36 A Sub Article 5.

Sub Article 5 deleted the words “twenty five” before the word “years” and after the word “of”.

Sub Article 5 was adopted with further amendments.

Article 36 A was adopted with further amendments.

**Article 57  
Health**

Article 57

Article 57 New Sub Articles 3

Motion made that a new Sub Article 3 be inserted to cover conventional and traditional medicine.

The mover withdrew the motion after information that the views would be more appropriate in Article 31 limitation of rights.

**Article 30**

**Duty of state to promote, rights and freedoms**

Article 30 Sub Articles 3

The motion was withdrawn.

**Article 54**

**Property**

Article 54

Article 54 A new Sub Article 54 (5) (a) and (b) the motion for further amendments to Sub-Articles was withdrawn.

**Article 75**

**Interpretation of the Bill of rights**

Article 75

Article 75 Sub Articles 1, 2 and 3

Sub Article 1 (a), (b), (c)

Sub Article 1, a new sub-Article (b) was inserted before the Sub Article (b) and after Sub Article (a) to read “shall recognize the importance of considering the interests of other species, aspects of the environment and future generations in ensuring that each may play its rightful role in the ongoing evolution of life”

The New Sub Article new (b) was adopted.

Sub Articles (a), (b), New (b) (c) and (d)

The Sub Articles were renumbered systematically as sub Article (a), (b), (c), (d) and (e).

Sub Articles 1 (a), (b), (c), (d) and (e) were adopted with **further** amendments.

Sub Article 2

Sub Article 2 inserted the words “recognize the fundamental importance of Maintaining the ecological balance and a harmonious relationship between human beings and the environment” after the words “right and”

Sub Article 2 was adopted with further amendments.

Article 75 was adopted with **further** amendments.

**MIN. CCC/TWGB/136/04 COMMUNICATION FROM THE CHAIR**

The convenor read a letter to the committee and the committee resolved to have audience with the Kenya Medical Association concerning Article 32 right to life on Wednesday January 28, 2004 at 9:00 a.m.

**MIN. CCC/TWGB/137/04**

**ADJOURNMENT**

And the time being forty five minutes past four O'clock, the Convenor adjourned the Sitting until Wednesday January 28, 2004 at 9.00 a.m.

Signed:.....  
**CECILY MBARIRE (CONVENOR)**

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 27, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Wednesday, January 28, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Intervention on Article 32, Right to Life (Kenya Medical Association)
- 5. Disposing off pending issues (Bill of Rights and Citizenship)**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire (Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTYSIXTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, JANUARY 28<sup>TH</sup>, 2004 AT 9:45 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1.	Cecily Mbarire	-	Convener
2.	Suba Churchill Meshack		463
3.	Amina Zuberi		227
4.	Anne Okoth		474
5.	Bernadette Quadros		622
6.	Dorcas Mbelesia		378
7.	Esther Keino		214
8.	Fatuma Ali Saman		505
9.	Florence Machayo		512
10.	Francis N. Kaloki		292
11.	Gaudentia Atonga		417
12.	George Wesonga		398
13.	J.W. Nyagah		151
14.	Jane Mwendu		291
15.	John Katumanga		435
16.	John Njue		539
17.	Joshua Jillo Onotto		237
18.	Joyce Umbima		466
19.	Lawrence Mute		455
20.	Lihanda Kemeni Savai		608
21.	Lucas K. Chepkitony		020
22.	Magugu Arthur		088
23.	Marie Therese Gachambi		519
24.	Masanya Godfrey Okeri		097
25.	Millie Odhiambo		451
26.	Moses Leng'ete Ole Sisika		365
27.	Neera Kent Kapila		524
28.	Nichasius Mugo		287
29.	Pamela Mboya		473
30.	Peter O. Bwana		516
31.	Rebecca Evelia Jandeka		384
32.	Rosemary Kinyanjui		526
33.	Rose Arungu-Olende		502
34.	Sabenzia N. Wekesa		478

35.	Sahara Ahmed Hillow	257
36.	Simeon Lesrima	082
37.	Sudi David Kiprono Sutter	192
38.	Sing'oei Korir	464
39.	Stephen Ondiek	168
40.	Sylvanus Onyambu Ogari	425
41.	Teresa Osunga	411
42.	Wilfred Kiboro	619

### **ABSENT WITH APOLOGY**

1.	Comm. Nancy Baraza	-	Rapporteur	-	561
2.	Wandati Abdulrahman Mirimo	-			547
3.	Ali Wario	-			206
4.	Lorna Timanoi	-			360
5.	Yusuf Wako	-			269
6.	Fahim Twaha	-			200
7.	Anne Njogu	-			475
8.	Salah Maalim Alio	-			259

### **ABSENT**

1.	Wafula Wamunyinyi	-			203
2.	Lorna Laboso	-			499
3.	Kilonzo Charles Mutavi	-			127
4.	Sheikh Abdalla	-			243

### **OBSERVERS PRESENT:**

1.	Monah Muthengi	-			150
2.	Joseph K. Waweru	-			069
3.	J.K. Wanjeru	-			068
4.	Kennedy Sanga	-			411B(Aide)
5.	Samuel Ongoro	-			097
6.	Jane Ogot	-			015
7.	Diana Imali Akivaga	-			455B
8.	Mwangi H.E. Mukami	-			012
9.	Peninnah Vulimo	-			T204
10.	Abdulaziz Ahmed	-			225

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Prof. Okoth-Ogendo	-	Rapporteur General	-	551
2.	Comm. Ibrahim Lethome	-	Rapporteur	-	568
3.	Comm. Salome Muigai	-	Rapporteur	-	555
4.	Jeremiah Nyegenye	-	Draftsman		

- |    |                  |   |                             |
|----|------------------|---|-----------------------------|
| 5. | John Wanyoike    | - | Clerk                       |
| 6. | Achieng Olende   | - | Programme Officer           |
| 7. | Helene Namisi    | - | Assistant Programme Officer |
| 8. | Carol Ndindi     | - | Assistant Programme Officer |
| 9. | Martina Odhiambo | - | Verbatim Recorder           |

### **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/138/04 ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate Pamela Mboya, seconded by Hon. Delegate J.W. Nyagah and was adopted by the Committee.

### **MIN. CCC/TWGB/139/04 CONFIRMATION OF MINUTES**

Minutes of the twenty fifth sitting held on Tuesday January 27, 2004 were proposed by the Hon. Delegate Sylvanus Onyambu Ogari, Seconded by the Hon. Delegate Sabenzia N. Wekesa, were confirmed and signed by the Convenor.

### **MIN. CCC/TWGB/140/04 MATTERS ARISING**

- (i) The Hon. Delegate Sheikh Abdalla was present in the afternoon but was inadvertently marked absent.
- (ii) Under Min.CCC/TWGB/134/04, Article 44, Freedom of religion, belief and opinion.  
Article 44 Sub Article (2) should read inserted the words "including observance a day of worship" after the word "observance" and before the word "practice".
- (iii) Under Min.CCC/TWGB/135/04,

#### **Article 37**

#### **Health**

The motion was valid, and stood as moved even after information that the views would be more appropriate in Article 31, limitation of rights, (The debate would be resumed in Article 31).

### **MIN. CCC/TWGB/141/04 INTERVENTION TALK BY KENYA MEDICAL ASSOCIATION**

The Guest Speakers Dr. P.O. Odongo - Acting Chairman of K.M.A.(Kenya Medical Association), Dr. J.G. Karanja - Chairman Kenya Obstetrical Gynaecological Society, Dr. F.

Odawa - Council member Kenya Obstetrical Gynaecological Society, Dr. Katini Nzau Ombaka - Vice Chairman Kenya Medical Women Association gave the members a candid talk on Article 32 right to life.

**MIN. CCC/TWGB/142/04**                      **CITIZENSHIP AND BILL OF RIGHTS**  
**DISPOSING OF ANY PENDING ISSUES**

**Article 57**  
**Health**

Article 57

New Sub Article Motion made that new Sub-Article “for the purpose of Article (1) “health care Services” includes traditional and alternative medicine, be inserted in Article 57 Sub Article 1

Debate arising

Question put and Negativated.

Article 57 Sub Article 1 was **not** further amended

**MIN. CCC/TWGB/143/04 MINORITY VIEW NEW SUB ARTICLE**

The Hon. Delegate Moses Leng’ete Ole Sisika was of the contrary view that a new Article should be inserted to include traditional and alternative medicine.

**MIN. CCC/TWGB/144/04**                      **ADJOURNMENT**

And the time being five minutes past one O’clock the Convener adjourned the Sitting until 2.30 p.m. this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

**DELEGATES  
NUMBERS**

1.	Cecily Mbarire	-	Convener
2.	Suba Churchill Meshack		463
3.	Amina Zuberi		227
4.	Anne Okoth		474
5.	Anne Njogu		475
6.	Esther Keino		214
7.	Fatuma Ali Saman		505
8.	Florence Machayo		512
9.	Francis N. Kaloki		292
10.	Gaudentia Atonga		417
11.	George Wesonga		398

12.	Jane Mwendu	291
13.	John Katumanga	435
14.	John Njue	539
15.	Joshua Jillo Onotto	237
16.	Lihanda Kemeni Savai	608
17.	Lucas K. Chepkitony	020
18.	Marie Therese Gachambi	519
19.	Moses Leng'ete Ole Sisika	365
20.	Neera Kent Kapila	524
21.	Nichasius Mugo	287
22.	Pamela Mboya	473
23.	Peter O. Bwana	516
24.	Rebecca Evelia Jandeka	384
25.	Rose Arungu-Olende	502
26.	Rosemary Kinyanjui	526
27.	Sabenzia N. Wekesa	478
28.	Sahara Ahmed Hillow	257
29.	Salah Maalim Alio	259
30.	Sheikh Abdalla	243
31.	Stephen Ondiek	464
32.	Sylvanus Onyambu Ogari	425
33.	Teresa Osunga	411
34.	Wilfred Kiboro	619

#### **OTHER DELEGATES**

1.	Mwalimu Digore Kitambi	231
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#### **ABSENT WITH APOLOGY**

1.	Comm. Nancy Baraza	-	Rapporteur	-	561
2.	Wandati Abdulrahman Mirimo	-	547		
3.	Yusuf Wako	-	269		
4.	Ali Wario	-	206		
5.	J.W. Nyagah	-	151		
6.	Fahim Twaha	-	200		
7.	Magugu Arthur	-	088		
8.	Lorna Timanoi	-	360		
9.	Joyce Umbima	-	466		
10.	Millie Odhiambo	-	451		
11.	Lawrence Mute	-	455		
12.	Dorcas Mbelesia	-	378		
13.	Simeon Lesrima	-	082		

#### **ABSENT**

1.	Wafula Wamunyinyi	-	203
2.	Lorna Laboso	-	499
3.	Kilonzo Charles Mutavi	-	127
4.	Sing'oei Korir	-	464
5.	Sudi David Kiprono Sutter	-	192
6.	Masanya Godfrey Okeri	-	097
7.	Bernadette Quadros	-	622

**OBSERVERS PRESENT:**

1.	Joseph K. Waweru	-	069
2.	Monah Muthengi		
3.	J.K. Wanjeru	-	068
4.	Kennedy Sanga	-	411B (Aide)
5.	Samuel Ongoro	-	097
6.	Rosemary Benzina	-	027
7.	Abdulaziz Ahmed Adam	-	225
8.	Jane Ogot	-	015

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Ibrahim Lethome	-	Rapporteur	-	568
2.	Comm. Salome Muigai	-	Rapporteur	-	555
3.	Jeremiah Nyegenye	-	Draftsman		
4.	John Wanyoike	-	Clerk		
5.	Achieng Olende	-	Programme Officer		
6.	Helene Namisi	-	Assistant Programme Officer		
7.	Carol Ndindi	-	Assistant Programme Officer		
8.	Martina Odhiambo	-	Verbatim Recorder		

**The Committee reassembled and resumed deliberations at 2:35p.m.**

**MIN. CCC/TWGB/145/04**

**ARTICLE 25 RESOLUTIONS**

**Article 25  
Dual Citizenship**

Motion made that:-

The Committee review Article 25 on Dual Citizenship.

Debate Arising

Question put and agreed on.

The Committee reviewed Article 25, Dual Citizenship and resolved as under that all the resolutions on Article 25 be as under.

## **Article 25**

### **Dual Citizenship**

#### Article 23 Sub Article (1)

Except as provided for under this Article Dual Citizenship is not permitted under the Laws of Kenya.

#### Sub Article (2)

A person in any of the following categories may, while retaining the citizenship of another country, on application, be registered as a citizen of Kenya, or as the case may be, shall not lose the citizenship of Kenya by acquiring the citizenship of another country-

- (i) a foreign spouse of a citizen of Kenya;
- (ii) a citizen of Kenya who is married to a foreign spouse; and
- (iii) a child of a citizen born outside Kenya, who is below the age of eighteen years, but only until the attainment of the age of eighteen years.
- (iv) If there is substantial reason for the dual citizenship.

#### Sub Article (3)

Parliament may enact legislation providing for dual citizenship in exceptional circumstances, where there is substantial reason.

#### Sub Article (4)

A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the Constitution, is entitled on application to be registered as a citizen of Kenya.

#### Sub Article (5)

A person who loses citizenship of Kenya as a result of acquiring the citizenship of another country is entitled, on renunciation of the citizenship of that other country, to regain the same citizenship status, which the person formerly enjoyed.

NB: The original Sub-Article 2 was renumbered as Sub Article 4 and Sub Article 3 was renumbered as Sub Article 5 while the original Sub-Article 1 was deleted and the new Sub-Articles 1 and 2 as written above had been adopted.

Article 23 was adopted with **further** amendments.

**MIN. CCC/TWGB/146/04 ARTICLE 32 RIGHT TO LIFE RESOLUTION AFTER AUDIENCE**

**Article 32  
Right to Life**

The Members resolved not to review Article 32 Right to life, despite having heard candid deliberations from Kenya Medical Associations representatives.

**MIN. CCC/TWGB/147/04 PERUSE RESOLUTIONS**

The Committee resolved to peruse through their amendments on citizenship and Bill of rights on Friday January 20, 2004.

**MIN. CCC/TWGB/148/04 ADJOURNMENT**

And the time being forty-five minutes past four O'clock, the Convener adjourned the Sitting until Friday January 30, 2004 at 9.00 a.m.

Signed:.....  
**CECILY MBARIRE (CONVENOR)**

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

January 28, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Friday, January 30, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Adoption of Bill of Rights and Citizenship Chapters as amended to the Draft Bill**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTY SEVENTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, JANUARY 30<sup>TH</sup>, 2004 AT 9:45 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	-	Convener
2. Suba Churchill Meshack		463
3. Amina Zuberi		227
4. Anne Okoth		474
5. Bernadette Quadros		622
6. Dorcas Mbelesia		378
7. Esther Keino		214
8. Fatuma Ali Saman		505
9. Florence Machayo		512
10. Francis N. Kaloki		292
11. Gaudentia Atonga		417
12. George Wesonga		398
13. J.W. Nyagah		151
14. John Katumanga		435
15. John Njue		539
16. Joshua Jillo Onotto		237
17. Joyce Umbima		466
18. Lawrence Mute		455
19. Lihanda Kemeni Savai		608
20. Magugu Arthur		088
21. Marie Therese Gachambi		519
22. Millie Odhiambo		451
23. Moses Leng'ete Ole Sisika		365
24. Neera Kent Kapila		524
25. Nichasius Mugo		287
26. Pamela Mboya		473
27. Peter O. Bwana		516
28. Rebecca Evelia Jandeka		384
29. Rosemary Kinyanjui		526
30. Sabenzia N. Wekesa		478
31. Sahara Ahmed Hillow		257
32. Sheikh Abdalla		243
33. Simeon Lesrima		082
34. Stephen Ondiek		168

35. Sylvanus Onyambu Ogari	425
36. Teresa Osunga	411
37. Yusuf Wako	269

**ABSENT WITH APOLOGY**

1. Comm. Nancy Baraza	-	Rapporteur	-	561
2. Wandati Abdulrahman Mirimo	-			547
3. Ali Wario	-			206
4. Lorna Timanoi	-			360
5. Fahim Twaha	-			200
6. Anne Njogu	-			475
7. Salah Maalim Alio	-			259
8. Masanya Godfrey Okeri	-			097
9. Rose Arungu-Olende	-			502
10. Wilfred Kiboro	-			619
11. Wafula Wamunyinyi	-			203

**ABSENT**

12. Lorna Laboso	-			499
13. Kilonzo Charles Mutavi	-			127
14. Jane Mwendu	-			291
15. Lucas K. Chepkitony	-			020
16. Sing'oei Korir	-			464
17. Sudi David Kiprono Sutter	-			192

**OBSERVERS PRESENT:**

9. Joseph K. Waweru	-			069
10. Kennedy Sanga	-			411B(Aide)
11. Samuel Ongoro	-			097
12. Jane Ogot	-			015
13. Diana Imali Akivaga	-			455B
14. Abdulaziz Ahmed	-			225

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

Comm. Ibrahim Lethome	-	Rapporteur	-	568
Comm. Salome Muigai	-	Rapporteur	-	555
Jeremiah Nyegenye	-	Draftsman		
John Wanyoike	-	Clerk		
Helene Namisi	-	Assistant Programme Officer		
Carol Ndindi	-	Assistant Programme Officer		
Martina Odhiambo	-	Verbatim Recorder		

## **PRAYER**

The meeting opened with a word of prayer.

### **MIN. CCC/TWGB/149/04                      ELECTION OF A TEMPORARY CONVENER**

The election of a temporary Convener was conducted by Comm. Salome Muigai.

The Hon. Suba Churchill was proposed by the Hon. Delegate Rebecca Evelia Jandeka and seconded by the Hon. Dorcas Mbelesia and there being no other proposal Suba Churchill was unanimously elected the Acting Convener.

### **MIN. CCC/TWGB/150/04    ADOPTION OF AGENDA**

The day's Agenda was proposed by Hon. Delegate George Wesonga, seconded by Hon. Delegate Gaudentia Atonga and was adopted by the Committee.

### **MIN. CCC/TWGB/151/04                      CONFIRMATION OF MINUTES**

Minutes of the twenty sixth sitting held on Wednesday January 28 2004 were proposed by the Hon. Delegate Nichasius Mugo, Seconded by the Hon. Delegate Joshua Jillo Onotto, were confirmed and signed by the Convenor.

### **MIN. CCC/TWGB/152/04                      MATTERS ARISING**

- (i) Hon. Delegate Sheikh Abdalla was inadvertently marked absent but was present.
  - a. The Kenya Medical Association representatives should have been indicated in attendance.
  - b. Under Min.CCC/TWGB/140/04 (ii), it should read "including observance of a day of worship"
  - c. Under Min.CCC/TWGB/141/04, the Delegates were concerned that the Kenya Medical Association Guest speakers took their presentation to the press and in particular Nation Newspaper of Friday January 31, 2004.  
The matter to be raised with the Rapporteur General and may be to the steering committee.
- (iv) Under Min.CCC/TWGB/147/04, peruse document the words January 20<sup>th</sup> should read Friday January 30, 2003.

- (v) Under Min.CCC/TWGB/146/04, Article 32 Right to Life, it should read, “After Discussing with the Kenya Medical Association representative the members resolved not to review Article 32, Right to Life.”

**MIN. CCC/TWGB/153/04 ADOPTION OF CITIZENSHIP AND THE BILL OF RIGHTS CHAPTERS FIVE AND SIX AS AMENDED BY THE COMMITTEE INTO THE DRAFT BILL**

The members perused through all the Articles in citizenship and Bill of Rights chapter five and six and their final resolution was as under:-

ARTICLE	AMENDMENTS
16	Article 16 (c) amended by inserting the words “registration and” after the words “any document”
17	<ul style="list-style-type: none"> <li>i. Clause 17(1) adopted without amendment</li> <li>ii. Clause 17 (2) deleted from article 17 and made to become a new Article 17 A.</li> </ul>
18	Adopted without amendment
19	Adopted without amendment
20	<ul style="list-style-type: none"> <li>1. Clause 20 (1) amended by deleting the word “three” and substituting therefore the word “seven”.</li> <li>2. Clause 20 (2) adopted without amendment.</li> </ul>
21	Adopted without amendment
22	<ul style="list-style-type: none"> <li>1. Clause 22(1) amended by inserting the words “nationality and” immediately after the words “eight years of age, and whose”</li> <li>2. Clause 22(2) adopted without amendment.</li> </ul>
23	<ul style="list-style-type: none"> <li>(a) Clause (1) deleted and the following new clause substituted – <ul style="list-style-type: none"> <li>(1) Except as may be provided for under clause (2) dual citizenship is not permitted under the laws of Kenya.</li> </ul> </li> <li>(b) A new clause (2) inserted immediately after clause (1) to read as follows:- <ul style="list-style-type: none"> <li>a. Parliament may enact legislation providing for dual citizenship, in specified exceptional circumstances where there is substantial reason.</li> </ul> </li> <li>3. Clause (2) re-numbered as clause (3).</li> <li>4. Clause (3) re-numbered as clause (4).</li> </ul>
24	Amended by deleting the words “or by other unlawful means” appearing at the end of the Article.
25	

	<p>a) Clause (1) amended by deleting the word “refers” appearing immediately after the words “of that person” and inserting it immediately after the words “the death of the parent”</p> <p>b) Clause 2 deleted</p>
26	Adopted without amendment
27	Amended in the opening paragraph by deleting the word “may” and substituting therefore the word “shall”
28	Deleted
29	<p>(a) Clause 29 (1) adopted without amendment.</p> <p>(b) Clause 29(2) amended by inserting the word “substantive” before the words “social justice.”</p> <p>(c) Clause 3 (a) amended by inserting the words “and community” immediately after the words “to each individual”</p> <p>Clause 3 (b) adopted without amendment</p>
30	<p>(a) Clause 30 (1) adopted without amendment.</p> <p>(b) Clause 30 (2) amended by deleting the words “It is” and substituting therefore the words “It shall be”</p> <p>(c) Clause 30 (3) adopted without amendment.</p> <p>(d) Clause 30 (4) adopted without amendment.</p> <p>(e) Clause 30 (5) amended by deleting the word “provide for” and substituting therefore the word “facilitate”.</p> <p>(f) Clause 30 (6)(a) amended by inserting the words “and other instruments” after the word “treaties” appearing at the end of the clause.</p> <p>(g) Clause 30 (6) (b) amended by deleting the word “two months” and substituting therefore the words “a reasonable period”</p> <p>(h) Clause 30(6)(c) adopted without amendment.</p> <p>(i) Clause 30(6)(d) adopted amendment.</p>
31	<p>Clause 31 (1) (b) amended by insetting a new sub clause (iv) as follows:-</p> <p><b>(iv) the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others; and</b></p>
32	<p>Article re-drafted as follows:</p> <p><b>Right to life</b></p> <p>32 (1) Every person has the right to life.</p> <p>(2) For the purposes of clause (1), the right to life commences on conception and subsists until death.</p> <p>(3) It is not a violation of clause (1) if the termination of the life of an unborn child is caused or occasioned or occurs as the result of the act of a medical practitioner done in good</p>

	<p>faith and without negligence, if according to contemporary medical knowledge, ethics and practice, the act is necessary to save the life of the mother of the unborn child.</p> <p>(4) The death penalty is abolished.</p>
33	Adopted without amendment
34	<p>(a) Clause (1) amended by –</p> <p>(i) deleting the word “unfairly”, and</p> <p>(ii) inserting the words “health status” after the words “marital status”.</p> <p>(b) Clause (2) amended by deleting the word “unfairly”</p> <p>(c) New clause (3) inserted to read as follows;</p> <p><b>(3) In this Constitution, “discrimination” means any distinction, exclusion or restriction made on the basis of one or more of the grounds specified at (1), which has the purpose of effect of impairing or nullifying the recognition, enjoyment or exercise by a person or group of persons of any of the rights recognised in this chapter on a basis of equality.</b></p> <p>(d) clause (3) amended by -</p> <p>(i) re-numbering it as clause (4);</p> <p>ii. deleting the word “may” and substituting therefore the word “shall;” and</p> <p>iii. inserting the words “including but not limited to affirmative action programmes and policies” immediately after the word “measures”.</p>
35	<p>1. Clause (1) amended to read “Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.”</p> <p>2. Clause (2) adopted without amendment.</p> <p>3. Clause (3) adopted without amendment.</p> <p>4. Clause (4) adopted without amendment.</p> <p>5. Clause (5) adopted</p>

	without amendment.
36	<p>Article re-drafted as follows:</p> <p><b>Older members of society</b></p> <p><b>36 (1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights.</b></p> <p><b>(2) The state shall by legislation and policy measures ensure the rights of older persons to -</b></p> <ul style="list-style-type: none"> <li><b>(a) participate fully in the affairs of society;</b></li> <li><b>(b) pursue their personal development;</b></li> <li><b>(c) be free from all forms of discrimination and abuse;</b></li> <li><b>(d) live in dignity and respect;</b></li> <li><b>(e) retain their social, economy and political autonomy; and</b></li> <li><b>(f) receive reasonable care and assistance of family and state.</b></li> </ul> <p><b>(3) Members of society, with the facilitation of the state, have a duty to plan for their old age.</b></p> <p><b>(4) Older members of society have a responsibility to share their knowledge and skills with others and to remain active in society.</b></p> <p><b>(5) Relevant Ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to deal with issues affecting older members of society</b></p> <p><b>(6) The State shall establish a Council to define and advise on policies and programmes for the care and protection of elderly persons</b></p> <p><b>(7) In this Constitution, “older member of society” means a person above the age of sixty years.</b></p>

	<p>(8) Within two years of the coming into force of this constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.</p>
36A	<p><b>New Article</b> on “The youth” adopted as follows:-</p> <p><b>36A The youth</b></p> <p>(1) The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, taking into account their unique needs.</p> <p>(2) The state shall take reasonable legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.</p> <p>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth –</p> <ul style="list-style-type: none"> <li>(a) access to quality and relevant education and training;</li> <li>(b) full participation in governance;</li> <li>(c) access to gainful employment;</li> <li>(d) adequate opportunities in the social, economic and other spheres of national life;</li> <li>(e) freedom of association of further their legitimate interests;</li> <li>(f) protection from any culture, custom or tradition that could undermine their dignity or quality of life; and</li> <li>(g) a life free from discrimination, exploitation or abusive.</li> </ul> <p>(4) Relevant ministries and complaints bodies including the commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues</p>

	<p style="text-align: center;"><b>affecting the youth.</b></p> <p style="text-align: center;"><b>(5) In this Constitution, “youth” refers to a woman or a man who has attained the age of eighteen years but is not above the age of thirty-five years.</b></p>
37	<ul style="list-style-type: none"> <li>(a) Clause (1) amended by deleting the word “emotionally and substituting therefore the word “psychologically”.</li> <li>(b) Clause (2) adopted without amendment.</li> <li>(c) Clause (3) amended by deleting the word “are” and substituting therefore the words “shall be”</li> <li>(d) Clause (4) adopted without amendment.</li> <li>(e) Clause (5) (i) to (o) amended and re-numbered.</li> <li>(f) Clause (7) re-numbered as clause (6) and amended by inserting the words “nomadic children” after the words “children with disabilities”.</li> <li>(g) Clause (9) re-numbered as clause (8) and amended by deleting the word “Article” and substituting therefore the word “Constitution”</li> </ul>
38	<ul style="list-style-type: none"> <li>(a) Clause (1) adopted without amendment.</li> <li>(b) Clause (2) adopted without amendment.</li> <li>(c) Clause (3) amended by inserting the words “a person of the opposite sex” immediately after the word “marry”.</li> <li>(d) Clause (4) amended by deleting the words “in the marriage and substituting therefore the words “as to the marriage”.</li> <li>(e) Clause (5) adopted without amendment.</li> </ul>
39	<ul style="list-style-type: none"> <li>(a) Article amended by deleting the phrase “persons with disability” wherever it appears and substituting therefore the phrase “persons with disabilities”</li> </ul> <p style="text-align: center;">(This amendment was proposed to be effected throughout the Draft Bill)</p> <ul style="list-style-type: none"> <li>(b) Clause (1) amended by deleting the words “participate as fully in</li> </ul>

	<p>society as they are able” and insert the words “be full participants in society”.</p> <p>(c) (i) Clause (2) (a) and (b) adopted without amendment.</p> <p>(ii) Clause (2) (c) amended by -</p> <ul style="list-style-type: none"> <li>• deleting the word “education” and substituting therefore the word “educational”</li> <li>• deleting the words “disabled persons” and “the disabled” and substituting therefore the words “persons with disabilities” and “their” respectively;</li> </ul> <p>(iii) Clause 2 (d) amended by inserting the words “ to houses for use by the public” after the words “ensure access to all places.”</p> <p>iv. Clause 2 (e) amended by deleting the words “encourage the development and” and substituting therefore the words “develop and ensure the”</p>
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	<p>(v) Clause 2 (f) amended by deleting the word “require” and substituting therefore the word “encourage”</p> <p>(vi) Clause 2(g) amended by –</p> <p>(i) by inserting the word “inclusion and” immediately after the words “provide for the”; and</p> <p>(ii) deleting the words “disabled persons” and substituting therefore the words “persons with disabilities”.</p> <p>(vii) Clause 2(h) amended by –</p> <p>(i) inserting the word “facilities” immediately after the word “materials”, and</p> <p>(ii) deleting the words “the disabled” and substituting therefore the words “persons with disabilities”</p> <p>(iii) deleting the words “due to” immediately after the words “overcome constraints” and substituting the words “arising from”</p>
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	<p>(viii) New Clauses 2(i) and 2(j) adopted as follows:</p> <ul style="list-style-type: none"> <li>(i) ensure that persons with disabilities have equal rights as other persons to inherit, access and control property;</li> <li>(ii) ensure that persons with disabilities have the right to equal and fair treatment and opportunities in the political, economic and social spheres as the rest of the society.</li> </ul> <p>(ix) Clause (3) amended by deleting the words “wherever appropriate”</p> <p>(x) Clause (4) amended by-</p> <ul style="list-style-type: none"> <li>(i) deleting the word “Article” and substituting therefore the word “Constitution;”</li> <li>(ii) inserting the word “psychological” immediately the word “mental”</li> <li>(iii) deleting the word “normal” and substituting therefore the word “ordinary”</li> <li>(iv) deleting the word “or” at the end of paragraph (a)</li> <li>(v) deleting paragraph (b)</li> </ul> <p>(xi) <i>New Clause</i> (5) adopted as follows:</p> <p><b>(5) Within one year of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.</b></p>
39A	<p><b>New Article</b> adopted on “Minorities and marginalized groups” as follows:</p> <p><b>(39) Minorities and other marginalized groups</b></p> <ul style="list-style-type: none"> <li><b>2. Minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, on a basis of equality, taking into account their special circumstances and needs.</b></li> <li><b>3. The state shall, by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to benefit minorities and other historically marginalized groups.</b></li> <li><b>4. The measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups-</b> <ul style="list-style-type: none"> <li><b>(a) Participate and are fully represented in governance and in all other spheres of national life;</b></li> <li><b>(b) are accorded special opportunities in the educational and economic fields;</b></li> <li><b>(c) are accorded special opportunities for access to gainful employment;</b></li> <li><b>(d) are assisted to develop their cultural values, languages and practices;</b></li> </ul> </li> </ul>

	<p>(e) are assisted to acquire the ancestral land which they occupy; and  (f) live a life free from discrimination, exploitation or abuse.</p> <p>5. Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.</p> <p>6. In this Constitution “minorities and other historically marginalized groups” includes, but is not limited to hunter and gatherers, nomadic pastoralists, pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</p>
40	Adopted without amendment
41	Adopted without amendment
42	Adopted without amendment
43	Adopted without amendment
44	<p>(a) Clause (1) adopted without amendment  (b) Clause (2) amended by inserting the words “including observation of a day of worship” immediately after the words “worship, observance”  (c) Clause (3) adopted without amendment  (d) Clause (4) adopted without amendment  (e) Clause (5) adopted without amendment</p> <p>Clause (6) amended in sub clause (d) by inserting the words “or private” after the words “a public”</p>
45	<p>(a) Clause (1) amended by inserting a new clause (1)(e) as follows:</p> <p>(e) freedom of dress.</p> <p>(b) Clause (2) deleted.</p>
46	<p>(a) Clause (1) amended by deleting the words “and print” and substituting therefore the words and “print and other”  (b) Clause (2) deleted and the following new clause substituted:</p> <p>(2) <b>The state shall not-</b></p> <p>(a) <b>Exercise control over, or interfere with any person or institution concerned in broadcasting or production or circulation of any publication or in the dissemination of information by any other medium; or</b>  (b) <b>Harass or penalize any such person or institution for any opinion or view or the content of any such broadcast, publication or dissemination.</b></p> <p>(c) Clause (3)(a) amended by inserting the words “and other forms of signal</p>

	<p>distribution” after the words “of the airwaves”</p> <p>(d) Clause (3)(b) adopted without amendment.</p> <p>(e) Clause (4) adopted without amendment.</p> <p>(f) Clause (5) adopted without amendment.</p> <p>(f) Clause (6)(a) amended to read as follows:</p> <p><b>(a) makes reasonable provision for equitable allocation of airtime by state-owned and other specified categories of broadcasting media, to political parties either generally or during elections campaigns</b></p> <p>(h) Clause 6(b) adopted without amendments</p> <p>(g) Clause 6(c) deleted and the following new clause (6)(c) and (d) substituted -</p> <p><b>(c) sets media standards; and</b></p> <p><b>(d) provides for the establishment of a body independent of government or political control, reflective of the interests of all sections of the community, to regulate and monitor compliance with the media standards referred to under paragraph (c).</b></p> <p>(h) Clause (7) deleted</p>
47	Adopted without amendment
49	Adopted without amendment
50	Adopted without amendment
51	Adopted without amendment
52	Adopted without amendment
53	Adopted without amendment
54	<p>(a) Clause (1) amended by inserting the words “in any part of the Republic” immediately after the words “in association with others”</p> <p>(b) Clause (2) amended to read as follows:</p> <p>(2) Parliament shall not enact a law that permits the state, or any person to-</p> <p>(a) arbitrarily deprives a person of property of any description; or</p> <p>(b) arbitrarily deprive a person of any interest in, or interest over, such property.</p> <p>(c) New sub clause (2) (c) inserted to read as follows:</p> <p><b>(a) <i>Limit or in any way restrict the enjoyment of any right under this article on the basis of any of the grounds set out under article 34(1)</i></b></p> <p>(d) Clause (3) (a) adopted without amendment.</p> <p>(e) Clause (3) (b) (I) amended to read as follows;</p>

	<p>Requires the prompt payment in full of a just compensation to the person before the property is taken and;</p> <p>(d) Clause (3) (b) (ii) adopted without amendment (e) Clause (4) adopted without amendment.</p> <p>(f) <b>New Clause (5) inserted to read as follows:</b>  <b>(5) Every person who owns or is responsible for-</b></p> <p style="padding-left: 40px;">(a) <b>a living organism must treat it with the care and respect appropriate to a living being and a cohabitant of Kenya;</b></p> <p style="padding-left: 40px;">(b) <b>part of Kenya must respect and care for it and conserve and protect any indigenous plants and animals on it, as a trustee for the present and future generation.</b></p>
55	<p>(a) Clause (1) to (5) adopted without amendment</p> <p>(b) <b>New clause (6) inserted to read as follows:</b></p> <p style="padding-left: 40px;"><b>(6) Parliament shall within two years of the coming into force of the Constitution, enact legislation to give effect to this article.</b></p>
56	<p>Re-phrased to read as follows:</p> <p>56 (1) Every person has a right to social security.</p> <p style="padding-left: 40px;">(2) The state shall provide appropriate social security assistance to persons who are unable to support themselves or their dependants.</p> <p style="padding-left: 40px;">(3) Parliament shall within three years of the coming into force of the Constitution enact legislation to give effect to this article.</p>
57	Adopted without amendment
58	<p>(a) Clause (1) and (2) amended to read as follows:</p> <p style="padding-left: 40px;">(1) Every person has a right to education</p> <p style="padding-left: 40px;">(2) The Government shall institute a programme to implement the right of every child to free and compulsory pre-primary and primary education and in so doing the Government shall pay particular attention to children with special needs.</p> <p>(b) Clause 58 (3) amended by inserting the words “secondary and” immediately after the words “available and accessible”.</p> <p>(c) Clause (4) adopted without amendment.</p>
59	<p>(a) Clause (1) amended by deleting the words “have access to adequate” and substituting therefore the words “adequate and accessible housing”.</p>

	(b) Clause (2) adopted without amendment.
	(c) Clause (3) adopted without amendment.
60	Delete the words “food in adequate quantities and “ and substitute therefore the words “adequate food”.
61	Amended by inserting the words “access to” immediately after the words “the right to”.
62	Adopted without amendment.
63	Adopted without amendment
63A	Adopted without amendment.
64	(a) Clause (1) adopted without amendment  (b) Clause (2) amended by inserting the words “goods and” after the words “Those who offer”  (c) Clause (3) adopted without amendment.  (d) Clause (4) adopted without amendment.  (e) Clause (5) amended by inserting the words “within three years of the coming into force of the Constitution” after the words “Parliament shall”.
65	Adopted without amendment.
66	Adopted without amendment
67	Adopted without amendment
68	Adopted without amendment
69	Adopted without amendment
70	(a) Clause (1) adopted without amendment  (b) Clause (2) amended:  (i) in sub clause (h) by deleting the word “prison” immediately after the words “law and order” and;  (ii) in sub clause (j) by inserting the words “by authorized persons” immediately after the words “to be informed”  (ii) in sub clause (k) by deleting the word “prison immediately after the words “hearing in”  (iii) in sub clause (n) by deleting all the words after the words “to vote”.  (d) <b>New sub clause (o) adopted to read as follows:</b>  (o) <b>in the case of persons with disabilities, to facilitates modified as necessary to fit the circumstances of such disabilities.</b>  (d) Clause (3) adopted without amendment.

71	<p>(a) Clause (1) adopted without amendment.</p> <p>(b) Clause (2) amended in sub clause (b) by deleting the words “twenty one” immediately after the words “more than” and substituting therefore the word “fourteen”</p> <p>(c) Clause (3) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p> <p>(e) Clause (5) adopted without amendment.</p> <p>(f) Clause (6) adopted without amendment.</p> <p>(g) Clause (7) adopted without amendment</p>
72	<p>(a) Clause (2) amended by deleting the words “A person enjoys the benefit of any right or freedom” and substituting therefore the words “Every person shall enjoy the rights or freedoms”</p> <p>(b) Clause (3) adopted without amendment</p> <p>(c) Clause (4) adopted without amendment.</p> <p>(d) Clause (4) adopted without amendment.</p>
73	Adopted without amendment
74	Adopted without amendment
75	<p>(a) clause (1) amended-</p> <ul style="list-style-type: none"> <li>▪ in sub clause (a), by inserting the word “equity” immediately after the words “dignity, equality”.</li> <li>▪ by inserting a new sub clause (b) as follows: <p style="margin-left: 40px;"><b>(b) shall recognize the importance of considering the interests of other species, aspects of the environment and future generations in ensuring that each may play its rightful role in the ongoing evolution of life:</b></p> </li> </ul> <p>(b) Clause (2) amended by deleting the full stop at the end of the clause and inserting the words “recognize the fundamental importance of maintaining the ecological balance and harmonious relationship between human beings and the environment”.</p> <p>(c) Clause (3) amended by deleting the words “to the extent that they are consistent with the Bill” and substituting therefore the words “unless they are inconsistent with the Bill of Rights”.</p> <p>(d) Clause (4) adopted without amendment.</p>

**MIN. CCC/TWGB/154/04 MINORITY VIEW**

ARTICLE NO.	NAME	VIEWS	AS FORMULATED BY MINORITY
20 Citizenship and marriage	Hon. Delegate Joyce Umbima Hon. Delegate Anne Njogu	Opposed amendment of Article 20 (1) to read ‘seven years’ instead of ‘three years’	<p>(1) <b>A person who has been married to a citizen of Kenya for a period of not less than three years is entitled, on application, to be registered as a citizen of Kenya.</b></p> <p>(2) <b>Citizenship is not lost through marriage of the dissolution of the marriage.</b></p>
29 Fundamental rights and freedoms	Hon. Delegate Moses Ole Sisika Hon. Delegate Jillo Onotto Hon. Delegate Ali Wario Hon. Delegate Korir Sing’oei Hon. Delegate Saleh Maalim Wario	The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and TRIBAL communities and to promote social injustice and the realization of the potential of all human beings.	
<i>Article 29 (2)</i>		There is need to clarify which “communities” Article 29 (2) refers to. Ethnic communities have become internationally recognized to collectiveness with a	

		corpus of rights (see the Ogoni and Katange Secession Communities before the African Commission on Human and People's Rights). In the absence of clear distinction as to which "communities" a	
<i>Article 29 (3) (b)</i>	Hon. Delegate Nichasius Mugo Hon. Delegates Moses Ole Sisika Hon. Delegate Millie Odhiambo Hon. Evelia Rebecca Jandeka	The clause should not left open to include other rights that have not been specified.	
31	Hon. Millie Odhiambo Hon. Joyce Umbima	The Article should have been worded differently to indicate that 'where Islamic Law provides a law standard.	
Limitation of Rights <i>Article 31 (4)</i>		Personal law provides a higher standard for women than equality standards.'	
32 Right to life	Hon. Delegate Neera Kent Kapila  Hon. Delegate Joyce Umbima  Hon. Delegate Rose Arungu-Olende  Hon. Delegate Bernadette Quadros  Hon. Delegate Lorna Laboso  Hon. Delegate Salah Maalim  Hon. Delegate Esther Keino  Hon. Delegate Yusuf Wako	The new sub-article that states that life is from conception until natural death should not be added	

	<p>Hon Delegate Eliud Paul Nakitare</p> <p>Hon. Delegate John Njue</p> <p>Hon. Delegate Sylvanus Onyambu Ogari</p> <p>Hon. Delegate Marie Therese Gachambi</p>	<p>New sub-article 32 (2) should be deleted as it did not stop abortion fully.</p>	
<p>39</p> <p>Persons with disability</p>	<p>Hon. Delegate Mary Teresa Osunga</p>	<p>Phrase 'person with disability' was more appropriate</p>	
<p>44</p> <p>Freedom of Religion, belief and opinion</p>	<p>Hon. Delegate Mary Teresa Osunga</p> <p><i>Article 44 (1)</i></p>		<p><b>A person may not be deprived of access to employment of the enjoyment of any right for reasons of that person's religious beliefs.</b></p>
	<p>Hon. Delegate Pamela Mboya</p> <p>Hon. Delegate Joyce Umbima</p> <p><i>Article 44 (5)</i></p>	<p>Language should be improved since the Article is ambiguous if left as it is.</p> <p>Phrase 'institutions or facilities' should be deleted from the Clause, in order to make the article clearer.</p>	
<p>45</p> <p>Freedom of expression</p> <p><i>Article 45 (1)</i></p>	<p>Hon. Delegate Mary Teresa Osunga</p> <p>Hon. Delegate John Njue</p> <p>Hon. Delegate Nicholas Mugo</p> <p>Hon. Delegate George Wesonga</p> <p>Hon. Delegate Jillo Onotto</p> <p>Hon. Delegate Sylvanus</p>	<p>Opposed to the insertion of the new sub-article</p>	

	Onyambu Ogari Hon. Godfrey Masanya		
<i>Article 45 (2)</i>	Hon. Delegate Godfrey Masanya Hon. Delegate John Katumanga Hon. Delegate Sylvanus Onyambu Ogari Hon. Delegate Millie Odhiambo Hon. Delegate Lihanda Savai Hon. Delegate Florence Machayo Hon. Delegate Dorcas Mbelesia Hon. Delegate Francis Kaloki Hon. Delegate Lucas Chepkitony Hon. Delegate Gaudentia Atonga	Opposed to the deletion of the Sub-Article.	
46 Publication of Opinion <i>Article 46 (6) (a)</i>	Hon. Delegate Rosemary Kinyanjui Hon. Delegate Abdulrahman Wandati Hon. Delegate Lawrence Mute Hon. Delegate Sisika Leng'ete Hon. Delegate Salah Maalim Alio Hon. Delegate Yusuf Wako Hon. Delegate Neera Kent	The sub-article should be deleted.	

	<p>Kapila</p> <p>Hon. Delegate Dorcas Mbelesia</p> <p>Hon. Delegate Joyce Umbima</p> <p>Hon. Delegate Lihanda Savai</p>		
<p><i>Article 46 (6) (c)</i></p>	<p>Hon. Delegate Abdulrahman Wandati</p> <p>Hon. Delegate Wilfred Kiboro</p> <p>Hon. Delegate Margaret Kamar</p> <p>Hon. Delegate Yusuf Wako</p> <p>Hon. Delegate Moses Ole Sisika</p> <p>Hon. Delegate George Wesonga</p> <p>Hon. Sala maalim</p> <p>Hon. Delegate Neera Kent Kapila</p> <p>Hon. Delegate John Katumanga</p>	<p>The article should be deleted</p>	
<p>47</p> <p>Access to Information</p> <p><i>Article 47 (4)</i></p>	<p>Hon. Nicholas Mugo</p>	<p>This sub-article should be dealt with by the Technical Working Committee on Transition and Consequential Arrangements.</p>	
<p>49</p> <p>Assembly, demonstration, picketing and petition</p>	<p>Hon. Delegate Florence Machayo</p>	<p>Such demonstrations should be peaceful and disciplined. The public should be educated on the same.</p>	
<p>50</p> <p><i>Article 50 (3)</i></p>	<p>Hon. Delegate Joyce Umbima</p> <p>Hon. Delegate Pamela Mboya</p>	<p>The principle of affirmative action should be included in</p>	

(b)		this sub-article to provide for equality in gender, persons with disabilities and for the marginalized groups.	
51 <i>Article 51 (3)</i>	Hon. Delegate Mary Teresa Osunga  Hon. Delegate Moses Ole Sisika  Hon. Delegate Gaudentia Atonga	Opposed to the inclusion of this right in the Bill	
54 <i>Article 54(1)</i>	Hon. Delegate Lihanda Savai  Hon. Delegate Fatuma Ali  Hon. Delegate Amina Zuberi  Hon. Delegate Esther Keino  Hon. Delegate Pamela Mboya	To be amended to read ‘Every man or woman has a right to acquire Property’.	<b>Every man or woman has a right to acquire and own property either individually or in association with others.</b>
<i>Article 54 (1)</i>	Hon. Delegate Salah Maalim	Opposed amendments to the Sub-Article	<b>Every person has a right to acquire and own property either individually or in association with others.</b>
<i>Article 54 (3) (b) (ii)</i>	Hon. Delegate Lihanda Savai	Opposed the provisions of the sub-article	
55 Labor Relations	Hon. Delegate Mary Teresa Osunga	Title to be amended	<b>“Fair Labour Practices”</b>
57 Health <i>Article 57 (1)</i>	Hon. Delegate Stephen Ondiek  Hon. Delegate Marie Therese Gachambi	Reproductive healthcare should not be included in the sub-article	(1) Every person has the right to health, which includes the right to health care services.
68 Rights of arrested person <i>Article 68 (1) (e)</i>	Hon. Delegate George Wesonga  Hon. Delegate Nichasius Mugo  Hon. Delegate Millie Odhiambo	Sub-Article should be deleted	
69	Hon. Delegate Marie Therese	Sub-Article should be	

Fair trial <i>Article 69 (1) (h)</i>	Gachambi Hon. Delegate Joyce Umbima	deleted	
70 Rights of persons held in custody <i>Article 70 (2) (c)</i>	Hon. Delegate Lihanda Savai	The Sub-Article should not grant persons in custody all the rights enumerated therein.	
75 Interpretation of the Bill of Rights <i>Article 75 (2)</i>	Hon. Delegate Anne Njogu		<b>(2) When interpreting and developing any legislation, common law or customary law, every court, tribunal or forum shall promote the spirit, purpose and objects of the Bill of Rights.</b>

**MIN. CCC/TWGB/155/04 VOTE OF THANKS**

The Members thanked one another for their co-operation in articulating, within their mandate and terms of reference to discharge their mandate.

**MIN. CCC/TWGB/156/04 ADJOURNMENT**

And the time being twenty minutes past one O'clock the Convener adjourned the sitting until Monday February 02, 2004.

Signed:.....  
CECILY MBARIRE (CONVENOR)

Date:.....

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 17, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Tuesday, February 17, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Discussion of Zero Draft and related Documents**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire (Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTY EIGHTH SITTING OF THE TECHNICAL COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, 17<sup>TH</sup> FEBRUARY 2004 AT 9.53 AM**

<b>PRESENT:</b>	<b>DELEGATE NUMBER</b>
<b>1. Hon. Suba Churchill Meshack</b>	<b>Acting Convener</b>
2. Hon. Amina Zuberi	227
3. Hon. Anne Okoth	474
4. Hon. Bernadette Quadros	622
5. Hon. Stephen Ondiek	168
6. Hon. Dorcas Mbelesia	378
7. Hon. Esther Keino	214
8. Hon. Evelia Rebecca Jandeka	384
9. Hon. Fahim Twaha	200
10. Hon. Florence Machayo	512
11. Hon. Francis Kaloki	292
12. Hon. Gaudentia Atonga	417
13. Hon. George Wesonga	398
14. Hon. Joseph Nyagah	151
15. Hon. Joshua Jillo Onotto	237
16. Hon. John Katumanga	435
17. Hon. John Njue	539
18. Hon. Joyce Umbima	466
19. Hon. Lihanda Kimeni Savai	608
20. Hon. Lorna Timanoi	360
21. Hon. Marie Therese Gachambi	519
22. Hon. Millie Odhiambo	451
23. Hon. Moses Leng'ete ole Sisika	365
24. Hon. Pamela Mboya	473
25. Hon. Peter O. Bwana	516
26. Hon. Sabenzia N. Wekesa	478
27. Hon. Sahara Ahmed Hillow	257
28. Hon. Sheikh Abdalla	243
29. Hon. Sylvanus Onyambu Ogari	425
30. Hon. Mary Teresa Osunga	411
31. Hon. Yusuf Wako	269
32. Hon. Wandati Abdulrahman Mirimo	547

**ABSENT WITH APOLOGIES**

1. Hon. Rosemary Kinyanjui	526
2. Hon. Cecily Mbarire	217
3. Hon. Anne Njogu	475
4. Hon. Salah Maalim Alio	259
5. Hon. Jane Mwende	291

**ABSENT**

1. Hon. Ali Wario	206
2. Hon. Lorna Laboso	499
3. Hon. Kilonzo Charles Mutavi	127
4. Hon. Sudi David Kiprono Sutter	192
5. Hon. Lucas K. Chepkitony	020
6. Hon. Lawrence Mute	455
7. Hon. Nichasius Mugo	287
8. Hon. Rose Arungu-Olende	502
9. Hon. Wafula Wamunyinyi	203
10. Hon. Wilfred Kiboro	619
11. Hon. Magugu Arthur	088
12. Hon. Fatuma Ali Saman	505
13. Hon. Masanya Godfrey Okeri	097
14. Hon. Sing'oei Korir	464
15. Hon. Neera Kent Kapila	524

**OBSERVERS PRESENT**

1. Monah Muthengi	150
2. Joseph K. Waweru	069
3. J.K. Wanjeru	068
4. Sam Ongoro	097
5. Kennedy Sanga	411B

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome	Rapporteur
2. Comm. Salome Muigai	Rapporteur
3. Comm. Nancy Baraza	Rapporteur
4. Mr. Jeremiah Nyegenye	Draftsperson
5. Ms. Helene Namisi	Assistant Programme Officer
6. Ms. Carol Ndindi	Assistant Programme Officer
7. Ms. Martina Odhiambo	Verbatim Recorder
8. Ms. Achieng' Olende	Programme Officer
9. Ms./ Mitchell Washington	

**PRAYER**

The meeting opened with a word of prayer.

**MIN. CCC/TWGB/154/04**

**ELECTION OF A TEMPORARY CONVENER**

The election of a temporary Convener was conducted by Comm. Salome Muigai.

Hon. Suba Churchill was proposed by Hon. Rebecca Evelia Jandeka (Delegate No. 384) and seconded by Hon. Pamela Mboya (Delegate No. 473), and there being no other proposal, Hon. Suba Churchill was unanimously elected the Acting Convener.

**MIN.CCC/TWG/155/04**

**ADOPTION OF AGENDA**

There being no specific agenda, the honorable delegates, formulated the Agenda as follows:

1. Prayer
2. Apologies
3. Discussion of Zero Draft & Related documents
4. A.O.B

The day's Agenda was proposed by Hon. Wandati Abdulrahman Mirimo (Delegate No. 547) and seconded by Hon. Dorcas Mbelesia (Delegate No. 378) and was adopted by the Committee.

**MIN.CCC.TWGB/155/04**

**DISCUSSION OF ZERO DRAFT & RELATED DOCUMENTS**

The members went through the Summary of Comments & suggestions given by participants at Leisure Lodge Beach and Golf Resort, Mombasa.

**MIN.CCC.TWGB/156/04**

**TITLE OF CHAPTER ON BILL OF RIGHTS**

There was a suggestion that the Bill of Rights should be renamed the 'Bill of Human and People's Rights'.

The Committee agreed that the title would be retained as is.

**MIN.CCC. TWGB/157/04**

**ARTICLE 17**  
**RETENTION OF EXISTING CITIZENSHIP**

There was a suggestion that the Article should be specific about the particular Constitution being referred to, and should be rephrased to read '*...this Constitution...*'.

The Committee agreed to amend the Article and assigned the duty of drafting the motion for amendment to Hon. Mary Teresa Osunga (Delegate No. 411)

**MIN.CCC.TWGB/158/04**

**ARTICLE 20 (1)**  
**CITIZENSHIP & MARRIAGE**

There was a suggestion to amend the Article to read ‘*Every man or woman who has been married...*’.

The Committee agreed that the Article should be left as is, with the understanding that in the interpretation, it shall be clearly stated that the word ‘person’ includes both man and woman.

**MIN.CCC.TWGB/159/04**

**ARTICLE 36 (6)**  
**OLDER MEMBERS OF SOCIETY**

There was a suggestion that the provision should specify by which means the state shall establish the Council that will define and advise on policies and programs for the care and protection of elderly persons, for example, by legislation.

The Committee agreed to amend the provision by inserting the words ‘by legislation’ and assigned the duty of drafting the motion for amendment to Hon. Pamela Mboya (Delegate No. 473)

**MIN.CCC.TWGB/160/04**

**ARTICLE 23**  
**DUAL CITIZENSHIP**

Several views concerning the issue of dual citizenship were presented.

The Committee resolved to leave the issue until it receives the views of the consensus-building team.

**MIN.CCC.TWGB/161/04**

**ARTICLE 37**  
**CHILDREN**

There was an observation that Article 37 (5) (iii) and Article 37 (5) (v) were repetitive.

The Committee resolved to leave the Article as it is, but Article 37 (5) (v) should be renumbered as Article 37 (5) (j) and Article 37 (5) (j) renumbered as Article 37 (5) (k). The task of preparing a motion for amendment was assigned to Hon. Millie Odhiambo (Delegate No. 451).

**MIN.CCC.TWGB/162/04**

**ARTICLE 29 (3) (a)**  
**FUNDAMENTAL RIGHTS & FREEDOMS**

It was observed that the language used in the Article exclude juristic persons and should be refined and harmonized.

The Committee that the provision would be left as it is.

**MIN.CCC.TWGB/163/04**

**ARTICLE 31**

## LIMITATION OF RIGHTS

It was suggested that the Article should be strengthened to specify the limitations that can be imposed on specific rights instead of relying on laws of general application.

The Committee resolved that the Draftsperson would source other limitations for consideration and adoption by the Committee. The honorable delegates would also identify, at an individual level, other provisions in the Bill of Rights that specify limitations and these would be consolidated in the Limitations clause.

### MIN.CCC.TWGB/164/04

### ARTICLE 32 RIGHT TO LIFE

It was suggested that Article 32 (2) and (3) should be deleted and Article 32 (4) rephrased.

The Committee resolved to retain Articles 32 (2) and (3) and to rephrase the provision on the death penalty.

### MIN.CCC.TWGB/165/04

### ADJOURNMENT

The Committee adjourned for lunch at 1.35 pm to resume at 2.30 pm.

### AFTERNOON SESSION

<b>PRESENT:</b>		<b>DELEGATES NUMBER</b>	
1.	Hon. Suba Churchill Meshack	Acting	Convener
2.	Hon. Amina Zuberi	227	
3.	Hon. Anne Okoth	474	
4.	Hon. Dorcas Mbelesia	378	
5.	Hon. Esther Keino	214	
6.	Hon. Evelia Rebecca Jandeka	384	
7.	Hon. Fahim Twaha	200	
8.	Hon. Florence Machayo	512	
9.	Hon. Francis Kaloki	292	
10.	Hon. Gaudentia Atonga	417	
11.	Hon. George Wesonga	398	
12.	Hon. Joshua Jillo Onotto	237	
13.	Hon. John Katumanga	435	
14.	Hon. John Njue	539	
15.	Hon. Lihanda Kimeni Savai	608	
16.	Hon. Lorna Timanoi	360	
17.	Hon. Lucas K. Chepkitony	020	
18.	Hon. Marie Therese Gachambi	519	
19.	Hon. Masanya Godfrey Okeri	097	
20.	Hon. Millie Odhiambo	451	

21.	Hon. Moses Leng'ete ole Sisika	365
22.	Hon. Pamela Mboya	473
23.	Hon. Peter O. Bwana	516
24.	Hon. Salah Maalim Alio	259
25.	Hon. Sahara Ahmed Hillow	257
26.	Hon. Sheikh Abdalla	243
27.	Hon. Sylvanus Onyambu Ogari	425
28.	Hon. Mary Teresa Osunga	411
29.	Hon. Yusuf Wako	269
30.	Hon. Wandati Abdulrahman Mirimo	547
31.	Hon. Wafula Wamunyinyi	203

**ABSENT WITH APOLOGIES**

1.	Hon. Rosemary Kinyanjui	526
2.	Hon. Cecily Mbarire	217
3.	Hon. Anne Njogu	475
4.	Hon. Jane Mwendu	291
5.	Hon. Fatuma Saman Ali	505

**ABSENT**

1.	Hon. Ali Wario	206
2.	Hon. Lorna Laboso	499
3.	Hon. Kilonzo Charles Mutavi	127
4.	Hon. Sudi David Kiprono Sutter	192
5.	Hon. Lawrence Mute	455
6.	Hon. Nichasius Mugo	287
7.	Hon. Rose Arungu-Olende	502
8.	Hon. Wilfred Kiboro	619
9.	Hon. Magugu Arthur	088
10.	Hon. Sabenzia N. Wekesa	478
11.	Hon. Sing'oei Korir	464
12.	Hon. Neera Kent Kapila	524

**OBSERVERS PRESENT**

1.	Monah Muthengi	150
2.	Joseph K. Waweru	069
3.	J.K. Wanjeru	068
4.	Kennedy Sanga	411B

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Ibrahim Lethome	Rapporteur
2.	Comm. Salome Muigai	Rapporteur
3.	Comm. Nancy Baraza	Rapporteur
4.	Mr. Jeremiah Nyegenye	Draftsperson
5.	Ms. Helene Namisi	Assistant Programme Officer

- |    |                      |                             |
|----|----------------------|-----------------------------|
| 6. | Ms. Carol Ndindi     | Assistant Programme Officer |
| 7. | Mr. John Wanyoike    | Clerk                       |
| 8. | Ms. Martina Odhiambo | Verbatim Recorder           |

**MIN.CCC/TWGB/166/04**

**COMMENCEMENT**

The afternoon session commenced at 2. 50 p.m.

**MIN.CCC/TWGB/167/04**

**DISCUSSION OF THE ZERO DRAFT & RELATED DOCUMENTS**

The Committee resumed discussion of the Summary of Comments and Suggestions given by participants at Leisure Lodge, Mombasa.

**MIN.CCC.TWGB/168/04**

**ARTICLE 35 (2)  
WOMEN**

There was a suggestion that the Article should be amended to read '*Women at all ages....*'.

The Committee resolved that the Article would be left as it is.

**MIN.CCC.TWGB/169/04**

**ARTICLE 37(5)  
CHILDREN**

There was a suggestion that the provisions should be amended to read '*Every child has a culturally acceptable name, an inheritance and parentage...*'.

The Committee resolved that the Article would be left as it is.

**MIN.CCC.TWGB/170/04**

**ARTICLE 38 (1)  
FAMILY**

It was suggested that the provisions should be amended to read '*The state shall recognize the extended family as the natural fundamental unit of society and as the necessary basis of social order.*'

The Committee resolved that the provisions shall be left as they are.

**MIN.CCC.TWGB/171/04**

**ARTICLE 39A (5)  
MINORITIES & OTHER MARGINALISED  
GROUPS**

It was pointed out that the definition of 'minorities' in the Article was not the same as the one adopted by the Technical Working Committee on Devolution.

The Committee agreed that this issue shall be dealt with at the Committee's next sitting and that the Secretariat shall assist in sourcing the paper on 'Affirmative Action'.

**MIN.CCC.TWGB/172/04**

**ARTICLE 43**  
**PRIVACY**

It was observed that this Article is in direct conflict with Article 289 on the Ethics & Integrity Commission.

The Committee resolved that no action would be taken on this issue.

**MIN.CCC.TWGB/173/04**

**ARTICLE 45 (1) (e)**  
**FREEDOM OF EXPRESSION**

There was a suggestion to delete this provision.

The Committee resolved the issue would be discussed at the Committee's next sitting.

**MIN.CCC.TWGB/174/04**

**ARTICLE 46**  
**PUBLICATION OF OPINION**

There was an observation that the media could be used as a tool to fuel unrest in the country and that the Article should be reconsidered since it makes it appear as though the media is above the law.

The Committee agreed to take no action on this issue.

**MIN.CCC.TWGB/175/04**

**ARTICLE 50 (3) (b)**  
**POLITICAL RIGHTS**

It was suggested that citizens who stand for public offices should be indigenous citizens.

The Committee resolved to take no action on the issue.

**MIN.CCC.TWGB/176/04**

**ARTICLE 55**  
**LABOUR RELATIONS**

It was pointed out that the employees' organizations did not necessarily have to be trade unions.

The Committee agreed to take no action on this issue.

**MIN.CCC.TWGB/177/04**

**ARTICLE 57**  
**HEALTH**

There was a suggestion to include the definition of the term 'emergency medical treatment'.

The Committee agreed to take no action on this issue.

**MIN.CCC.TWGB/178/04**

**ARTICLE 69**  
**FAIR TRIAL**

There was an observation that the right to fair trial in civil suits had not been sufficiently covered.

The Committee agreed to take no action on this issue.

**MIN.CCC.TWGB.179/04**

**ARTICLE 73 (2)**  
**RIGHT TO ASK THE COMMISSION ON HUMAN**  
**RIGHTS & ADMINISTRATIVE JUSTICE OR COURT**  
**TO UPHOLD THE BILL OF RIGHTS**

There was an observation that the Article should be reconciled with Article 288 on the Commission on Human Rights and Administrative Justice

The Committee resolved that this issue would be discussed at the Committee's next sitting.

**MIN.CCC.TWGB/180/04**

**ARTICLE 75 (3)**  
**INTERPRETATION OF THE BILL OF RIGHTS**

It was pointed out that the words '*...unless they are inconsistent with the Bill of Rights*' imply that some customary law could be relegated and rendered obsolete.

The Committee agreed to take no action on this issue.

**MIN.CCC.TWGB/181/04**

**ADJOURNMENT**

There being no other business, the Committee adjourned its sitting at 4.50 p.m.

**MIN.CCC.TWGB.182/04**

**DATE OF NEXT MEETING**

The Committee will meet on Wednesday, 18<sup>th</sup> February 2004 at 9.00 a.m

**SIGNED:..... DATE.....**

**Hon. Suba Churchill (Acting Convener)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 17, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Wednesday, February 18, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Discussion of Zero Draft and related documents**
- 5. Deliberation on Cross-cutting or conflicting provisions**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE TWENTY NINTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, FEBRUARY 18<sup>TH</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

	<b>Acting Convenor</b>
1. Suba Churchill Meshack	
2. Amina Zuberi	227
3. Anne Okoth	474
4. Bernadette Quadros	622
5. Dorcas Mbelersia	378
6. Esther Keino	214
7. Fatuma Ali Saman	505
8. Florence Machayo	512
9. Francis N. Kaloki	292
10. Gaudentia Atonga	417
11. George Wesonga	398
12. Jane Mwende	291
13. John Katumanga	435
14. John Njue	539
15. Joshua Jillo Onotto	237
16. Joyce Umbima	466
17. Lihanda Kemeni Savai	608
18. Lucas K. Chepkitony	020
19. Marie Therese Gachambi	519
20. Masanya Godfrey Okeri	097
21. Millie Odhiambo	451
22. Moses Leng'ete Ole Sisika	365
23. Pamela Mboya	473
24. Peter O. Bwana	516
25. Rebecca Evelia Jandeka	384
26. Rosemary Kinyanjui	526
27. Sabenzia N. Wekesa	478
28. Sahara Ahmed Hillow	257
29. Sylvanus Onyambu Ogari	425
30. Sudi David Kiprono Sutter	192
31. Mary Teresa Osunga	411
32. Wandati Abdulrahman Mirimo	547
33. Yusuf Wako	269

### **ABSENT WITH APOLOGIES**

1. Cecily Mbarire	-	Convenor	217
2. Lawrence Mute			455
3. Nichasius Mugo			287
4. Wilfred Kiboro			619
5. Stephen Ondiek			168
6. Sheikh Abdalla			243
7. Anne Njogu			475

### **ABSENT**

1. Ali Wario			206
2. Lorna Timanoi			360
3. J.W. Nyagah			151
4. Fahim Twaha			200
5. Lorna Laboso		499	
6. Kilonzo Charles Mutavi		127	
7. Magugu Arthur		088	
8. Wafula Wamunyinyi		203	
9. Neera Kent Kapila		524	
10. Salah Maalim Alio		259	
11. Simeon Lesrima		082	
12. Sing'oei Korir		464	
13. Rose Arungu-Olende		502	

### **OBSERVERS PRESENT:**

1. Monah Muthengi	-	150	
2. Gichane Muraguri	-	236	
3. J.K. Wanjeru	-	068	
4. Joseph K. Waweru	-	069	
5. Kennedy Sanga	-	411B(Aide)	
6. Samuel Ongoro	-	097	
7. Davis Malombe	-	012	
8. Peninnah Vulimu	-	T204	
9. Moses Njuguna			

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Salome Muigai	-	Rapporteur	-	555
2. Comm. Ibrahim Lethome	-	Rapporteur	-	568
3. Comm. Nancy Baraza	-	Rapporteur	-	561
4. Jeremiah Nyegenye	-	Draftsman		
5. John Wanyoike	-	Clerk		

- |                     |   |                             |
|---------------------|---|-----------------------------|
| 6. Achieng Olende   | - | Programme Officer           |
| 7. Helene Namisi    | - | Assistant Programme Officer |
| 8. Carol Ndindi     | - | Assistant Programme Officer |
| 9. Martina Odhiambo | - | Verbatim Recorder           |

**PRAYER**

The meeting started with a word of prayer

**MIN. CCC/TWGB/187/04 CONFIRMATION OF MINUTES**

Minutes of the Twenty Seventh sitting held on Friday January 30, 2004 were proposed by the Hon. Delegate Amina Zuberi, seconded by Hon. Delegate John Katumanga were confirmed and signed by the Acting Convenor Hon. Suba Churchill.

**MIN. CCC/TWGB/188/04 MATTER ARISING**

Under minute of CCC/TWGB/153/04:-

- (xi) Article 30 6(d) the word “without” was inserted therein before the word “amendment” and after the word “adopted”;
- (xii) Article 31 (1) (b) the word “insetting” was deleted and inserted the word “inserting”;
- (xiii) Article 36 A (e) deleted the word “of” before the word “further” and after the word “association” and inserted the word “to” therein.
- (xiv) Article 36 A (g) the word “abusive” was deleted and inserted the word “abuse”;
- (xv) Article 46 2 second “f” was renumbered as “g” and second “g” was renumbered as (i);
- (xvi) That Articles 54 New Sub Article (5) and Article 75 new Sub Article (b) were in an appropriate chapter and should be deleted and referred to the appropriate Technical Working Committees;
- (xvii) That Article 54 (b) deleted the word “deprives” and substituted with the word “deprive”;
- (xviii) Article 70 (o) deleted the word “facilitate” and substituted with the word “facilities”.

**Under Min.CCC/TWGB/154/04 Minority views:-**

- (i) Article 29 deleted the word “injustice and inserted the word “justice” therein;

- (ii) Article 29 (3) b inserted the word “be” before the word “left” and after the word “not”;
  - a. Article 31 deleted the words “a law” and inserted the words “a lower”;
  - b. Article 44 deleted the word “employment of” and inserted the word “employment or” therein;
  - c. Article 68 (1) (e) the Hon. Delegate Millie Odhiambo requested that her name be expunged from the minority view, the request was unanimously granted by the members;
  - d. Article 45 (1) was inserted as the New Article 45 (1) New (e).

**MIN. CCC/TWGB/189/04 CONFIRMATION OF MINUTES**

Minutes of the Twenty Eighth sitting held on Tuesday September 17, 2004 were proposed by the Hon. Delegate Esther Keino, seconded by the Hon. Delegate Moses Leng’ete Ole Sisika, were confirmed and signed by the Acting Convener Hon. Suba Churchill Meshack.

**MIN. CCC/TWGB/190/04 MATTERS ARISING**

- (a) That Hon. Delegates Wilfred Kiboro and Nichasius Mugo were inadvertently marked absent while they were absent with apologies.
- (b) That Hon. Delegate Joyce Umbima was inadvertently marked absent but should have been marked absent with apology.
- (c) Under Min. CCC/TWGB/16204 inserted the word “resolved” before the word “committee” and after the word “that”.
- (d) Under Min.CCC/TWGB/177/04 it should read that “The Committee resolved that this Article be taken as a cross cutting issue”.
- (e) Under Min.CCC/TWGB/174/04 it should read “The committee resolved that the earlier decision taken on the Article remain unchanged” should be inserted wherever it reads “the Committee agreed to take no action on this issue”.

**MIN. CCC/TWGB/191/04 DELIBERATIONS ON ARTICLE 45 1 (e)**

**Article 45  
Freedom of Expression.**

Article 45 1(e)

Freedom of Dress

The delegates deliberated on Article 45 1 (e) as they were informed that the Sub Article 1 (e) was in an inappropriate place.

Debate arising.

Debate to be resumed in the afternoon.

**MIN. CCC/TWGB/192/04 ADJOURNMENT**

And the time being one O'clock the Acting Convener adjourned the sitting until 2.30 p.m.

**AFTERNOON**

**PRESENT:**

**DELEGATES  
NUMBERS**

	<b>Acting Convener</b>
1. Suba Churchill Meshack	
2. Amina Zuberi	227
3. Anne Okoth	474
4. Dorcas Mbelesia	378
5. Esther Keino	214
6. Francis N. Kaloki	292
7. Gaudentia Atonga	417
8. Jane Mwendu	291
9. John Katumanga	435
10. John Njue	539
11. Joshua Jillo Onotto	237
12. Joyce Umbima	466
13. Lawrence Mute	455
14. Lihanda Kemeni Savai	608
15. Marie Therese Gachambi	519
16. Masanya Godfrey Okeri	97
17. Millie Odhiambo	451
18. Moses Leng'ete Ole Sisika	365
19. Nichasius Mugo	287
20. Pamela Mboya	473
21. Peter O. Bwana	516
22. Rebecca Evelia Jandeka	384
23. Rose Arungu-Olende	502
24. Rosemary Kinyanjui	526
25. Sylvanus Ogari	425
26. Sing'oei Korir	464
27. Mary Teresa Osunga	411
28. Wafula Wamunyi	203

### **ABSENT WITH APOLOGIES**

1.	Cecily Mbarire	-	Convenor	217
2.	Comm. Ibrahim Lethome	-	Rapporteur	568
3.	Sahara Ahmed Hillow			257
4.	Wilfred Kiboro			619
5.	Stephen Ondiek			168
6.	Sheikh Abdalla			243
7.	Lorna Timanoi			360
8.	Florence Machayo			512
9.	Sabenzia N. Wekesa			478
10.	Wandati Abdulrahman Mirimo			547
11.	George Wesonga			398
12.	Neera Kent Kapila			524
13.	Anne Njogu			475

### **ABSENT**

1.	Ali Wario			206
2.	J.W. Nyagah			151
3.	Fahim Twaha			200
4.	Lorna Laboso			499
5.	Kilonzo Charles Mutavi			127
6.	Magugu Arthur			088
7.	Yusuf Wako			269
8.	Bernadette Quadros			622
9.	Salah Maalim Alio			259
10.	Simeon Lesrima			82
11.	Sudi David Kiprono Sutter			192
12.	Fatuma Ali Saman			505
13.	Lucas K. Chepkitony			20

### **OBSERVERS PRESENT:**

1.	Monah Muthengi	-	150
2.	Kennedy Sanga	-	411B(Aide)
3.	Tim Gitau		

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Salome Muigai	-	Rapporteur	-	555
2.	Comm. Nancy Baraza	-	Rapporteur	-	561
3.	Jeremiah Nyegenye	-	Draftsman		
4.	John Wanyoike	-	Clerk		
5.	Achieng Olende	-	Programme Officer		



**NATIONAL CONSTITUTIONAL CONFERENCE**

February 18, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Thursday, February 19, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Discussion of Cross-cutting or Conflicting Provisions**
- 5. Pending Issues from Summary of Comments Raised at Leisure Lodge, Mombasa**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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**NATIONAL CONSTITUTIONAL CONFERENCE**

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**MINUTES OF THE THIRTIETH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, FEBRUARY 19<sup>TH</sup>, 2004 AT 9:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

<b><u>PRESENT:</u></b>	<b>DELEGATES NUMBERS</b>
1. Suba Churchill Meshack	<b>Acting Convenor</b>
2. Amina Zuberi	227
3. Anne Njogu	475
4. Anne Okoth	474
5. Bernadette Quadros	622
6. Dorcas Mbelesia	378
7. Esther Keino	214
8. Florence Machayo	512
9. Francis N. Kaloki	292
10. Gaudentia Atonga	417
11. George Wesonga	398
12. Jane Mwende	291
13. John Katumanga	435
14. John Njue	539
15. Joshua Jillo Onotto	237
16. Joyce Umbima	466
17. Lawrence Mute	455
18. Lorna Timanoi	360
19. Lucas K. Chepkitony	020
20. Marie Therese Gachambi	519
21. Masanya Godfrey Okeri	097
22. Millie Odhiambo	451
23. Moses Leng'ete Ole Sisika	365
24. Pamela Mboya	473
25. Peter O. Bwana	516
26. Rebecca Evelia Jandeka	384
27. Rose Arungu-Olende	502
28. Rosemary Kinyanjui	526
29. Sabenzia N. Wekesa	478
30. Sahara Ahmed Hillow	257
31. Salah Maalim Alio	259
32. Sheikh Abdalla	243
33. Sing'oei Korir	464

34. Sylvanus Onyambu Ogari	425
35. Sudi David Kiprono Sutter	192
36. Mary Teresa Osunga	411

**ABSENT WITH APOLOGIES**

1. Cecily Mbarire	-	Convenor	217
2. Nichasius Mugo			287
3. Wilfred Kiboro			619
4. Stephen Ondiek			168
5. Lihanda Kemen Savai			608
6. Wandati Abdulrahman Mirimo			547
7. Neera Kent Kapila			524
8. Fahim Twaha			200

**ABSENT**

1. Ali Wario	206
2. J.W. Nyagah	151
3. Lorna Laboso	499
4. Kilonzo Charles Mutavi	127
5. Magugu Arthur	088
6. Wafula Wamunyinyi	203
7. Yusuf Wako	269
8. Simeon Lesrima	82
9. Fatuma Ali Saman	505

**OBSERVERS PRESENT:**

1.Monah Muthengi	-	150
2.Gichane Muraguri	-	236
3.Joseph K. Waweru	-	069
4.Kennedy Sanga	-	411B(Aide)
5.Samuel Ongoro	-	097
6.Diana Imali Akivaga	-	455B
7.Jane Ogot	-	015

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm.Salome Muigai	-	Rapporteur	-	555
2. Comm. Ibrahim Lethome	-	Rapporteur	-	568
3. Jeremiah Nyegenye	-	Draftsman		
4. John Wanyoike	-	Clerk		
5. Helene Namisi	-	Assistant Programme Officer		
6. Carol Ndindi	-	Assistant Programme Officer		
7. Martina Odhiambo	-	Verbatim Recorder		

## **PRAYER**

The meeting started at 9:50 a.m. with a word of prayer

## **MIN. CCC/TWGB/195/04 ADOPTION OF AGENDA**

Hon. Bishop John Njue proposed the adoption of Agenda. This was seconded by the Hon. Delegate Gaudentia Atonga and the Agenda was thereby adopted.

## **MIN. CCC/TWGB/196/04 DISCUSSION OF CROSS CUTTING ISSUES**

### **(i) Article 15 Duties of a Citizen**

The Convener informed the honourable delegates that the Technical Working Committee A had resolved to retain Article 15 on the Duties of a Citizen in their chapter.

### **(ii) Article 67 Access to Courts and Article 186 Independence of the Judiciary.**

That a Sub Article “Court fees shall be reasonable and shall not be as such as to discourage the use of system” referred to this Committee by Committee E be considered for incorporation in Article 67.

The members resolved that Article 186 should be transferred and inserted in Article 67.

### **(iii) Article 39 A Minorities and other Marginalized Groups and Article 109 Representations of Special Interest Groups.**

That trade unions, ethnic minorities and geographically disadvantaged communities were not enumerated in Article 39 A .

The members resolved that there was no conflict of issues in the Articles as Committee F had tackled the issue of special interest groups and these are not necessarily marginalized.

### **(iv) Article 36 Older Members of Society and Article 109 Representation of Special Interest Groups.**

That Article 36 defines older members of society as persons above the age of sixty years while Article 109 defines them as persons above the age of sixty-five years.

The members resolved to retain their definition of older members of society as persons above the age of sixty years as they had earlier resolved.

**(v) Article 54 Property and Article 233 Ownership of Land,**

That Article 54 allows every person, regardless of his/her citizenship, to acquire and own property, while Article 233 limits the right to acquire an interest or right in land. The two Articles were contradictory.

The Committee resolved that would review Article 54 in view of Article 233 since the two Articles require harmonization.

**(vi) Article 38 Family and Article 235 Tenure of Land.**

That the Committee may consider recognizing and protecting matrimonial property during and at the termination of marriage.

The Committee resolved that it had sufficiently covered the issue in Article 38.

**(vii) Article 54 Property and Article 236 Protection of Rights in Land and Property.**

That the Ccommittee explore the viability of including the provisions in Article 236 (2) (c) (ii) on disturbance allowance.

The Committee resolved that there was no viability in the provisions of Article 236 (2) (c) (ii).

It was also decided that the Committee has no mandate to delete the provisions of Article 236 but would forward this recommendation to the relevant Technical Working Committee.

It was noted that Article 236 goes on to provide conditions that limit the rights provided in Article 54 and that this concern should be forwarded to the Rapporteur-General.

**(viii) Article 63 Environment and Article 243 Enforcement of Environment Rights.**

The members resolved that Article 63 remain as earlier resolved by the Committee and that it would recommend deletion of Article 243 to the relevant Technical Working Committee.

**(ix) Article 235 Tenure of Land**

That the word “Jural” be amended to read “Juristic”.

The Committee resolved that this recommendation would be forwarded to the relevant Committee.

**(x) Article 75: Interpretation of the Bill of Rights and Article 54 That Property Article 75 (1) (b)**

That Article 75 (1) (b), Article 75 (2) from the words “...and recognise the fundamental importance of maintaining the ecological balance and harmonious relationship between human beings and the environment” and Article 54 (5) be deleted.

The Committee resolved to delete these provisions.

**(xi) Article 73 Right to ask the Commission on Human Rights and Administrative Justice or Court to uphold the Bill of Rights and Article 288 the Commission on Human Rights and Administrative Justice.**

That Committee K on Constitutional Commissions to include the other functions of the Commission as enumerated in Article 73.

The Committee resolved that it would recommend to the relevant Committee the adoption of the functions enumerated in Article 73 and would only consider deleting the same once Committee K had adopted them.

**(xii) Article 26 Residence and the Sixth Schedule**

That the phrase “within one year of the coming into force” be amended to read “within two years of the coming into force”.

The Committee resolved to amend the provisions of Article 26 to read ‘..... within two years.....’

**(xiii) Article 36 (8)**

That the words “within two years of coming into force” had been covered by Committee L and the Committee should consider deleting the time frame provided in Article 36 (8).

The Committee resolved to retain the Article as it is and leave the issue of specified time periods to the Rapporteur General or the Draftspersons.

**(xiv) Article 39 Persons with Disabilities and Article 288. The Commission on Human Rights and Administrative Justice.**

That the term “person with disabilities” be used instead of “person with disability”

The Committee resolved that the phrase “person with disability” was appropriate since it was in the singular.

**(xv) Article 39, Persons with Disabilities and the Sixty Schedule**

The Committee resolved that a Rapporteur or the Convener of from Technical Working Committee L would be invited to the Committee to give an explanation on Article 39, 47, 52, 56, and 64 on the rationale in the different time periods in the above Articles.

**MIN. CCC/TWGB/196/04**

**ADJOURNMENT**

And the time being one O'clock the Acting Convener adjourned the sitting until 2.30 p.m.

**AFTERNOON SITTING**

**PRESENT:**

**DELEGATES  
NUMBERS**

	<b>Acting Convener</b>
1. Suba Churchill Meshack	474
2. Anne Okoth	378
3. Dorcas Mbelesia	512
4. Florence Machayo	292
5. Francis N. Kaloki	417
6. Gaudentia Atonga	398
7. George Wesonga	435
8. John Katumanga	539
9. John Njue	237
10. Joshua Jillo Onotto	466
11. Joyce Umbima	608
12. Lihanda Kemeni Savai	360
13. Lorna Timanoi	519
14. Marie Therese Gachambi	097
15. Masanya Godfrey Okeri	451
16. Millie Odhiambo	365
17. Moses Leng'ete Ole Sisika	473
18. Pamela Mboya	516
19. Peter O. Bwana	384
20. Rebecca Evelia Jandeka	526
21. Rosemary Kinyanjui	243
22. Sheikh Abdalla	168
23. Stephen Ondiek	425
24. Sylvanus Onyambu Ogari	411
25. Mary Teresa Osunga	269
26. Yusuf Wako	

### **ABSENT WITH APOLOGIES**

1.	Cecily Mbarire	-	Convenor	217
2.	Comm. Salome Muigai		-Rapporteur	- 555
3.	Comm. Ibrahim Lethome		-Rapporteur	- 568
4.	Comm. Nancy Baraza	-	Rapporteur	- 561
5.	Nichasius Mugo			287
6.	Wilfred Kiboro			619
7.	Fahim Twaha			200
8.	Anne Njogu			475
9.	Wandati Abdulrahman Mirimo			547
10.	Neera Kent Kapila			524
11.	Sabenzia N. Wekesa			478

### **ABSENT**

1.	Ali Wario			206
2.	J.W. Nyagah			151
3.	Lorna Laboso			499
4.	Kilonzo Charles Mutavi			127
5.	Magugu Arthur			088
6.	Wafula Wamunyinyi			203
7.	Simeon Lesrima			82
8.	Fatuma Ali Saman			505
9.	Amina Zuberi			227
10.	Esther Keino			214
11.	Bernadette Quadros			622
12.	Jane Mwendu			291
13.	Lawrence Mute			455
14.	Lucas K. Chepkitony			020
15.	Rose Arungu-Olende			502
16.	Sahara Ahmed Hillow			257
17.	Salah Maalim Alio			259
18.	Sudi David Kiprono Sutter			192
19.	Sing'oei Korir			464

### **OBSERVERS PRESENT:**

1.	Monah Muthengi	-	150
2.	Joseph K. Waweru	-	069
3.	Kennedy Sanga	-	411B(Aide)
4.	Samuel Ongoro	-	097
5.	Peninnah Vulimu	-	T204
6.	Tim Gitau		

## **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |    |                   |   |                             |
|----|-------------------|---|-----------------------------|
| 1. | Jeremiah Nyegenye | - | Draftsman                   |
| 2. | Helene Namisi     | - | Assistant Programme Officer |
| 3. | Carol Ndindi      | - | Assistant Programme Officer |
| 4. | Martina Odhiambo  | - | Verbatim Recorder           |

## **Min.CCC/TWGB/197/04 COMMENCEMENT**

The Committee resumed sitting at 2:45p.m.

## **Min.CCC/TWGB/198/04 DISCUSSION OF CROSS-CUTTING ISSUES**

### **(i) Article 36, 39, 47, 52, 56 and 64**

The Committee resolved to adopt all provisions by Committee L relating to time frames within which relevant legislation would be enacted, on condition that at Plenary, it should be emphasised that the Bill of Rights is fundamental and should be given priority in terms of relevant legislation.

### **d. Article 63 - A Language and Culture and Article 15B Cultural Principles**

That Article 15 B (2) (a) and (b) should be deleted since these provisions are already catered for in Article 63 A.

The Committee resolved to recommend the deletion of these provisions to the Committee on Culture.

### **(iii) Article 39 - Persons with Disabilities and Article 15 C Educational Values and Principles**

That Article 15C (2) (e) be deleted since Article 39 already caters for these provisions

The Committee resolved to recommend the deletion of these provisions to the Committee on Culture.

### **(iv) Article 38 – Family and Article 15C Educational Values and Principles**

That Article 15 C (3) be deleted since Article 38 already covers the provisions of the Article.

The Committee resolved to recommend the deletion of the provisions to the Committee on Culture.

The Committee further resolved to delete the words “a person of the opposite sex” from Article 38 (3) (a) and insert a new Sub-Article that outlaws same sex marriages.

**Min.CCC/TWGB/199/04 PENDING ISSUES FROM SUMMARY OF COMMENTS RAISED AT LEISURE, LODGE, MOMBASA**

**(i) Article 36: Older Members of Society.**

That the words “by legislation” be inserted between “shall” and “establish” to read “The state shall, by legislation establish a Council to define and advise on policies and programmes for the care and protection of older members of society”.

**Min.CCC/TWGB/200/04 ADJOURNMENT**

It was brought to the attention of the Chair that there was a lack of quorum. Upon confirmation of the same, the Chair adjourned at 3:40 p.m.

**Min.CCC/TWGB/201/04 DATE OF NEXT MEETING**

The Committee’s next sitting will be held on Friday, 20<sup>th</sup> February 2004 at 9:00 a.m.

**Signed:.....**  
SUBA CHURCHILL MESHACK  
(ACTING CONVENOR)

**Date:.....**

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 19, 2004

**TECHNICAL WORKING COMMITTEE ‘B’ ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee “B” and has the honor to inform them that a sitting of the Committee will be held on Friday, February 20, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Discussion of Pending Issues Arising from the Summary of Comments Raised at Leisure Lodge, Mombasa**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE THIRTY-FIRST SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON FRIDAY, FEBRUARY 20<sup>TH</sup>, 2004 AT 10:00 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

<b><u>PRESENT:</u></b>	<b>DELEGATES NUMBERS</b>
	<b>Acting Convenor</b>
1. Suba Churchill Meshack	227
2. Amina Zuberi	475
3. Anne Njogu	474
4. Anne Okoth	622
5. Bernadette Quadros	378
6. Dorcas Mbelesia	214
7. Esther Keino	512
8. Florence Machayo	292
9. Francis N. Kaloki	417
10. Gaudentia Atonga	398
11. George Wesonga	151
12. J.W. Nyagah	291
13. Jane Mwendu	539
14. John Njue	237
15. Joshua Jillo Onotto	466
16. Joyce Umbima	455
17. Lawrence Mute	360
18. Lorna Timanoi	608
19. Lihanda Kemeni Savai	519
20. Marie Therese Gachambi	097
21. Masanya Godfrey Okeri	451
22. Millie Odhiambo	365
23. Moses Leng'ete Ole Sisika	473
24. Pamela Mboya	516
25. Peter O. Bwana	384
26. Rebecca Evelia Jandeka	526
27. Rosemary Kinyanjui	257
28. Sahara Ahmed Hillow	243
29. Sheikh Abdalla	425
30. Sylvanus Onyambu Ogari	411
31. Mary Teresa Osunga	547
32. Wandati Abdulrahman Mirimo	269
33. Yusuf Wako	

### **ABSENT WITH APOLOGIES**

1. Cecily Mbarire	-	Convenor	217
2. Nichasius Mugo			287
3. Wilfred Kiboro			619
4. Stephen Ondiek			168
5. Neera Kent Kapila			524
6. Fahim Twaha			200
7. John Katumanga			435
8. Salah Maalim Alio			259

### **ABSENT**

1. Ali Wario			206
2. Lorna Laboso			499
3. Kilonzo Charles Mutavi			127
4. Magugu Arthur			088
5. Wafula Wamunyinyi		203	
6. Simeon Lesirma		82	
7. Fatuma Ali Saman		505	
8. Lucas K. Chepkitony		020	
9. Rose Arungu-Olende		502	
10. Sabenzia N. Wekesa		478	
11. Sing'oei Korir		464	
12. Sudi David Kiprono Sutter		192	

### **OBSERVERS PRESENT:**

1. Gichane Muraguri	-	236	
2. Joseph K. Waweru	-	069	
3. Kennedy Sanga	-	411B(Aide)	
4. Samuel Ongoro	-	097	
5. Diana Imali Akivaga	-	455B	
6. Davis Malombe	-	012	
7. Abdulaziz A. Adam	-	225	
8. Gabriel Mambo	-	168B(Aide)	

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Salome Muigai	-	Rapporteur	-	555
2. Comm. Ibrahim Lethome	-	Rapporteur	-	568
3. Comm. Nancy Baraza	-	Rapporteur	-	561

- |                     |   |                             |
|---------------------|---|-----------------------------|
| 4. Charles Oyaya    | - | Programme Officer           |
| 5. Helene Namisi    | - | Assistant Programme Officer |
| 6. Carol Ndindi     | - | Assistant Programme Officer |
| 7. Martina Odhiambo | - | Verbatim Recorder           |

**Min.CCC/TWGB/202/04 COMMENCEMENT AND PRAYERS**

The meeting started at 10.10 a.m. with a word of prayer

**Min.CCC/TWGB/203/04 ADOPTION OF AGENDA**

The adoption of the Agenda was proposed by the Hon. Delegate George Wesonga, seconded by the Hon. Delegate Marie Therese Gachambi and thereafter unanimously adopted by the Committee.

**Min.CCC/TWGB/204/04 DISCUSSION OF PENDING ISSUES ARISING FROM THE SUMMARY OF COMMENTS RAISED AT LEISURE LODGE, MOMBASA**

**(a) Article 36: Older Members of Society**

The Committee resumed debate of the motion previously moved by the Hon. Delegate Pamela Mboya to amend Article 36 (5) by inserting the words “by legislation”.

Question put and motion carried.

Article 36 (5) was adopted with amendments.

**(b) ARTICLE 37 CHILDREN**

That Article 37 (5) (i) (v) be renumbered as Article 37 (5) (j) and Article 37 (5) (j) be renumbered as Article 37 (5) (k).

Motion moved by the Hon. Delegate Millie Odhiambo(Delegate No. 451) and seconded by the Hon. Delegate Abdulrahman Wandati (Delegate No.547).

Question put and

Article 37 (5) was adopted with amendments.

**(c) ARTICLE 38 FAMILY**

Article 38 (3) (c) be amended by deleting the words ‘a person of the opposite set’.

Motion moved by Hon. Peter Bwana (Delegate No.516) and seconded by Hon. Sheikh Abdalla (Delegate No. 365).

Debate arose

Question put and motion carried

Article 38 adopted with amendments.

**(d) ARTICLE 45 FREEDOM OF EXPRESSION**

That Article 45 (e) ‘freedom of dress’ be deleted and Article 45 (c) be amended by inserting the words ‘including creativity’ after the word ‘creativity’ motion moved by Hon. Mary Teresa Osunga (Delegate No. 411) and seconded by Hon. Joyce Umbima (Delegate No. 466)

Question put and motion carried.

Article 45 adopted with amendments.

**(e) ARTICLE 34: FREEDOM FROM DISCRIMINATION**

That the word ‘dress’ be inserted in Article 34 (1) between the words ‘language’ and ‘OR’.

Motion moved by Hon. Amina Zuberi (Delegate No. 227) and seconded by Hon. Anne Njogu (Delegate No. 475)

Debate arose.

Question put and motion carried.

Article 34 (1) was **adopted with amendments.**

**(f) ARTICLE 32 RIGHT TO LIFE**

That Article 32 (4) be amended by deleting the words ‘The death penalty is abolished’ and substitute thereof the words ‘There shall be no death penalty’

Motion moved by Hon. Peter Bwana (Delegate No. 516) and seconded by Hon. Lorna Timanoi (Delegate No. 360).

Question put and motion carried

Article 32 was **adopted with amendments.**

**(g) ARTICLE 54: PROPERTY**

That Article 54 (5) be deleted and referred to the relevant Technical Working Committee.

Motion moved by Hon. Millie Odhiambo (Delegate No. 451) and seconded by Hon. Peter Bwana (Delegate No. 516).

Question put and motion carried.

Article 54 was adopted with amendments.

**(h) ARTICLE 75: INTERPRETATION OF THE BILL OF RIGHTS**

That Article 75 (1) (6) be deleted and referred to the relevant Technical Working Committee and that Article 75 (1) (c) and (d) be renumbered appropriately.

Motion moved by Hon. Millie Odhiambo (Delegate No. 451) and seconded by Hon. Marie Therese Gachambi (Delegate No. 519).

That Article 75 (2) be amended by deleting the words ‘and recognise the fundamental importance of maintaining the ecological balance and harmonious relationship between human beings and the environment and referred to the relevant Technical Working Committee.

Motion moved by Hon. Joyce Umbima (Delegate No. 466) and seconded by Hon. Millie Odhiambo (Delegate No. 451).

Question put and motion carried.

Article 75 adopted with amendments.

**(i) ARTICLE 26 RESIDENCE**

That Article 26 (2) be amended by deleting the words ‘one year’ and therein inserting the words ‘two years’.

Motion moved by Hon. Marie Therese Gachambi (Delegate No. 519) and seconded by Hon. Anne Njogu (Delegate No. 475).

Question put and motion carried.

Article 26 was adopted with amendments.

(j) **ARTICLE 39: PERSONS WITH DISABILITIES**

That Article 39 (5) be amended by deleting the words ‘one year’ and inserting therein the words ‘three years’.

Motion moved by Hon. Millie Odhiambo (Delegate No. 451) and seconded by Hon. Joyce Umbima (Delegate No. 466).

Debate arose.

Question put and motion carried.

Article 39 was adopted with amendments.

(k) **ARTICLE 47: ACCESS TO INFORMATION**

That Article 47 (4) be amended by deleting the words ‘six months’ and therein inserting the words ‘one year’

Motion moved by Hon. Peter Bwana (Delegate No. 516) and seconded by Hon. Rosemary Kinyanjui (Delegate No. 526).

Question put and motion carried.

Article 47 was **adopted with amendments.**

(l) **ARTICLE 67: ACCESS TO COURTS**

That Article 67 be amended by renumbering it as Article 67 (1) and to insert a new Sub-Article 67 (2) to read ‘The court or other tribunal referred to in clause (1) shall be accessible and affordable so as to enhance access to justice.

Motion moved by Hon. Anne Njogu (Delegate No. 475) and seconded by Hon. Millie Odhiambo (Delegate No. 451).

Question put and motion carried.

Article 67 **adopted with amendments.**

**Min.CCC/TWGB/205/04 VOTE OF THANKS**

The Chair gave a vote of thanks to all the Honourable Delegates. The secretariat and the support staff for a job well done.

**Min.CCC/TWGB/206/04**

**ADJOURNMENT AND DATE OF THE NEXT  
MEETING**

There being no other business, the Committee adjourned at 1.35p.m. The Committee's next sitting will be on Monday 23<sup>rd</sup> February, 2004 at 9:00a.m.

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 20, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Monday, February 23, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Discussion of Cross-Cutting or Conflicting Provisions**
- 5. Discussion of pending issues Arising from the Summary of Comments Raised at Leisure Lodge, Mombasa**
6. Any Other Business
7. Date of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE THIRTY-SECOND SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON MONDAY, FEBRUARY 23<sup>RD</sup> 2004 AT 10:00 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

	<b>Acting Convenor</b>
1. Suba Churchill Meshack	
2. Amina Zuberi	227
3. Anne Njogu	475
4. Anne Okoth	474
5. Florence Machayo	512
6. Francis N. Kaloki	292
7. Gaudentia Atonga	417
8. J.W. Nyagah	151
9. John Katumanga	435
10. John Njue	539
11. Lawrence Mute	455
12. Lorna Timanoi	360
13. Lucas K. Chepkitony	020
14. Lihanda Kemeni Savai	608
15. Marie Therese Gachambi	519
16. Moses Leng'ete Ole Sisika	365
17. Nichasius Mugo	287
18. Pamela Mboya	473
19. Rose Arungu-Olende	502
20. Rebecca Evelia Jandeka	384
21. Rosemary Kinyanjui	526
22. Sabenzia N. Wekesa	478
23. Sheikh Abdalla	243
24. Sylvanus Onyambu Ogari	425
25. Mary Teresa Osunga	411
26. Yusuf Wako	269
27. Wandati Abdulrahman Mirimo	547

**ABSENT WITH APOLOGIES**

1. Cecily Mbarire	- Convenor	217
2. Wilfred Kiboro		619
3. Stephen Ondiek		168
4. Neera Kent Kapila		524

5.	Fahim Twaha	200
6.	Salah Maalim Alio	259
7.	Joshua Jillo Onotto	237
8.	Millie Odhiambo	451
9.	Dorcas Mbelesia	378

**ABSENT**

1.	Ali Wario	206
2.	Lorna Laboso	499
3.	Kilonzo Charles Mutavi	127
4.	Magugu Arthur	088
5.	Wafula Wamunyinyi	203
6.	Simeon Lesirma	82
7.	Fatuma Ali Saman	505
8.	Sahara Ahmed Hillow	257
9.	Sing'oei Korir	464
10.	Sudi David Kiprono Sutter	192
11.	Bernadette Quadros	622
12.	Esther Keino	214
13.	George Wesonga	398
14.	Jane Mwendu	291
15.	Joyce Umbima	466
16.	Masanya Godfrey Okeri	097
17.	Peter O. Bwana	516

**OBSERVERS PRESENT:**

1.	Monah Muthengi	-	150
2.	Gichane Muraguri	-	236
3.	Joseph K. Waweru	-	069
4.	Tim Gitau	-	
5.	Kennedy Sanga	-	411B(Aide)
6.	Diana Imali Akivaga	-	455B
7.	Davis Malombe	-	012
8.	E.D. Godana OBS	-	02
9.	Khatib Hudson	-	038
10.	Amina Hersi D.L.	-	026
11.	Peninnah Vulimu	-	T204

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Comm. Salome Muigai	-	Rapporteur	-	555
2.	Comm. Ibrahim Lethome	-	Rapporteur	-	568
3.	Comm. Nancy Baraza	-	Rapporteur	-	561
4.	Achieng' Olende	-	Programme Officer		

- |    |                  |   |                             |
|----|------------------|---|-----------------------------|
| 5. | Helene Namisi    | - | Assistant Programme Officer |
| 6. | Carol Ndindi     | - | Assistant Programme Officer |
| 7. | Martina Odhiambo | - | Verbatim Recorder           |

**Min.CCC/TWGB/207/04 COMMENCEMENT AND PRAYERS**

The meeting started at 10.20 a.m. with a word of prayer.

**Min.CCC/TWGB/208/04 ADOPTION OF AGENDA**

Adoption of the day's Agenda was proposed by Hon. Gaudentia Atonga (Delegate No. 417) seconded by Hon. Florence Machayo (Delegate No. 512) and unanimously adopted by the Committee.

**Min.CCC/TWGB/209/04 CONFIRMATION OF MINUTES OF WEDNESDAY, 18<sup>TH</sup> FEBRUARY 2004**

Confirmation of the Minutes of the Twenty-Ninth sitting held on Wednesday, 18<sup>th</sup> February 2004 was proposed by Hon. Rebecca Evelia Jandeka (Delegate No. 384), seconded by Hon. John Katumanga (Delegate No. 435) and signed by the Acting Convener Hon. Suba Churchill.

**Min.CCC/TWGB/210/04 MATTERS ARISING**

The following were the matters arising from the Minutes of the meeting held on Wednesday, 18<sup>th</sup> February 2004.

- (a) Hon. Lorna Timanoi was inadvertently marked absent whereas she was present in the morning session.
- (b) Observer No. 069, Joseph K. Waweru was inadvertently marked absent.

**Min.CCC/TWGB/211/04 CONFIRMATION OF MINUTES OF THURSDAY, 19<sup>TH</sup> FEBRUARY, 2004**

Confirmation of the Minutes of the Thirtieth sitting held on Thursday 19<sup>th</sup> February 2004 was proposed by Hon. Francis Kaloki (Delegate No. 292), seconded by Hon. Pamela Mboya (Delegate No. 473) and signed by the Acting Convener, Hon. Suba Churchill.

**Min.CCC/TWGB/212/04 MATTERS ARISING**

The following were the matters arising from the Minutes of the meeting held on Thursday, 19<sup>th</sup> February 2004:-

- i. Under Min.CCC/TWGB/196/04 (i), it should be reflected that the Committee resolved to leave the Article to the Technical Working Committee A.
- ii. Under Min.CCC/TWGB/196/04 (ii), it should be reflected that the Committee resolved that the issue of distance would be inserted in Article 67.
- iii. Under Min.CCC/TWGB/196/04 (v), the word 'it' should be inserted between the words 'that' and 'would' to make the sentence more comprehensive.
- iv. Under Min.CCC/TWGB/196/04 (vi), it should be reflected that the Committee referred to in the first paragraph is the Committee on Citizenship and Bill of Rights.
- v. Under Min.CCC/TWGB/196/04 (viii), it should reflect that the Committee would recommend to the relevant Technical Working Committee the deletion of Article 240.
- vi. Under Min.CCCTWGB/196/04(x), it should reflect that the Committee also resolved to refer the deleted provisions to the relevant Technical Working Committee.

#### **Min.CCC/TWGB/213/04 DISCUSSION OF CROSS-CUTTING ISSUES**

##### **Article 39 Persons with Disabilities and Article 15 C Educational Values and Principles.**

The Committee revisited its decision to recommend to the Committee on Culture the deletion of Article 15 C (2) (e). The Committee resolved that it would instead recommend that the Committee on Culture retains Article 15 C (2) (e).

#### **Min.CCC/TWGB/214/04 CONFIRMATION OF MINUTES OF FRIDAY, 20<sup>TH</sup> FEBRUARY 2004**

Confirmation of the Minutes of the Thirty-first sitting held on Friday, 20<sup>th</sup> Febraury 2004 was proposed by Hon. Sylvanus Onyambu Ogari (Delegate No. 425), seconded by Hon. Mary Teresa Osunga (Delegate No. 411) and signed by the Acting Convener, Hon. Suba Churchill.

#### **Min.CCC/TWGB/215/04 MATTERS ARISING**

The following were the matters arising from the Minutes of the meeting held on Friday, 20<sup>th</sup> February 2004:-

- (i) Under Min.CCC/TWGB/205/04, it should be reflected that after the vote of thanks, the Chair was also thanked.

**Min.CCC/TWGB/216/04**

**DISCUSSION OF PENDING ISSUES ARISING  
FROM THE SUMMARY OF COMMENTS  
RAISED AT LEISURE LODGE, MOMBASA**

The Chair informed the Committee that the Report from the Consensus Building Group was ready but not yet available due to typographical corrections and photocopying.

The Committee resolved to postpone discussion of the pending issues as well as of the report from the Consensus Building Group until such a time when enough copies of the same would be available to all honorable delegates.

**Min.CCC/TWGB/217/04 COMMUNICATION FROM THE CHAIR**

The Chair read out several internal memoranda from Technical Working Committee B addressed to various other Technical Working Committees and the Rapporteur-General relating to resolutions and recommendations of the Committee on the Crosscutting and conflicting provisions of the Draft Bill.

**Min.CCC/TWGB/218/04 ADJOURNMENT**

The Committee adjourned at 1.00 p.m. to resume its sitting at 2.30 p.m.

**AFTERNOON SESSION**

**PRESENT:**

**DELEGATES  
NUMBERS**

		<b>Acting Convenor</b>
1.	Suba Churchill Meshack	
2.	Amina Zuberi	227
3.	Anne Okoth	474
4.	Bernadette Quadros	622
5.	Esther Keino	214
6.	Francis N. Kaloki	292
7.	Gaudentia Atonga	417
8.	Jane Mwendu	291
9.	John Katumanga	435
10.	John Njue	539
11.	Joshua Jillo Onotto	237
12.	Joyce Umbima	466
13.	Lawrence Mute	455
14.	Lihanda Kemeni Savai	608
15.	Marie Therese Gachambi	519
16.	Moses Leng'ete Ole Sisika	365
17.	Millie Odhiambo	451
18.	Pamela Mboya	473
19.	Peter O. Bwana	516

20.	Rose Arungu-Olende	502
21.	Rebecca Evelia Jandeka	384
22.	Rosemary Kinyanjui	526
23.	Sabenzia N. Wekesa	478
24.	Salah Maalim Alio	259
25.	Sudi David Kiprono Sutter	192
26.	Sylvanus Onyambu Ogari	425
27.	Mary Teresa Osunga	411
28.	Wandati Abdulrahman Mirimo	547

### **ABSENT WITH APOLOGIES**

1.	Cecily Mbarire	-	Convenor	217
2.	Comm.Salome Muigai	-	Rapporteur	- 555
3.	Comm. Ibrahim Lethome	-	Rapporteur	- 568
4.	Comm. Nancy Baraza	-	Rapporteur	- 561
5.	Wilfred Kiboro			619
6.	Stephen Ondiek			168
7.	Neera Kent Kapila			524
8.	Fahim Twaha			200
9.	Dorcas Mbelesia			378
10.	Florence Machayo			512
11.	Lorna Timanoi			360
12.	Nichasius Mugo			287

### **ABSENT**

1.	Ali Wario	206
2.	Lorna Laboso	499
3.	Kilonzo Charles Mutavi	127
4.	Magugu Arthur	088
5.	Wafula Wamunyinyi	203
6.	Simeon Lesirma	82
7.	Fatuma Ali Saman	505
8.	Sahara Ahmed Hillow	257
9.	Sing'oei Korir	464
10.	Yusuf Wako	269
11.	George Wesonga	398
12.	Lucas K. Chepkitony	020
13.	Masanya Godfrey Okeri	097
14.	Sheikh Abdalla	243
15.	Anne Njogu	475
16.	J.W. Nyagah	151

### **OBSERVERS PRESENT:**

1.	Monah Muthengi	-	150
2.	Gichane Muraguri	-	236
3.	Joseph K. Waweru	-	069
4.	Tim Gitau	-	
5.	Kennedy Sanga	-	411B(Aide)
6.	Diana Imali Akivaga	-	455B
7.	Ephraim Gathuma	-	197
8.	Evomne Muli	-	146
9.	Peninnah Vulimu	-	T204

#### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1.	Achieng' Olende	-	Programme Officer
2.	Helene Namisi	-	Assistant Programme Officer
3.	Carol Ndindi	-	Assistant Programme Officer
4.	Martina Odhiambo	-	Verbatim Recorder

#### **Min.CCC/TWGB/219/04 COMMENCEMENT**

The Committee resumed its sitting at 2:35 p.m.

#### **Min.CCC/TWGB/220/04 DISCUSSION OF PENDING ISSUES ARISING FROM THE SUMMARY OF COMMENTS RAISED AT LEISURE LODGE, MOMBASA**

The Committee resumed its discussion of pending issues arising from the Summary of Comments raised at Leisure Lodge, Mombasa by considering the Report on the Recommendations of the Conference Consensus Building Group.

##### **(i) Character of Marriage**

There was recommendation that the Draft should clarify the definition of marriage to prohibit gay marriage.

The following was the proposition of the Consensus Building Group:-

**Marriage can take place only between persons of opposite sex.**

The Committee resolved that it would not re-open debate on Article 38 Family since the proposition by the Consensus Building Group had been overtaken by events.

##### **(ii) The Right to Life**

There was a recommendation that the matter of when abortion is permitted should not be included in the Constitution but should instead, as at present, be left to Parliament.

The following were the propositions of the Consensus Building Group:-

1. **The right to life is protected**
2. **There shall be no capital punishment.**

The Committee resolved to re-open debate on Article 32.

**Min.CCC/TWGB/221/04                      ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the Committee adjourned at 4.50 p.m. The Committee's next sitting will be held on Tuesday, 24<sup>th</sup> February, 2004 at 9:00 a.m.

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 23, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Tuesday, February 24, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
- 4. Deliberation on Consensus Building Committee Report**
5. Any Other Business
6. Date of Next Meeting

**Approved for circulation  
Cecily Mbarire (Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE THIRTY-THIRD SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON TUESDAY, FEBRUARY 24<sup>TH</sup> 2004 AT 10:30 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Cecily Mbarire	Convenor
2. Suba Churchill Meshack	463
3. Ali Wario	206
4. Anne Njogu	475
5. Anne Okoth	474
6. Bernadette Quadros	622
7. Bishop Stephen Ondiek	168
8. Fatuma Ali Saman	505
9. Florence Machayo	512
10. Francis N. Kaloki	292
11. Gaudentia Atonga	417
12. George Wesonga	398
13. J.W. Nyagah	151
14. Jane Mwendu	291
15. John Katumanga	435
16. John Njue	539
17. Joyce Umbima	466
18. Joshua Jillo Onotto	237
19. Lawrence Mute	455
20. Lorna Timanoi	360
21. Lucas K. Chepkitony	020
22. Lihanda Kemeni Savai	608
23. Masanya Godfrey Okeri	097
24. Marie Therese Gachambi	519
25. Millie Odhiambo	451
26. Moses Leng'ete Ole Sisika	365
27. Pamela Mboya	473
28. Peter O. Bwana	516
29. Rose Arungu-Olende	502
30. Rebecca Evelia Jandeka	384
31. Rosemary Kinyanjui	526
32. Sabenzia N. Wekesa	478
33. Sahara Ahmed Hillow	257
34. Salah Maalim Alio	259

35. Sheikh Abdalla	243
36. Sudi David Kiprono Sutter	192
37. Sylvanus Onyambu Ogari	425
38. Mary Teresa Osunga	411
39. Wandati Abdulrahman Mirimo	547
40. Yusuf Wako	269

### **OTHER DELEGATES**

1. Joel Kipyego	368
2. Rev. Ibrahim Omondi	542

### **ABSENT WITH APOLOGIES**

1. Comm. Ibrahim Lethome	-	Rapporteur	-	568
2. Comm. Nancy Baraza	-	Rapporteur	-	561
3. Wilfred Kiboro				619
4. Neera Kent Kapila				524
5. Fahim Twaha				200
6. Dorcas Mbelesia				378
7. Nichasius Mugo				287

### **ABSENT**

1. Lorna Laboso	499
2. Kilonzo Charles Mutavi	127
3. Magugu Arthur	088
4. Wafula Wamunyinyi	203
5. Simeon Lesirma	82
6. Sing'oei Korir	464
7. Esther Keino	214
8. Amina Zuberi	227

### **OBSERVERS PRESENT:**

1. Monah Muthengi	-	150
2. Joseph K. Waweru	-	069
3. J.K. Wanjera	-	068
4. Kennedy Sanga	-	411B(Aide)
5. Mwangi H.E. Mukami		
6. Sam Ongoro	-	097
7. Diana Imali Akivaga	-	455B
8. Davis Malombe	-	012

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

- |                       |   |                   |                             |     |
|-----------------------|---|-------------------|-----------------------------|-----|
| 1. Comm.Salome Muigai | - | Rapporteur        | -                           | 555 |
| 2. Martina Odhiambo   | - | Verbatim Recorder |                             |     |
| 3. John Wanyoike      |   | -                 | Clerk                       |     |
| 4. Achieng' Olende    |   | -                 | Programme Officer           |     |
| 5. Helene Namisi      |   | -                 | Assistant Programme Officer |     |
| 6. Carol Ndindi       |   | -                 | Assistant Programme Officer |     |

**Min.CCC/TWGB/222/04 ADOPTION OF AGENDA**

Hon. Delegate Suba Churchill proposed the adoption of Agenda, seconded by Hon. Delegate Marie Therese Gachambi and was adopted.

**Min.CCC/TWGB/223/04 CONFIRMATION OF THE MINUTES**

Minutes of the Thirty-Second sitting held on February 23, 2004 were proposed by Hon. Delegate Rebecca Evelia Jandeka, seconded by Hon. Delegate Rosemary Kinyanjui were confirmed and signed by the Convener.

**Min.CCC/TWGB/224/04 MATERS ARISING**

- (i) Under Min. 220/04:-

Character of marriage Article. That marriage of the same sex between men (Gay), women (lesbian) (homosexually is prohibited.

- (ii) Observer Sam Ongoro was inadvertently marked absent while he was present.

- (iii) Hon. Joel Sang was a visiting delegate and his name was inadvertently let our.

- (iv) That a task force (Sub Committee) elected to look into the Consensus report on Article 32 Right to Life was omitted in the Minutes hence the Minutes were not correctly taken.

**Min.CCC/TWGB/225/04 DELIBERATIONS ON CONSENSUS BUILDING COMMITTEE**

**1. Article 32  
Right to Life**

The task force (Sub Committee) consisting of Hon. Delegate Wandati Abdurahaman Mirimo, Bernadette Quadros, Millie Odhiambo, Marie verbally Therese Gachambi and Lawrence Mute presented the report on Article 32 Right to Life.

Motion made that:-

Article 32 should read:-

The right to Life is protected;

In relation to unborn child Parliament shall enact legislation that recognises the sanctity of Life and ensures:-

3. The Safety of the pregnant woman and;
  4. The safety of the unborn child.
3. There shall be no capital punished.

Debate Arising

Question put and agreed on that Article 32 as Amended be part of the Draft Bill.

Article 32 as amended was adopted

**Article 23**

**Dual Citizenship**

Question put that debate on Article 23 be re-opened.

Debate Arising

Question put and agreed on.

The Committee resolved to re-open debate on Article 23 Dual Citizenship in light of new information from the Consensus building Committee.

**Min.CCC/TWGB/226/04 ADJOURNMENT**

And the time being five minutes past one O'clock the Convenor adjourned the sitting until 2.30 p.m. this afternoon.

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 24, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Wednesday, February 25, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

1. Prayers
2. Confirmation of Minutes
3. Matters Arising
4. Any Other Business
5. *Sine Die* of Next Meeting

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....

Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE THIRTY-FOURTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON WEDNESDAY, FEBRUARY 25<sup>TH</sup>, 2004 AT 10.45 A.M.**

**PRESENT:**

**DELEGATES  
NUMBERS**

1. Suba Churchill Meshack	463	(Acting Convenor)
2. Dorcas Mbelesia	378	
3. Fatuma Ali Saman	505	
4. Florence Machayo	512	
5. Francis N. Kaloki	292	
6. George Wesonga	398	
7. John Katumanga	435	
8. John Njue	539	
9. Joyce Umbima	466	
10. Lihanda Kemeni Savai	608	
11. Masanya Godfrey Okeri	097	
12. Marie Therese Gachambi	519	
13. Millie Odhiambo	451	
14. Moses Lengete Ole Sisika	365	
15. Neera Kent Kapila	524	
16. Peter O. Bwana	516	
17. Rebecca Evalia Jandeka	384	
18. Rosemary Kinyanjui	526	
19. Sahara Ahmed Hillow	257	
20. Salah Maalim Alio	259	
21. Teresa Osunga	411	
22. Silvanus Onyambu Ogari	425	
23. Wandati Abdulrahman Mirimo	547	

**ABSENT WITH APOLOGY**

1. Cecily Mbarire	(Convenor)	217
2. Comm. Nancy Baraza	- Rapporteur	561
3. Ali Wario		203
4. Wilfred Kiboro		619
5. Lorna Timanoi		360
6. Nichasius Mugo		287

7. Yusuf Wako	269
8. J. W. Nyagah	151
9. Lawrence Mute	455

**ABSENT**

1. Lorna Laboso	499
2. Kilonzo Charles Mutavi	127
3. Masanya Godfrey Okeri	097
4. Wafula Wamunyinyi	203
5. Simeon Lesirma	082
6. Sing'oei Korir	464
7. Amina Zuberi	227
8. Ann Njogu	475
9. Bishop Stephen Ondiek	168
10. Lorna Timanoi	360
11. Lucas K. Chepkitony	020
12. Peter O. Bwana	516
13. Sahara Ahmed Hillow	257
14. Sudi David Kiprono Sutter	192
15. Magugu Arthur	088
16. Ann Okoth	474
17. Berneddette Quodros	622
18. Esther Keino	214
19. Fahim Twaha	200
20. Gaudentia Atonga	417
21. Jane Mwendu	291
22. Joshua Jillo Onotto	237
23. Lucas K. Chepkitony	020
24. Pamela Mboya	473
25. Rose Arungu-Olende	502
26. Sabenzia N. Wekesa	478
27. Sheikh Abdalla	243
28. Sudi David Kiprono Sutter	192

**OBSERVERS PRESENT**

1. Joseph K. Waweru	-	069
2. Tim Gitau	-	

**IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Salome Muigai	-	Rapporteur	-	555
2. Comm. Ibrahim Lethome	-	Rapporteur	-	568
3. John Wanyoike	-	Clerk		
4. Achieng' Olende	-	Programme Officer		
5. Helene Namisi	-	Assistant Programme Officer		

- 6. Carol Ndindi - Assistant Programme Officer
- 7. Martina Odhiambo - Verbatim Recorder

The meeting opened with a word of prayer.

**MIN.CCC/TWGB/232/04 ADOPTION OF AGENDA**

(i) **The adoption of Agenda was proposed by the Hon. Delegate Abdulrahman Wandati, Seconded by the Hon. Delegate Marie Therese Gachambi and was adopted by the Committee.**

(ii) *Sine die* of Next Meeting

The Members resolved that the word sine die should be deleted from the Agenda as they resolved to hold a sitting on Thursday February 26, 2004.

**MIN.CCC/TWGB/233/04 MINUTES AND REPORT**

The Convenor informed the Members that the Tuesday, February 24, 2004 minutes were not ready and also their report had not been finalised (photocopying) that they should meet on Thursday February 26, 2004 to collect their copies to peruse, familiarize and be in readiness for the plenary.

**MIN.CCC/TWGB/234/04 ADJOURNMENT**

And the time being forty minutes past eleven O'clock the Acting Convenor Suba Churchill adjourned the meeting to Thursday February 26, 2004 at 9:00 a.m.

Signed..... Date.....  
**Cecily Mbarire(Convenor)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

February 25, 2004

**TECHNICAL WORKING COMMITTEE 'B' ON CITIZENSHIP AND BILL OF RIGHTS**

**The Convener presents her compliments to Members of the Technical Working Committee "B" and has the honor to inform them that a sitting of the Committee will be held on Thursday, February 26, 2004 at Tent No.2, Bomas of Kenya at 9.00 am.**

**AGENDA**

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

**Approved for circulation  
Suba Churchill (Acting Convener)**

Signed .....  
Date ..... Time .....

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<b>NATIONAL CONSTITUTIONAL CONFERENCE</b>
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**MINUTES OF THE THIRTY-FIFTH SITTING OF THE TECHNICAL WORKING COMMITTEE 'B', ON CITIZENSHIP AND BILL OF RIGHTS HELD IN THE COMMITTEE TENT NO. 2 ON THURSDAY, FEBRUARY 26<sup>TH</sup>, 2004 AT 11.00 A.M.**

**PRESENT:**

**DELEGATES**  
**NUMBERS**

1. Suba Churchill Meshack	463	(Acting Convenor)
2. Amina Zuberi	227	
3. Anne A. Okoth	474	
4. Bishop Stephen Ondiek	168	
5. Dorcas Mbelesia	378	
6. Esther Keino	214	
7. Fatuma Ali Saman	505	
8. Florence Machayo	512	
9. Francis N. Kaloki	292	
10. Gaudentia Atonga	417	
11. George Wesonga	398	
12. Joshua Jillo Onotto	237	
13. John Katumanga	435	
14. John Njue	539	
15. Lihanda Kemeni Savai	608	
16. Lorna Timanoi	360	
17. Masanya Godfrey Okeri	097	
18. Marie Therese Gachambi	519	
19. Millie Odhiambo	451	
20. Moses Lengete Ole Sisika	365	
21. Neera Kent Kapila	524	
22. Rebecca Evelia Jandeka	384	
23. Rose Arungu-Olende	502	
24. Rosemary Kinyanjui	526	
25. Sabenzia N. Wekesa	478	
26. Sahara Ahmed Hillow	257	
27. Salah Maalim Alio	259	
28. Sheikh Abdalla	243	
29. Simeon Lesirma	082	
30. Teresa Osunga	411	
31. Silvanus Onyambu Ogari	425	
32. Wandati Abdulrahman Mirimo	547	
33. Yusuf Wako	269	

### **ABSENT WITH APOLOGY**

1. Cecily Mbarire	Convenor	217
2. Comm. Salome Muigai	Rapporteur -	555
3. Fahim Twaha		200
4. J.W. Nyagah		151
5. Ali Wario		206
6. Wilfred Kiboro		619
7. Nichasius Mugo		287

### **ABSENT**

1. Comm. Nancy Baraza	Rapporteur	561
2. Anne Njogu		475
3. Bernadette Quadros		622
4. Jane Mwendu		291
5. Kilonzo Charles Mutavi		127
6. Joyce Umbima		466
7. Lawrence Mute		455
8. Lorna Laboso		499
9. Lukas K. Chepkitony		020
10. Magugu Arthur		088
11. Pamela Mboya		473
12. Sing'oei Koriri		464
13. Peter O. Bwana		516
14. Sudi David Kiprono Sutter		192
15. Wafula Wamunyinyi		203

### **OBSERVERS PRESENT**

1. Joseph K. Waweru	-	069
2. Monah Muthengi	-	150
3. J.K. Wanjera	-	068
4. Nasra Aweis Abubakar	-	092
5. Samuel Ongoro	-	097

### **IN ATTENDANCE (CONSTITUTION OF KENYA REVIEW COMMISSION)**

1. Comm. Ibrahim Lethome	-	Rapporteur	-	568
2. John Wanyoike	-	Clerk		
3. Helene Namisi	-	Assistant Programme Officer		
4. Martina Odhiambo	-	Verbatim Recorder		

**MIN.CCC/TWGB/235/04 ADOPTION OF AGENDA**

The adoption of Agenda was proposed, Seconded by the Hon. Delegate Silvanus Onyambu Ogari and was adopted by the Committee.

**MIN.CCC/TWGB/236/04 CONFIRMATION OF MINUTES**

Minutes of the Thirty-Fourth sitting held on Wednesday February 25, 2004 were proposed by the Hon. Delegate Evelia Rebecca Jandeka, seconded by the Hon. Delegate Dorcas Mbelesia were confirmed and signed by the Acting Convenor Hon. Suba Churchill.

**MIN.CCC/TWGB/237/04 MATTERS ARISING**

That the Hon. Delegate Amina Zuberi was present but had attended another Committee.

That the Hon. Delegate Lorna Timanoi was absent with apology.

That the Hon. Delegate Peter O. Bwana was present.

That the Hon. Delegate Gaudentia Atonga was absent with apology.

That Hon. Delegate Masanya Godfrey was marked present and absent but should have been marked present.

That the Hon. Delegate Teresa Osunga was marked present but was absent.

That the Hon. Delegate Sahara Ahmed Hillow was marked twice absent and present while she should have been marked present.

The Committee resolved that in the Thirty-Fourth meeting, most Delegates were absent, as the meeting started late while it was supposed to start at 9:00 a.m.

**MIN.CCC/TWGB/238/04 CONFIRMATION OF MINUTES**

Minutes of the Thirty-Third sitting held on Tuesday February 24, 2004 were proposed by the Hon. Delegate Marie Therese Gachambi, seconded by the Hon. Delegate John Katumanga were confirmed and signed by the Acting Convenor Hon. Delegate Suba Churchill.

**MIN.CCC/TWGB/239/04 MATTERS ARISING**

- (i) That Hon. Delegate Teresa Osunga was inadvertently marked absent while she was present.
- (ii) That Comm. Ibrahim Lethome was marked absent with apology and also in attendance, he should have been marked in-Attendance only.

- (iii) Hon. Delegate J.W. Nyaga was inadvertently marked absent while he should have been marked absent with apology.
- (iv) Under Min.CCC/TWGB/222/04, the name Marie Therese Gathambi should read Marie Therese Gachambi.
- (v) Article 32, Right to Life

### **Minority View**

That Hon. Delegate Rose Kinyanjui had a contrary view on Article 32, Right to Life.

- (i) That the Committee report to steering Committee and plenary of Conference Article 23, Dual Citizenship Sub Article 1 (ii) the word “not” should be deleted in the amended report.

### **MIN.CCC/TWGB/240/04 ANY OTHER BUSINESS**

- (i) Plenary

That the Members were not happy at what transpired during the plenary as the delegates were not allowed to ask for clarifications as they were just informed to collect a document in their tents. It was stated that not all commissioners were in that Report of the Commission’s Task Force on Amendments to the review laws.

The Acting Convenor informed the Delegates that they should study and understand their report and from other Committees (Zero one Draft) so that they would be able to deliberate better in the plenary.

### **MIN.CCC/TWGB/241/04 PLENARY REPORTING**

- (i) The Acting Convenor informed the Delegates that the Committee will be the first one to present its report in the plenary.
- (ii) The Members were informed that Article 76 (i) as amended by Committee C contradicts Article 50 of their Committee (B) report that it may be contested in the plenary.

### **MIN.CCC/TWGB/242/04 ADJOURNMENT**

And the time being twenty minutes past one O’clock the Acting Convenor Hon. Suba Churchill adjourned the meeting until Friday February 27, 2004 at 9:00 a.m.

**APPENDIX V**  
**ANNOTATION OF DRAFT BILL**  
**CHAPTER FOUR**  
**CITIZENSHIP**

**General principles concerning citizenship**

**16**

Except where the Constitution has made provision to the contrary, all citizens of Kenya are –

- (a) equally entitled to the rights, privileges and benefits of citizenship;
- (b) equally subject to the duties and responsibilities of citizenship; and
- (c) equally entitled to a Kenyan passport and to any document of *registration and identification* issued by the state to citizens.

**Retention of existing citizenship**

**17.**

- (4) Every person who immediately before the coming into force of the Constitution was a citizen of Kenya is a citizen of Kenya.

***Citizenship of persons who would have been citizens of Kenya***

**17A**

- (2) Every person who immediately before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen of Kenya if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya.

**Acquisition of citizenship**

**18.**

Citizenship may be acquired by –

- (a) Birth;

(b) Registration; and

(c) Naturalization

### **Citizenship by birth**

#### **19.**

- (1) Every person born after the coming into force of the Constitution, is a citizen of Kenya if, at the date of the person's birth, either the mother or the father of the person is a citizen of Kenya.
- (2) A person who is a citizen of Kenya under this Article cannot be deprived of that citizenship.

### **Citizenship and marriage**

#### **20.**

- (1) A person who has been married to a citizen of Kenya for a period of not less than ~~three~~ *seven* years is entitled, on application, to be registered as a citizen of Kenya.
- (2) Citizenship is not lost through marriage or the dissolution of marriage.

### **Citizenship by naturalization**

#### **21.**

A person who has been lawfully resident in Kenya for a continuous period of not less than seven years and who satisfies the conditions prescribed by an Act of Parliament may apply to be naturalized as a citizen of Kenya.

### **Children found in Kenya and adopted children**

#### **22.**

- (1) A child found in Kenya who appears to be less than eight years of age, and whose *nationality and* parents are not known, is presumed to be a citizen of Kenya.
- (2) A child below the age of eighteen years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled on application to become a citizen of Kenya.

### **Dual citizenship**

#### **23.**

~~(1) Dual citizenship is permitted under the laws of Kenya.~~

*(1) Parliament shall enact legislation providing for conditions upon which:*

- (i) a person who is a citizen of Kenya may not lose the citizenship of another country.*
- (ii) the citizenship of Kenya may be granted to individuals who are citizens of other countries*

(2) A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the Constitution, is entitled on application to be registered as a citizen of Kenya in accordance with the provisions of Article 23 (1).

### **Cessation of citizenship**

#### **24.**

A person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation, *or* concealment of any material fact. ~~or by other unlawful means.~~

### **Citizenship of parent dying before birth of a person.**

#### **25**

(1) A reference in this Chapter to the citizenship of the parent of a person at the time of the birth of that person, ~~refers~~ in relation to a person born after the death of the parent, *refers* to the citizenship of the parent at the time of the parent's death.

~~(2) For the purposes of clause (1), where the death of a parent occurred before the coming into force of the Constitution, the citizenship that the parent would have had, if the parent had died after the coming into operation of the Constitution, shall be deemed to be the parent's citizenship at the time of death.~~

### **Residence**

#### **26.**

(1) The following persons may enter and reside in Kenya so long as they comply with the conditions prescribed by Parliament governing entry and residence –

- (a) a former citizen;
- (b) a foreign wife or widow or foreign husband or widower of a citizen; and
- (c) a child of a citizen.

(2) Parliament shall, within two years of the coming into force of the Constitution enact legislation governing the entry into and residence in Kenya, of other categories of persons and providing for the status of permanent residents.

### **Powers of Parliament**

27.

Parliament ~~may~~ *shall* enact legislation -

- (a) prescribing conditions upon which a person may become a citizen in terms of the Constitution;
- (b) providing for the acquisition of citizenship of Kenya by persons who are not eligible or who are no longer eligible to become citizens under this Chapter;
- (c) relating to the making of applications for citizenship by registration or naturalization;
- (d) providing for the renunciation by a person of that person's citizenship of Kenya;
- (e) providing for the deprivation of citizenship; and
- (f) generally giving effect to the provisions of this Chapter.

### **Citizenship Registration Board**

~~— 28.~~

- ~~(1) — There is established the Citizenship Registration Board to deal with matters provided for under Article 27, consisting of not less than five and not more than nine members appointed by the President with the approval of Parliament from among persons of moral standing.~~

## **CHAPTER FIVE**

### **THE BILL OF RIGHTS**

#### **Fundamental rights and freedoms**

29.

- (1) The Bill of Rights is the foundation stone of Kenya's democratic state and is the framework for the adoption of social, economic and cultural policies.
- (2) The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities and to promote *substantive* social justice and the realization of the potential of all human beings.
- (3) The rights and freedoms set out in this Bill of Rights –
  - (a) belong to each individual *and community* and are not granted by the state.

- (b) do not exclude other rights which are not expressly mentioned in this chapter; and
- (c) are subject only to the limitations contained in the Bill.

### **Duty of the state to promote rights and freedoms**

#### **30.**

- (1) The state shall observe, respect, protect, promote and fulfill the rights and freedoms in this Bill of Rights.
- (2) It ~~is~~ ***shall be*** the primary duty of every state organ to give effect to clause (1) whenever that state organ –
  - (a) makes policy or enacts law;
  - (b) implements policy or legislation;
  - (c) performs any of its functions; or
  - (d) exercises any of its powers.
- (3) The state shall take reasonable legislative, policy and other measures; to achieve the progressive realisation of the rights guaranteed Articles 56, 57, 58, 59, 60, 61 and 62.
- (4) Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of rights mentioned in clause 3(a).
- (5) The state, through legislative and other instruments, shall recognise and ~~provide for~~ ***facilitate*** the role of civil society in the promotion and protection of the rights and freedoms in this Bill of Rights.
- (6) The Republic shall fulfill all its international obligations in respect of human rights and for that purpose-
  - (a) the Republic shall report on time to international human rights bodies on the implementation of human rights treaties ***and other instruments***;
  - (b) draft reports intended for submission by the Republic to international bodies shall be published in Kenya for ~~two months~~ ***a reasonable period*** and facilities shall be provided for the public to discuss and debate them before the reports are revised and submitted;
  - (c) the Republic shall facilitate the submission of alternative drafts by civil society organizations to international human rights bodies; and

- (d) the comments and recommendations of international bodies shall be disseminated to the public and the Government shall make a statement to Parliament on how it intends to implement those recommendations.

### **Limitation of rights**

#### **31.**

- (1) A right or freedom set out in the Bill of Rights may be limited -
  - (a) only by a law of general application; and
  - (b) only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –
    - (i) the nature of the right;
    - (ii) the importance of the purpose of the limitation;
    - (iii) the nature and extent of the limitation;
    - (iv) *the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others; and*
    - (v) the relation between the limitation and its purpose; and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1), provision in legislation –
  - (a) shall not be construed as limiting a right or freedom set out in the Bill of Rights unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.
  - (b) shall not limit a right or freedom set out in the Bill of Rights so as to derogate from the core or the essential content of the right.
- (3) The state, or another person claiming that a particular limitation is permitted in terms of this Article, is responsible to demonstrate to the court, tribunal or other forum that the requirements of this Article have been satisfied.
- (4) The provisions of this chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.

## Right to life

32

- (1) *The right to life is protected.*
- (2) *In relation to an unborn child, Parliament shall enact legislation that recognizes the sanctity of life and ensures:*
  - (a) *the safety of the pregnant woman; and*
  - (b) *the safety of the unborn child*
- (3) *There shall be no capital punishment*

## Equality

33.

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms.

## Freedom from discrimination.

34.

- (1) The state shall not ~~unfairly~~ discriminate directly or indirectly against anyone on one or more grounds, including race, sex, pregnancy, marital status, **health status**, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language, **dress** or birth.
- (2) A person shall not ~~unfairly~~ discriminate directly or indirectly against another person on one or more grounds in terms of clause (1).
- (3) *In this Constitution, “discrimination” means any distinction, exclusion or restriction made on the basis of one or more of the grounds specified at (1), which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by a person or group of persons of any of the rights recognised in this chapter on a basis of equality.*
- (4) Despite clause (1), the state ~~may~~ **shall** take legislative and other measures **including but not limited to affirmative action programmes and policies** designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure shall –
  - (a) adequately provide for benefits to be on the basis of genuine need; and
  - (b) be permissible in terms of Article 31 .

## **Women**

### **35.**

- (1) Women *and men* have the right to equal treatment ~~with men~~, including the right to equal opportunities in political, economic, *cultural* and social activities.
- (2) Women are entitled to be accorded the same dignity of the person as men.
- (3) Women and men have an equal right to inherit, have access to and control property.
- (4) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women is prohibited.
- (5) The state shall -
  - (a) protect women and their rights, taking into account their unique status and natural maternal role in society; and
  - (b) provide reasonable facilities and opportunities to enhance the welfare of women to enable them to realise their full potential and advancement.

## **Older members of society**

### **36**

- (1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights.
- (2) *The state shall by legislation and policy measures ensure the rights of older persons to –*
  - (a) *participate fully in the affairs of society;*
  - (b) *pursue their personal development;*
  - (c) *be free from all forms of discrimination and abuse;*
  - (d) *live in dignity and respect;*
  - (e) *retain their social, economic and political autonomy; and*
  - (f) *receive reasonable care and assistance of family and state.*
- (3) *Members of society, with the facilitation of the state, have a duty to plan for their old age.*
- (4) *Older members of society have a responsibility to share their knowledge and skills with others and to remain active in society.*

- (4) Relevant Ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to deal with issues affecting older members of society.
- (5) *The State shall establish a Council to define and advise on policies and programmes for the care and protection of older members of society.*
- (6) *In this Constitution, “older member of society” means a person above the age of sixty years*
- (7) *Within two years of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.*

*The Youth*  
*36A*

- (1) *The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, taking into account their unique needs.*
- (2) *The state shall take reasonable legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.*
- (3) *The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth –*
- (a) *access to quality and relevant education and training;*
  - (b) *full participation in governance;*
  - (c) *access to gainful employment;*
  - (d) *adequate opportunities in the social, economic and other spheres of national life;*
  - (e) *freedom of association to further their legitimate interests;*
  - (f) *protection from any culture, custom or tradition that could undermine their dignity or quality of life; and*
  - (g) *a life free from discrimination, exploitation or abuse.*
- (4) *Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting the youth.*

*(5) In this Constitution, “youth” refers to a woman or a man who has attained the age of eighteen years but is not above the age of thirty-five years.*

## **Children**

### **37**

- (1) Children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects: physically, intellectually, ~~emotionally~~ **psychologically** and spiritually, for the benefit of themselves and society as a whole.
- (2) All children whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.
- (3) A child’s best interests ~~are~~ **shall be** of paramount importance in every matter concerning the child.
- (4) A child’s mother and father, whether married to each other or not, have an equal duty to protect and provide for the child.
- (5) Every child has a right to –
  - (a) a name and a nationality from birth and to have their birth registered;
  - (b) parental care, or to appropriate alternative care where the child is separated from its parents;
  - (c) free basic education which shall be compulsory;
  - (d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;
  - (e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare;
  - (f) **adequate nutrition, shelter, basic health care services and social services;**

- (g) be free of corporal punishment or other forms of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;
- (h) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;
- (i) not be arrested or detained except as a measure of last resort, and where a child is arrested or detained *to be treated in a manner that promotes the child's dignity and self-worth and that pays attention to the child's rights, including but not limited to the right to –*
  - i. be so detained only for the shortest appropriate period of time;
  - ii. be kept separate from adults in custody;
  - iii. be accorded legal assistance by the state;
  - iv. be treated in a manner, and to be kept in conditions that take account of the child's *disability, if any*, gender and age;
- (j) have a legal practitioner assigned to the child by the state and at state expense in proceedings affecting the child, if injustice would otherwise result; and
- (k) know of decisions affecting the child, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.

~~(7)~~ (6) Children with special needs, including girls, orphans, children with disabilities, *nomadic children*, refugee children, and homeless children, are entitled to the special protection of the state and society.

~~(8)~~ (7) The state has the obligation to take steps to implement in law and administration the provisions of the Constitution and of international instruments and standards on the rights of the child.

~~(9)~~ (8) In this ~~Article~~ *Constitution* “child” means a person under the age of eighteen years.

## **The family**

### **38.**

- (1) The state shall recognise the family as the natural fundamental unit of society and as the necessary basis of social order
- (2) The family is entitled to the respect and protection of the state.
- (3) Every person who is at least eighteen years of age –
  - (a) has the right to marry based upon the free consent of the parties; and
  - (b) has the right to found a family.

(4) Parties to a marriage are entitled to equal rights ~~in~~ **as to** the marriage, during the marriage, and at the dissolution of their marriage.

**(5) *Same sex marriage and homosexuality are prohibited***

~~(5)~~(6) Parliament shall enact legislation that, in a manner consistent with this Article and the other provisions of the Constitution, recognizes –

- (a) marriages concluded under any tradition, or system of religious, personal or family law; or
- (b) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

***Persons with disabilities***

**39.**

(1) ***Persons with disabilities*** are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, and to ~~participate as fully in society as they are able.~~ ***be full participants in society.***

(2) The state shall, by legislation and policy measures –

- i. (a) recognise the right of ***persons with disabilities*** to respect and human dignity;
- (b) educate communities and society on the causes of disability and the need for respect for the dignity and rights of all;
- (c) ensure that ~~education,~~ ***educational*** institutions and facilities for ~~disabled persons~~ ***persons with disabilities*** are as integrated into society as a whole as is compatible with ~~the~~ ***their*** interests ~~of the disabled~~;
- (d) ensure access to all places, ***to houses for use by the public***, to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access;
- (e) ~~encourage the development and~~ ***develop and ensure the*** use of sign language, Braille and other appropriate means of communication;
- (f) remove from official usage in any language words that are demeaning when applied to persons with disabilities, and ~~require~~ ***encourage*** the same in private use of language;

- (g) provide for the *inclusion and* participation of ~~disabled persons~~ *persons with disabilities* in decision-making at all levels; ~~and~~
- (h) facilitate the acquisition of materials, *facilities* and devices to enable ~~the disabled persons with disabilities~~ to overcome constraints ~~due to~~ *arising from* disability;
- (i) *ensure that persons with disabilities have equal rights as other persons to inherit, access and control property; and*
- (j) *ensure that persons with disabilities have the right to equal and fair treatment and opportunities in the political, economic and social spheres as the rest of the society.*

(3) Legislation and policy measures provided for in clause (2) shall, ~~wherever appropriate~~ make special provision for women with ~~disability-~~ *disabilities*.

(4) For the purposes of this ~~Article~~ *Constitution* “disability” includes any physical, sensory, mental, *psychological* or other impairment, condition, or illness that –

- (a) has, or is perceived, by significant sectors of the community to have a substantial or long term adverse effect on a person’s ability to carry out ~~normal~~ *ordinary* day-to-day activities. ~~or~~

~~(b) — forms the basis of unfair discrimination.~~

*(5) Within three years of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.*

*Minorities and other marginalized groups*

**39A**

- (1) *Minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, on a basis of equality, taking into account their special circumstances and needs.*
- (2) *The state shall, by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to benefit minorities and other historically marginalized groups.*
- (3) *The measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups –*
  - (a) *participate and are fully represented in governance and in all other spheres of national life;*
  - (b) *are accorded special opportunities in the educational and economic fields;*
  - (c) *are accorded special opportunities for access to gainful employment;*

- (d) *are assisted to develop their cultural values, languages and practices;*
  - (e) *are assisted to have reasonable access to water, health services and transport infrastructure;*
  - (f) *are assisted and provided with a reasonable opportunity to meet their basic needs; and*
  - (g) *live a life free from discrimination, exploitation or abuse.*
- (4) *Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.*
- (5) *In this Constitution “minorities and other historically marginalized groups” includes, but is not limited to hunter gatherers, nomadic pastoralists, pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.*

## **Human dignity**

### **40.**

Everyone has inherent dignity and the right to have that dignity respected and protected.

## **Freedom and security of the person**

### **41.**

Everyone has the right to freedom and security of the person, which includes the right –

- (a) not to be deprived of freedom arbitrarily or
  - 1. without just cause;
- (b) not to be detained without trial, except during a state of emergency in which case the detention is subject to the provisions of Article 71;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any manner, whether physical or psychological; and
- (e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

## **Slavery, servitude and forced labour**

**42.**

- (1) No person may be held in slavery or servitude.
- (2) No person may be required to perform forced labour.

## **Privacy**

**43.**

Every person has the right to privacy, which includes the right not to have -

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized;
- (d) information relating to their family or private affairs unnecessarily required or revealed;  
or
- (e) the privacy of their communications infringed.

## **Freedom of religion, belief and opinion**

**44**

Every person has the right to freedom of conscience, religion, thought, belief and opinion.

- (2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, *including observance of a day of worship*, practice or teaching.
- (3) Every religious community is entitled at its own expense to establish and run places of education and to provide religious instruction for persons of that community in the course of providing the education.
- (4) Religious observances and religious instruction may be conducted at state or state-aided institutions, so long as -
  - (a) they are conducted on an equitable basis so that no religion is privileged; and
  - (b) attendance at such observances or religious instruction is free and voluntary.

(5) A person may not be deprived of access to any institution or employment or facility or the enjoyment of any right for reasons of that person's religious beliefs.

(6) A person may not be compelled –

(a) to take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold; or

(b) to take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;

(c) to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;

(d) by a public *or private* body to disclose that person's religious convictions or beliefs; or

(e) to do any other act that is contrary to that person's religion or belief.

### **Freedom of expression**

#### **45.**

(1) Every person has the right to freedom of expression, which includes:

(a) freedom of the press and other media;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity, including dress; and

(d) academic freedom and freedom of scientific research.

~~(2) The right referred to in clause (1) does not extend to~~

~~(a) propaganda for war or war-like activities;~~

~~(b) incitement to violence;~~

~~(c) advocacy of hatred that is based on discrimination and that constitutes vilification of others or incitement to cause harm; or~~

~~(d) propagation of all forms of prejudice, leading, or likely to lead to armed conflict or loss of life.~~

## Publication of opinion

46.

(1) Freedom and independence of electronic ~~and~~ print **and other** media of all types are guaranteed.

(2) The state shall not -

(a) exercise control over, or interfere with, any ~~writer, editor or publisher of a newspaper or other institution of the mass media,~~ **person or institution concerned in broadcasting or production or circulation of any publication or in the dissemination of information by any other medium;** or

(b) harass or penalize any such person **or institution** for any ~~editorial~~ opinion or view, or the content of any such **broadcast** publication or dissemination.

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that -

(a) are designed to ensure the necessary regulation of the airwaves **and other forms of signal distribution;** and

(b) are independent of control by government, political interests or commercial interests.

(4) All state-owned media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.

(5) Parliament shall not enact any law-

(a) requiring prior licensing of any form of publication or dissemination of information, comment or opinion; or

(b) permitting censorship of any form of publication or dissemination of information, comment or opinion, except as contemplated in clause (6).

(6) Parliament shall enact law that –

~~(a) provides for reasonable allocation of air time by all broadcasting media to political parties based on proven popular support either generally or during election campaigns;~~

**(b) makes reasonable provision for equitable allocation of airtime by state-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns.**

- (b) regulates freedom to broadcast in order to ensure fair election campaigning;
  - ~~(c) provides for reasonable prior censorship of films, video, advertisements or other electronic media, or of live performances, to the extent necessary in the public interests.~~
  - (c) *sets media standards; and*
  - (d) *provides for the establishment of a body independent of government or political control reflective of the interests of all sections of the community, to regulate and monitor compliance with the media standards referred to under paragraph (c).*
- (7) A law contemplated in clause (6) shall provide for a body independent of government or political control, reasonably reflective of the interests of all affected sections of the community, to exercise any permitted powers of censorship or classification.

### **Access to information**

#### **47.**

- (1) Every citizen has the right of access to-
  - (a) information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.
- (2) Every person has the right to demand the correction or deletion of untrue or misleading information which affects the person.
- (3) The state has the obligation to publish and publicize any important information affecting the life of the nation.
- (4) Parliament shall, within six months of the coming into force of the Constitution enact legislation to give effect to this right.

### **Freedom of association**

#### **48.**

- (1) Every person has the right to freedom of association.
- (2) The right applies to the formation, operation and continued existence of organisations.
- (3) A person may not be compelled to join any association of any kind.

(4) The state shall, through legislation and policy measures promote and encourage direct and indirect civil society participation in decision-making and in the management of public affairs at all levels of government.

(5) Any legislation that requires civil society organisations to register or otherwise be subject to control shall adhere to the following principles-

(a) registration may be required only if there is good reason for it;

(b) registration shall be in the hands of a body that is independent of Government or political control;

(c) any fee chargeable shall be no more than is necessary to defray essential expenditure of the procedure.

(d) there shall be a right to registration, unless there is good reason to the contrary;

(e) any standards of conduct applied to organisations shall be formulated with input from affected organisations and not imposed by Government; and

(f) de-registration procedures shall provide for a fair hearing and for a right of appeal to an impartial and reasonably accessible tribunal.

#### **Assembly, demonstration, picketing and petition**

##### **49.**

Every person has the right, peaceably and unarmed without the requirement of prior permission, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

#### **Political rights**

##### **50.**

(1) Every citizen is free to make political choices, which includes the right –

(a) to form, or participate in forming, a political party;

(b) to participate in the activities of, or recruit members for, a political party; and

(c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections for -

(a) any elective public body or office established in terms of the Constitution; and

(b) office bearers of any political party of which they are a member.

(3) Every adult citizen has the right in accordance with relevant legislation–

(c) to be registered as a voter and to vote by secret ballot in any election referred to in clause (2); and

(d) to stand on conditions of equality, for public office, or office within a political party of which they are a member, and if elected, to hold office.

## **Freedom of movement and residence**

### **51.**

- (1) Every person has the right to freedom of movement.
- (2) Every person has the right to leave the Republic.
- (3) Every citizen has the right to enter into, remain in and reside anywhere in, the Republic.

## **Refugees and asylum**

### **52.**

- (1) The right of asylum is recognised and shall be granted in accordance with the provisions of the Constitution.
- (2) A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country or of other treatment which would justify that person's being regarded as a refugee.
- (3) Within one year of the coming into force of this Constitution Parliament shall enact a law in compliance with international law and practice, governing persons who seek refuge or asylum in Kenya.

## **Freedom of trade, occupation and profession**

### **53.**

- (1) Every citizen has the right to choose his or her trade, occupation or profession freely.
- (2) The practice of a trade, occupation or profession may be regulated by law.

## **Property**

### **54.**

- (1) Every person has a right to acquire and own property either individually or in association with others ***in any part of the Republic.***
- (2) Parliament shall not enact a law that permits the state, or any person, to ~~arbitrarily~~ -
  - (a) ***arbitrarily*** deprive a person of property of any description; or
  - (b) ***arbitrarily*** deprive a person of any interest in, or right over, such property.
- (c) ***limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out under Article 34(1).***

(3) The state may not deprive a person of property of any description, or of any interest in, or right over, property, unless that deprivation -

(a) results from an acquisition of land or an interest in land in accordance with the provisions of Chapter Eleven; or

(b) is for a public purpose or in the public interest and is carried in accordance with an Act of Parliament that -

(i) ~~requires prompt payment of fair and adequate compensation to the person, before the property is taken; and~~

(i) requires prompt payment in full, of a just compensation to the person, before the property is taken.

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

## **Labour relations**

### **55.**

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right to-
  - (a) a fair remuneration;
  - (b) reasonable working conditions
  - (c) form, join, or participate in the activities and programmes of a trade union; and
  - (d) strike.
- (3) Every employer has the right to-
  - (a) form and join an employers' organisation; and
  - (b) participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right to -
  - (a) determine its own administration, programmes and activities;
  - (b) organise; and
  - (c) form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.
- (6) *Parliament shall within two years of the coming into force of the Constitution enact legislation to give effect to this article.*

## **Social security**

### **56.**

- (1) *Every person has the right to social security.*

*(2) The state shall provide appropriate social security assistance to persons who are unable to support themselves or their dependants.*

*(3) Parliament shall within three years of the coming into force of the Constitution enact legislation to give effect to this Article*

## **Health**

### **57.**

(1) Every person has the right to health, which includes the right to health care services, including reproductive health care.

(2) No person may be refused emergency medical treatment.

## **Education**

### **58.**

(1) Every person has the right to a basic education, ~~including pre-primary, primary and secondary education.~~

(2) The Government shall institute a programme to implement the right of every child to free and compulsory *pre-primary and* primary education *and in so doing shall pay particular attention to children with special needs.*

(3) The state, through reasonable measures, shall make progressively available and accessible *secondary and* post-secondary education.

(4) Every person has the right to establish and maintain, at their own expense, independent educational institutions that meet standards laid down in legislation; and comply with the requirements of the Constitution.

## **Housing**

### **59.**

(1) Every person has the right to ~~have access to~~ adequate *and accessible* housing.

(2) No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances

(3) Parliament may not enact any law that permits or authorizes arbitrary eviction.

## **Food**

### **60.**

Everyone has the right to be free from hunger and to have access to ~~food in adequate quantities and~~ *adequate food* of adequate quality and cultural acceptability.

## **Water**

### **61.**

Everyone has the right to *access to* water in adequate quantities and of satisfactory quality.

## **Sanitation**

### **62.**

Everyone has the right to a reasonable standard of sanitation, including the ability to dispose of the bodies of the dead with decency.

## **Environment**

### **63.**

(1) Everyone has the right -

- (a) to an environment that is safe for life and health.
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development.

(c) to free access to information about the environmental situation.

(d) to compensation for damage arising from the violation of the rights recognized under this Article.

## **Language and culture**

### **63A.**

(1) Everyone has the right to use the language, and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of this Bill of Rights.

(2) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

- (a) to enjoy their culture, practise their religion and use their language; or
- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(3) No person may compel another person to perform, observe or undergo any cultural or religious practice or rite.

(4) No person may be compelled to indicate or define his or her ethnic or racial affiliation.

## Consumer rights

### 64.

(1) Consumers have the right to -

- (a) goods and services of appropriate quality;
- (b) the information necessary for them to gain full benefit from the goods and services;
- (c) the protection of their health, safety, and economic interests; and
- (d) compensation for ~~defects that cause them~~  
***loss or injury arising from defects in goods or services***

(2) Those who offer ***goods and*** services shall endeavour to consult consumers and consumer organizations in connection with issues that affect them

(3) The principles of this Article apply to goods and services offered by the public and private persons and entities, whether in return for consideration or for taxes and other forms of revenue, or offered free of charge

(4) An Act of Parliament shall provide for consumer protection and for fair, honest and decent advertising.

(5) Parliament shall ***within three years of the coming into force of the Constitution*** enact legislation to give effect to the rights in clause (1) and (2), and such legislation shall -

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
- (b) promote an efficient administration.

## **Fair administration**

### **65.**

- (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.
- (2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall -
  - (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
  - (b) promote an efficient administration.

## **Right not to obey unlawful instructions**

### **66.**

- (1) Every person has a right not to obey unlawful instructions.
- (2) No person is liable to punishment under any law for disobeying unlawful instructions.

## **Access to courts**

### **67.**

- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
- (2) The Court or other tribunal referred to in clause (1) shall be accessible and affordable so as to enhance access to justice.

## **Rights of arrested persons**

### **68.**

- (1) Every person who is arrested for allegedly committing an offence has the right -
- (a) to remain silent;
  - (b) to be informed promptly in a language they understand -
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (c) not to be compelled to make any confession or admission that could be used in evidence against that person and where any such person freely chooses to make any confession, such confession shall be made before a Court or Magistrate;
  - (d) to be held separately from persons who are serving sentence;
  - (e) to be brought before a court as soon as reasonably possible, but not later than 48 hours after being arrested or -
    - (i) not later than the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day that is not an ordinary court day; or
    - (ii) if the person is arrested far from a court, as speedily as possible;
  - (f) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
  - (g) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.

(2) No person may be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment of not more than six months.

## **Fair trial**

### **69**

- (1) Every accused person has the right to a fair trial, which includes the right -
- (a) to be presumed innocent until the contrary is proved;
  - (b) to be informed of the charge with sufficient detail to answer it;

- (c) to have adequate time and facilities to prepare a defence;
  - (d) to a public trial before an ordinary court or tribunal;
  - (e) to have the trial begin and conclude without unreasonable delay;*
  - (f) to be present when being tried;
  - (g) to choose, and be represented by, an advocate and to be informed of this right promptly;
  - (h) to have an advocate assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (i) to remain silent, and not to testify during the proceedings;
    - (j) to adduce and challenge evidence;
    - (k) not to be compelled to give self-incriminating evidence;
  - (l) to have without payment the assistance of an interpreter where the accused person cannot understand the language used at the trial;
  - (m) not to be convicted for an act, or omission, that was not an offence at the time it was committed or omitted; but this paragraph does not prevent conviction and punishment for an act, or omission, which at the time it was committed was a crime under general principles of law recognized by the major legal systems;
  - (n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (o) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that the offence was committed, and the time of sentencing; and
  - (p) of appeal to, or review by, a higher court.
- (2) Whenever this Article requires information to be given to a person, that information shall be given in a language that the person understands.
- (3) Evidence obtained in a manner that violates any right in this Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

- (4) An accused person charged with an offence other than an offence that the court may try by summary procedures shall be entitled, if they so require, to a transcript of the proceedings of the trial.
- (5) An accused person has the right to a copy of the record of proceedings within fourteen days after they are concluded and in return for a reasonable fee if prescribed by law.
- (6) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which they are entitled to appeal, may petition the Supreme Court for a new trial where new and compelling evidence has become available.

### **Rights of persons held in Custody**

#### **70.**

- (1) Persons who are held in custody under the law, whether sentenced or not, retain all their fundamental rights under the Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.
- (2) A person held in custody has the right -
  - (a) to be treated in a way that respects their human dignity, and not be subject to discrimination on the basis of any prohibited ground;
  - (b) not to be exploited or abused by staff or fellow prisoners, and the state shall take adequate steps to ensure their protection;
  - (c) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health, and sanitation guaranteed elsewhere in this Bill of Rights;
  - (d) to reasonable health care at public expense, and to pay for their own health care by their own doctors if necessary;
  - (e) to exercise, education, and to work, in return for reasonable remuneration;
  - (f) to observe their religion, and not to be subjected to treatment that violates their religious practices and convictions;
  - (g) to communicate with their lawyers, other persons whose assistance is necessary, religious advisers, close family, including spouses, and are entitled to visits of reasonable frequency and duration;

- (h) to privacy, including the separation of women and men, and children and adults, to the extent compatible with the preservation of law and order and ~~prison~~ discipline;
  - (i) to the separation of women from men and children from adults;
  - (j) to be informed *by authorized persons* of the rules and decisions that affect them;
  - (k) to a fair hearing in any ~~prison~~ disciplinary proceedings;
  - (l) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
  - (m) to complain to the prison authorities, the Commission on Human Rights and Administrative Justice or any similar institution, and to communicate with the press; and
  - (n) to vote. ~~but Parliament may enact laws restricting the right to vote of a person sentenced to a term of imprisonment of two years or more.~~
  - (o) *in the case of persons with disabilities, to facilities modified as necessary to fit the circumstances of such disabilities.*
- (3) The state shall ensure that the prison system, so far as it relates to convicted prisoners, observes the minimum standards laid down under relevant international law and international standards.

### State of emergency

#### 71.

- (1) A state of emergency may be declared only in accordance with Article 151 (4) and only when-
- (a) the Republic is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - (b) the declaration is necessary to restore peace and order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-
- (a) prospectively; and
  - (b) for no more than ~~twenty one~~ *fourteen* days from the date of the declaration, unless the Parliament resolves to extend the declaration.

- (3) Parliament may extend a declaration of a state of emergency -
  - (a) by resolution adopted –
    - (i) following a public debate in Parliament; and
    - (ii) by the majorities set out in clause (4); and
  - (b) for no more than two months at a time.
- (4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty five per cent of the members of Parliament, and any subsequent extension shall be adopted with a supporting vote of at least seventy five per cent of the members of Parliament.
- (5) Any competent court may decide on the validity of-
  - (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; or
  - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (6) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from this Bill of Rights only to the extent that -
  - (a) the derogation is strictly required by the emergency; and
  - (b) the legislation -
    - (i) is consistent with Kenya's obligations under international law applicable to states of emergency
    - (ii) conforms to clause (7); and
    - (iii) is published in the Gazette as soon as reasonably practicable after being enacted and does not take effect until it is so published.
- (7) An Act of Parliament that authorizes a declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration may not permit or authorize indemnifying the state, or any person, in respect of any unlawful act.

## **Application of the Bill of Rights**

### **72.**

- (1) The Bill of Rights applies to the interpretation of all law and binds Parliament, the Executive, the Judiciary, all organs and agencies of the state and all persons.
- (2) ~~A person enjoys the benefit of any right or freedom~~ ***Every person shall enjoy the rights and freedoms*** in the Bill of Rights, to the greatest extent possible, given the nature of the right, and of the person.
- (3) A provision of the Bill of Rights binds a natural or a juristic person to the extent possible, given the nature of the right, and the nature of any duty imposed by that right.
- (4) When applying a provision of the Bill of Rights to a natural or person, as required by clause (2) or (3), a court –
  - (a) in order to give effect to a right or freedom in the Bill of Rights, shall apply, and if necessary, develop, the law to the extent that legislation does not give effect to that right or freedom;
  - (b) shall adopt the interpretation which most favours the enforcement of a right or freedom; and
  - (c) may develop rules of the common law to limit that right or freedom in a manner consistent with the limitations contemplated in Article 31.

## **Right to ask the Commission on Human Rights and Administrative Justice or court to uphold the Bill of Rights.**

### **73.**

- (1) A person listed in this Article has the right to complain to the Commission on Human Rights and Administrative Justice, or to approach a court of competent jurisdiction, alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened. The persons who may complain to the Commission or approach a court are –
  - (a) a person acting in their own interest;
  - (b) a person acting on behalf of another person who cannot act in their own name;
  - (c) a person acting as a member of, or in the interest of, a group or class or persons;

- (d) a person acting in the public interest; and
  - (e) an association acting in the interest of its members.
- (2) If a person complains to the Commission on Human Rights and Administrative Justice, the Commission shall –
  - (a) investigate the complaint; and
  - (b) provide appropriate redress where human rights have been violated.
- (3) The Chief Justice shall within one year of the coming into operation of this Constitution, make rules providing for court proceedings contemplated in clause (1), and those rules shall satisfy the following criteria -
  - (a) that the rights of standing provided for in this Article are fully facilitated;
  - (b) that formalities for starting proceedings are kept to the minimum, in particular that the courts will, if necessary, be prepared to start proceedings on the basis of informal documentation, such as a letter or newspaper report;
  - (c) that the courts, while observing the rules of natural justice, shall respond to the justice of the claim and not be unreasonably restricted by technical requirements;
  - (d) that no fee may be charged for commencing proceedings under the Article; and
  - (e) that organisations or individuals with particular expertise may appear before the court as ‘amicus (friend of the court).

**Authority of the court to uphold and enforce the Bill of Rights.**

**74.**

- (1) The High Court has jurisdiction to hear applications for redress for a contravention of the Bill of Rights.
- (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to lower courts.
- (3) In any matter brought before it in terms of Article 73, a court may grant appropriate relief, including -
  - (a) a declaration of rights;

- (b) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 31;
  - (c) an order of compensation against the state or any person responsible for the violation of rights; and
  - (d) normal orders of judicial review
- (4) In proceedings against a public authority for a violation of human rights, a Court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or totally devoid of merit.
- (5) Without prejudice to the full scope of this Bill, it is the obligation of the state to pass necessary legislation and establish necessary machinery to give the fullest effect to its provisions.

### **Interpretation of the Bill of Rights**

#### **75.**

- (1) When interpreting the Bill of Rights, a court, tribunal or forum –
- (a) shall promote the values that underlie an open and democratic society based on human dignity, equality, *equity* and freedom;
  - (b) shall consider international law; and
  - (c) may consider foreign law;
- (2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote the spirit, purport and objects of the Bill of Rights
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law or legislation, ~~to the extent that they are consistent with the Bill.~~ ***unless they are inconsistent with the Bill of Rights.***
- (4) When interpreting and applying a particular right or freedom in respect of the state, claims that the state does not have the resources to implement the right or freedom, every state organ, and any court, tribunal or forum, shall be guided by the following principles:
- (a) It is the responsibility of the state to show that the resources are not available.
  - (b) In allocating resources, the state has an obligation to give priority to ensuring the widest possible enjoyment of the right

having regard to prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right;

- (c) A court, tribunal or a Division of the Human Rights and Administrative Justice Commission may not interfere with a decision by an organ of the state concerning the allocation of available resources, solely on the basis that the court, tribunal or forum or the Division would have reached a different conclusion.



**APPENDIX VI**

**COMMITTEE REPORT TO STEERING COMMITTEE AND PLENARY OF CONFERENCE**

<b><u>CHAPTER FOUR – CITIZENSHIP</u></b>				
<b><u>ARTICLE</u></b>	<b>AS PRINTED IN THE DRAFT BILL</b>	<b>AS ADOPTED BY THE TWC</b>	<b>AS FORMULATED BY THE MINORITY (IF ANY)</b>	<b>EXPLANATORY NOTES</b>
<b>16</b>  <b>General principles concerning citizenship</b>	<p>Except where the Constitution has made provision to the contrary, all citizens of Kenya are-</p> <p>(a) equally entitled to the rights, privileges and benefits of citizenship;</p> <p>(b) equally subject to the duties and responsibilities of citizenship; and</p> <p>(c) equally entitled to a Kenyan passport and to any document of identification issued by the state to citizens.</p>	<p>Except where the Constitution has made provision to the contrary, all citizens of Kenya are –</p> <p>(a) equally entitled to the rights, privileges and benefits of citizenship;</p> <p>(b) equally subject to the duties and responsibilities of citizenship; and</p> <p>(c) equally entitled to a Kenyan passport and to any document of <i>registration and</i> identification issued by the state to citizens.</p>	NONE	<p>Amendment: Inserted ‘registration and’ in Art. 16 (c).</p> <p>Rationale: The word ‘registration’ should be inserted in order to ensure that Kenyan citizens have the right to documents of identification as well as to those of registration of birth.</p>
<b>17</b>  <b>Retention of existing citizenship</b>	<p>(1) Every person who immediately before the coming into force of the Constitution was a citizen of Kenya is a citizen of Kenya.</p> <p>(2) Every person who immediately</p>	<p>Every person who immediately before the coming into force of the Constitution was a citizen of Kenya is a citizen of Kenya.</p>	NONE	<p>Amendment: Art. 17 (1) adopted without amendment. Art. 17 (2) deleted and made to become new Art. 17A</p>

	before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen of Kenya if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya			Rationale: Art. 17 (2) is misplaced as it deals with acquisition of citizenship, yet Art. 17 deals with the retention of existing citizenship.
<b>17A</b> <b>Citizenship of persons who have been citizens of Kenya</b>	NEW	Every person who immediately before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen of Kenya if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya.		
<b>18</b> <b>Acquisition of Citizenship</b>	Citizenship may be acquired by – (a) birth; (b) registration; and (c) naturalization	Citizenship may be acquired by – (a) birth; (b) registration; and (c) naturalization	NONE	Adopted without amendment.  Rationale: The word ‘may’ is more appropriate in this instance since one cannot be compelled to acquire citizenship through any particular means.
	(1) Every person born after the	<b>(1) Every person born after the</b>		Adopted without

<p><b>19</b> <b>Citizenship by birth</b></p>	<p>coming into force of the Constitution, is a citizen of Kenya if, at the date of the person's birth, either the mother or the father of the person is a citizen of Kenya.</p> <p>(2) A person who is a citizen of Kenya under this Article cannot be deprived of that citizenship.</p>	<p><b>coming into force of the Constitution, is a citizen of Kenya if, at the date of the person's birth, either the mother or the father of the person is a citizen of Kenya.</b></p> <p>(2) A person who is a citizen of Kenya under this Article cannot be deprived of that citizenship.</p>	<p>NONE</p>	<p>amendment.</p> <p>Rationale: The Article ensures that citizenship is provided for on the basis of gender parity.</p>
<p><b>20</b> <b>Citizenship and marriage</b></p>	<p>(1) A person who has been married to a citizen of Kenya for a period of not less than three years is entitled, on application, to be registered as a citizen of Kenya.</p> <p>(2) Citizenship is not lost through marriage or the dissolution of marriage.</p>	<p>(1) A person who has been married to a citizen of Kenya for a period of not less than <i>seven</i> years is entitled, on application, to be registered as a citizen of Kenya.</p> <p>(2) Citizenship is not lost through marriage or the dissolution of marriage.</p>	<p>NONE</p>	<p>Amendments: Art. 20 (1): substitute 'three' with 'seven'. Art. 20 (2) adopted without amendment.</p> <p>Rationale: A three-year period is too short and is open to abuse.</p> <p>The institution of marriage should be safeguarded and prevented from commercialization.</p>
<p><b>21</b> <b>Citizenship by naturalizati</b></p>	<p>A person who has been lawfully resident in Kenya for a continuous period of not less than seven years and who satisfies the conditions prescribed by an Act of Parliament may apply to be naturalized as a</p>	<p>A person who has been lawfully resident in Kenya for a continuous period of not less than seven years and who satisfies the conditions prescribed by an Act of Parliament may apply to be naturalized as a</p>	<p>NONE</p>	<p>Adopted without amendment.</p>

on	citizen of Kenya.	citizen of Kenya.		
<p style="text-align: center;"><b>22</b></p> <p><b>Children found in Kenya and adopted children</b></p>	<p>(1) A child found in Kenya who appears to be less than eight years of age, and whose parents are not known, is presumed to be a citizen of Kenya.</p> <p>(2) A child below the age of eighteen years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled, on application, to become a citizen of Kenya.</p>	<p>(1) A child found in Kenya who appears to be less than eight years of age, and whose <i>nationality and</i> parents are not known, is presumed to be a citizen of Kenya.</p> <p>(2) A child below the age of eighteen years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled, on application, to become a citizen of Kenya.</p>	NONE	<p>Amendments: Art. 22 (1): insert words ‘nationality and’. Art. 22 (2) adopted without amendments.</p> <p>Rationale: The amendment would prevent the influx of abandoned children from neighboring countries.</p>
<p style="text-align: center;"><b>23</b></p> <p><b>Dual Citizenship</b></p>	<p>(1) Dual citizenship is permitted under the laws of Kenya.</p> <p>(2) A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the Constitution, is entitled on application to be registered as a citizen of Kenya.</p> <p>(3) A person who loses citizenship of Kenya as a result of acquiring the citizenship of</p>	<p><b>(1) Parliament shall enact legislation providing for conditions upon which; -</b></p> <p><b>(i) a person who is a citizen of Kenya may not lose the citizenship of Kenya by reason of acquiring the citizenship of another country;</b></p> <p><b>(ii) the citizenship of Kenya may not be granted to individuals who are citizens of other countries.</b></p> <p><b>(2) A person who as a result of acquiring the citizenship of</b></p>		<p>Amendments: Article re-drafted</p>

	another country is entitled, on renunciation of the citizenship of that other country, to regain the same citizenship status which the person formerly enjoyed.	<b>another country lost the citizenship of Kenya at any time before the coming into force of this Constitution is entitled on application to be registered as a citizen of Kenya in accordance with the provisions of Article 23 (1).</b>		
<b>24</b> <b>Cessation of citizenship</b>	A person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation, concealment of any material fact, or by other unlawful means.	A person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation or concealment of any material fact.	NONE	Amendments: Deleted words ‘or by other unlawful means’  Rationale: The phrase ‘or by other unlawful means’ acts as a claw back clause in that it allows Parliament, through ordinary legislation, to pass law that respects citizenship and thereafter deprives someone of the same citizenship.
<b>25</b> <b>Citizenship of parent dying before birth of a</b>	(1) A reference in this Chapter to the citizenship of the parent of a person at the time of the birth of that person, refers in relation to a person born after the death of the parent, to the citizenship of the parent at the time of the parent’s death.	<b>A reference in this Chapter to the citizenship of the parent of a person at the time of the birth of that person, in relation to a person born after the death of the parent, refers to the citizenship of the parent at the time of the parent’s death.</b>	NONE	Amendments: Art. 25 (1): delete word ‘refers’ appearing after the words ‘of that person’ and insert it after the words ‘death of the parent’.  Art. 25 (2) was deleted.

<p><b>person</b></p>	<p>(2) For the purposes of clause (1), where the death of a parent occurred before the coming into force of the Constitution, the citizenship that the parent would have had, if the parent had died after coming into operation of the Constitution, shall be deemed to be the parent's citizenship at the time of death.</p>			
<p><b>26 Residence</b></p>	<p>(1) The following persons may enter and reside in Kenya so long as they comply with the conditions prescribed by Parliament governing entry and residence –</p> <p>(a) a former citizen;</p> <p>(b) a foreign wife or widow or foreign husband or widower of a citizen; and</p> <p>(c) a child of a citizen.</p> <p>(2) Parliament shall, within one year of the coming into force of the Constitution, enact legislation governing the entry into and residence in Kenya, of other categories of persons and providing for the status of permanent residents.</p>	<p><b>(1) The following persons may enter and reside in Kenya so long as they comply with the conditions prescribed by Parliament governing entry and residence –</b></p> <p>(a) a former citizen;</p> <p>(b) a foreign wife or widow or foreign husband or widower of a citizen; and</p> <p>(c) a child of a citizen.</p> <p>(2) Parliament shall, within <i>two years</i> of the coming into force of the Constitution, enact legislation governing the entry into and residence in Kenya, of other categories of persons and providing for the status of permanent residents.</p>	<p>NONE</p>	<p>Amendments: Art. 26 (1) adopted without amendment. Art. 26 (2) substituted one year with 'two years'</p> <p>Rationale: Residence is not the same as citizenship. The time period adopted was in consistence with the time period specified by the Committee on Transitional Arrangements.</p>

<p style="text-align: center;"><b>27</b></p> <p><b>Powers of Parliament</b></p>	<p>Parliament may enact legislation –</p> <ul style="list-style-type: none"> <li>(a) prescribing conditions upon which a person may become a citizen in terms of the Constitution;</li> <li>(b) providing for the acquisition of citizenship of Kenya by persons who are not eligible or who are no longer eligible to become citizens under this Chapter;</li> <li>(c) relating to the making of applications for citizenship by registration or naturalization;</li> <li>(d) providing for the renunciation by a person of that person’s citizenship of Kenya;</li> <li>(e) providing for the deprivation of citizenship; and</li> <li>(f) generally giving effect to the provisions of this Chapter.</li> </ul>	<p>Parliament <i>shall</i> enact legislation –</p> <ul style="list-style-type: none"> <li>(a) prescribing conditions upon which a person may become a citizen in terms of the Constitution;</li> <li>(b) providing for the acquisition of citizenship of Kenya by persons who are not eligible or who are no longer eligible to become citizens under this Chapter;</li> <li>(c) relating to the making of applications for citizenship by registration or naturalization;</li> <li>(d) providing for the renunciation by a person of that person’s citizenship of Kenya;</li> <li>(e) providing for the deprivation of citizenship; and</li> <li>(f) generally giving effect to the provisions of this Chapter.</li> </ul>	<p style="text-align: center;">NONE</p>	<p>Amendments: Substituted word ‘may’ with ‘shall’.</p> <p>Rationale: The word ‘shall’ compels Parliament to enact legislation.</p>
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<p style="text-align: center;"><b>28</b></p> <p><b>Citizenship Registration Board</b></p>	<p>There is established the Citizenship Registration Board to deal with matters provided for under Article 27, consisting of not less than five and not more than nine members appointed by the President with the approval of Parliament from among persons of moral standing.</p>	<p>DELETED</p>	<p>NONE</p>	<p>The Article creates a Constitutional Board, which may not be necessary and would duplicate the work of the Immigration Department.</p>
<p><b>CHAPTER FIVE – THE BILL OF RIGHTS</b></p>				
<p style="text-align: center;"><b>29</b></p> <p><b>Fundamental rights and freedoms</b></p>	<p>(1) The Bill of Rights is the foundation stone of Kenya’s democratic state and is the framework for the adoption of social, economic and cultural policies.</p> <p>(2) The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.</p> <p>(3) The rights and freedoms set out in this Bill of Rights –</p> <p>(a) belong to each individual and</p>	<p>(1) The Bill of Rights is the foundation stone of Kenya’s democratic state and is the framework for the adoption of social, economic and cultural policies.</p> <p>(2) The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities and to promote <i>substantive</i> social justice and the realization of the potential of all human beings.</p> <p>(3) The rights and freedoms set out in this Bill of Rights –</p> <p>(a) belong to each individual and</p>		<p>Amendments:</p> <p>Art. 29 (1) adopted without amendment.</p> <p>Art. 29 (2): insert ‘substantive’.</p> <p>Art. 29 (3) insert ‘ and community’.</p> <p>Art. 29 (4) adopted without amendment.</p> <p>Rationale:</p> <p>The Article captures the spirit of the Bill of Rights and enumerates the broad categories of universally accepted rights.</p>

	<p>are not granted by the state.</p> <p>(b) do not exclude other rights which are not expressly mentioned in this Chapter; and</p> <p>(c) are subject only to the limitations contained in the Bill.</p>	<p><i>community</i> and are not granted by the state.</p> <p>(b) do not exclude other rights which are not expressly mentioned in this Chapter; and</p> <p>(c) are subject only to the limitations contained in the Bill.</p>		
<p><b>30</b></p> <p><b>Duty of the state to promote rights and freedoms</b></p>	<p>(1) The state shall observe, respect, protect, promote and fulfill the rights and freedoms in this Bill of Rights.</p> <p>(2) It is the primary duty of every state organ to give effect to clause (1) whenever that state organ –</p> <p>(a) makes policy or enacts law;</p> <p>(b) implements policy or legislation;</p> <p>(c) performs any of its functions; or</p> <p>(d) exercises any of its powers.</p> <p>(3) The state shall take reasonable legislative, policy and other measures, to achieve the progressive realization of the rights guaranteed in Articles 56, 57,</p>	<p>(1) The state shall observe, respect, protect, promote and fulfill the rights and freedoms in this Bill of Rights.</p> <p>(2) <i>It shall be</i> the primary duty of every state organ to give effect to clause (1) whenever that state organ –</p> <p>(a) makes policy or enacts law;</p> <p>(b) implements policy or legislation;</p> <p>(c) performs any of its functions; or</p> <p>(d) exercises any of its powers.</p> <p>(3) The state shall take reasonable legislative, policy and other measures, to achieve the progressive realization of the rights guaranteed in Articles 56, 57, 58, 59, 60, 61 and 62.</p>	NONE	<p>Amendments:</p> <p>Art. 30 (1) adopted without amendments.</p> <p>Art. 30 (2): substitute ‘It is’ with ‘It shall be’.</p> <p>Art. 30 (3) adopted without amendment.</p> <p>Art. 30 (4) adopted without amendment.</p> <p>Art. 30 (5): substitute ‘provide for’ with ‘facilitate’.</p> <p>Art. 30 (6) (a): inserted ‘and other instruments’.</p> <p>Art. 30 (6) (b): substitute ‘two months’ with a reasonable period’.</p> <p>Art. 30 (6) (c) and (d) adopted without amendments.</p> <p>Rationale: The Article brings in</p>

	<p>58, 59, 60, 61 and 62.</p> <p>(4) Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of rights mentioned in clause (3).</p> <p>(5) The state, through legislative and other instruments, shall recognize and provide for the role of civil society in the promotion and protection of the rights and freedoms in this Bill of Rights.</p> <p>(6) The Republic shall fulfill all its international obligations in respect of human rights and for that purpose –</p> <p>(a) the Republic shall report on time to international human rights bodies on the implementation of human rights treaties.</p> <p>(b) draft reports intended for submission by the Republic to international bodies shall be published in Kenya for two months and facilities</p>	<p>(4) Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of rights mentioned in clause (3).</p> <p>(5) The state, through legislative and other instruments, shall recognize and <i>facilitate</i> for the role of civil society in the promotion and protection of the rights and freedoms in this Bill of Rights.</p> <p>(6) The Republic shall fulfill all its international obligations in respect of human rights and for that purpose –</p> <p>(a) the Republic shall report on time to international human rights bodies on the implementation of human rights treaties <i>and other instruments</i>.</p> <p>(b) draft reports intended for submission by the Republic to international bodies shall be published in Kenya for <i>a reasonable period</i> and facilities shall be provided for the public to discuss and</p>		<p>enforcement mechanisms, which would especially come in handy if the domestic mechanisms failed to secure the upholding of human rights.</p> <p>The phrase ‘treaties and other instruments’ is a broader terminology and captures all instruments of international law.</p> <p>The two-month period for submission of draft reports to international bodies is too short and impractical.</p> <p>There is need for a Human Rights Commission to handle issues that promote the rights and freedoms of the people of Kenya.</p>
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	<p>shall be provided for the public to discuss and debate them before the reports are revised and submitted.</p> <p>(c) the Republic shall facilitate the submission of alternative drafts by civil society organizations to international human rights bodies; and</p> <p>(d) the comments and recommendations of international bodies shall be disseminated to the public and the Government shall make a statement to Parliament on how it intends to implement those recommendations.</p>	<p>debate them before the reports are revised and submitted.</p> <p>(c) the Republic shall facilitate the submission of alternative drafts by civil society organizations to international human rights bodies; and</p> <p>(d) the comments and recommendations of international bodies shall be disseminated to the public and the Government shall make a statement to Parliament on how it intends to implement those recommendations.</p>		
<p><b>31 Limitations of Rights</b></p>	<p>(1) A right or freedom set out in the Bill of Rights may be limited –</p> <p>(a) only by a law of general application; and</p> <p>(b) only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including</p>	<p>(1). A right or freedom set out in the Bill of Rights may be limited –</p> <p>(a) only by a law of general application; and</p> <p>(b) only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –</p>	<p>NONE</p>	<p>Amendments: Inserted new Art. 31 (1) (b) (iv)</p> <p>Rationale: There is need to recognize and accept the principle that all rights are subject to some limitations and that no right is absolute.</p> <p>Conceptually, rights are</p>

	<p>–</p> <p>(i) the nature of the right;</p> <p>(ii) the importance of the purpose of the limitation;</p> <p>(iii) the nature and extent of the limitation; and</p> <p>(iv) the relation between the limitation and its purpose; and whether there are less restrictive means to achieve the purpose.</p> <p>(2) Despite clause (1), provision in legislation –</p> <p>(a) shall not be construed as limiting a right or freedom set out in the Bill of Rights unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.</p> <p>(b) shall not limit a right or freedom set out in the Bill or Rights so as to derogate from the core or the essential content of the right</p> <p>(3) The state, or another person claiming that a particular limitation is permitted in</p>	<p>(i) the nature of the right;</p> <p>(ii) the importance of the purpose of the limitation;</p> <p>(iii) the nature and extent of the limitation;</p> <p><b>(iv) the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others; and</b></p> <p>(v) the relation between the limitation and its purpose; and whether there are less restrictive means to achieve the purpose.</p> <p><b>(2) Despite clause (1), provision in legislation –</b></p> <p>(a) shall not be construed as limiting a right or freedom set out in the Bill of Rights unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.</p> <p>(b) shall not limit a right or freedom set out in the Bill or Rights so as to derogate from</p>		<p>subject to certain limitations in accordance with the law of general application.</p> <p>Before the rights of an individual are limited, the state has to prove a two-tier criterion. First, the limitation must be part of a law of general application and secondly, the limitation should be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.</p>
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	<p>terms of this Article, is responsible to demonstrate to the court, tribunal or other forum that the requirements of this Article have been satisfied.</p> <p>(4) The provisions of this chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.</p>	<p>the core or the essential content of the right</p> <p>(3) The state, or another person claiming that a particular limitation is permitted in terms of this Article, is responsible to demonstrate to the court, tribunal or other forum that the requirements of this Article have been satisfied.</p> <p>(4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.</p>		
<p><b>32</b></p> <p><b>Right to life</b></p>	<p>(1). Everyone has the right to life.</p> <p>(2). The death penalty is abolished.</p>	<p><b>(1) The right to life is protected.</b></p> <p><b>(2) In relation to an unborn child, Parliament shall enact legislation that recognizes the sanctity of life and ensures:-</b></p> <p><b>(a) the safety of the pregnant woman; and</b></p> <p><b>(b) the safety of the unborn child.</b></p>	<p>Presented by Hon. Rosemary Kinyanjui (Delegate No. 526)</p> <p>(1) The right to life is protected.</p> <p>(2) For the purposes of clause (1), the right to life commences on</p>	<p>Amendments: Article re-drafted.</p> <p>Rationale: The article should cater for the unborn child and should prohibit abortion.</p> <p>The Article should recognize that life is sacred and the state should not be</p>

		(3) <b>There shall be no capital punishment.</b>	<p>conception and subsists until death.</p> <p>(3) In relation to an unborn child, Parliament shall enact legislation that recognizes the sanctity of life and ensures:-</p> <p>(a) the safety of the pregnant woman; and</p> <p>(b) the safety of the unborn child.</p> <p>(4) There shall be no capital punishment.</p>	<p>allowed to take away life under any circumstances.</p> <p>Minority View: The Article should define when life begins and not leave the definition to Parliament.</p>
<b>33</b> <b>Equality</b>	<p>(1) Every person is equal before the law and has the right to equal protection and equal benefits of the law.</p> <p>(2) Equality includes the full and equal enjoyment of all rights and freedoms.</p>	<p>(1) Every person is equal before the law and has the right to equal protection and equal benefits of the law.</p> <p>(2) Equality includes the full and equal enjoyment of all rights and freedoms.</p>	NONE	Adopted without amendments.
<b>34</b>	(1) The state shall not unfairly discriminate directly or indirectly against anyone	(1) The state shall not discriminate directly or indirectly against anyone on		Amendments: Art. 34 (1): deleted 'unfairly'

<p><b>Freedom from discrimination</b></p>	<p>on one or more grounds, including race, sex, pregnancy, marital status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language or birth.</p> <p>(2) A person shall not unfairly discriminate directly or indirectly against another person on one or more grounds in terms of clause (1).</p> <p>(3) Despite clause (1), the state may take legislative and other measures designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure shall –</p> <p>(a) adequately provide for benefits to be on the basis of genuine need; and</p> <p>(b) be permissible in terms of Article 31.</p>	<p>one or more grounds, including race, sex, pregnancy, marital status, <i>health status</i>, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language, <i>dress</i> or birth.</p> <p>(2) A person shall not discriminate directly or indirectly against another person on one or more grounds in terms of clause (1).</p> <p>(3) <b>In this Constitution, ‘discrimination’ means any distinction, exclusion or restriction made on the basis of one or more of the grounds specified at clause (1), which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by a person or group of persons of any rights recognized in this Chapter on a basis of equality.</b></p> <p>(4) Despite clause (1), the state</p>	<p>NONE</p>	<p>Art. 34 (1): inserted ‘health status’.</p> <p>Art. 34 (1): inserted ‘dress’</p> <p>Art. 34 (2): deleted ‘unfairly’.</p> <p>New Art. 34 (3) inserted.</p> <p>Art. 34 (3) renumbered as (4).</p> <p>Art. 34 (3): substituted ‘may’ with ‘shall’.</p> <p>Art. 34 (3): inserted ‘including but not limited to affirmative action programmes and policies’.</p> <p>Rationale: The word ‘unfairly’ should be deleted since it is already implied by the use of the word ‘discrimination’.</p> <p>Health status and dress should be included as a ground upon which one should not be discriminated against.</p> <p>It is important to include the definition of the word ‘discrimination’ in order to avoid conflict.</p>
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		<p><i>shall</i> take legislative and other measures <i>including but not limited to affirmative action programmes and policies</i> designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure shall –</p> <p>(a) adequately provide for benefits to be on the basis of genuine need; and</p> <p>(b) be permissible in terms of Article 31.</p>		
<p><b>35</b></p> <p><b>Women</b></p>	<p>(1) Women have the right to equal treatment with men, including the right to equal opportunities in political, economic and social activities.</p> <p>(2) Women are entitled to be accorded the same dignity of the person as men.</p> <p>(3) Women and men have an equal right to inherit, have access to and control property.</p> <p>(4) Any law, culture, custom or tradition that undermines the dignity, welfare, interest</p>	<p>(1) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, <i>cultural</i> and social activities.</p> <p>(2) Women are entitled to be accorded the same dignity of the person as men.</p> <p>(3) Women and men have an equal right to inherit, have access to and control property.</p> <p>(4) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or</p>	NONE	<p>Amendments: Art. 35 (1) amended to include men and cultural activities. Art. 35 (2) –(5) adopted without amendments.</p> <p>Rationale: There is need to include the word ‘men’ in the Article so that men and women can be seen to complement each other and not to be seen as competing.</p> <p>Issues concerning women</p>

	<p>or status of women is prohibited.</p> <p>(5) The state shall –</p> <p>(a) protect women and their rights, taking into account their unique status and natural maternal role in society; and</p> <p>(b) provide reasonable facilities and opportunities to enhance the welfare of women to enable them to realize their full potential and advancement.</p>	<p>status of women is prohibited.</p> <p>(5) The state shall –</p> <p>(a) protect women and their rights, taking into account their unique status and natural maternal role in society; and</p> <p>(b) provide reasonable facilities and opportunities to enhance the welfare of women to enable them to realize their full potential and advancement.</p>		<p>need to be emphasized as much as possible since women have been sidelined politically, economically, culturally and socially.</p> <p>The law should protect the dignity of both men and women.</p>
<p><b>36</b></p> <p><b>Older members of society</b></p>	<p>(1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights, including a right to –</p> <p>(a) participate fully in the affairs of society;</p> <p>(b) pursue their personal development;</p> <p>(c) be free from all forms of discrimination, exploitation or abuse;</p> <p>(d) live with dignity and respect; and</p> <p>(e) retain their autonomy.</p> <p>(2) Older members of society are entitled to reasonable</p>	<p>(1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights,.</p> <p><b>(2) The state shall by legislation and policy measures ensure the rights of older persons to –</b></p> <p><b>(a) participate fully in the affairs of society;</b></p> <p><b>(b) pursue their personal development;</b></p> <p><b>(c) be free from all forms of discrimination, exploitation and abuse;</b></p> <p><b>(d) live in dignity and respect;</b></p> <p><b>(e) retain their social, economic</b></p>	NONE	<p>Amendments: Article re-drafted.</p> <p>Rationale: The responsibilities of society to the older generation need to be clearly stipulated.</p> <p>The state should be responsible for ensuring that the elderly are well catered for and facilitate a plan for their retirement.</p> <p>There is a need to establish a Council that will define policies for the care and</p>

	<p>care and assistance of family and state.</p> <p>(3) Older members of society have the duty to plan for their retirement, to share their knowledge and skills with others, and to remain active in society.</p> <p>(4) Relevant ministries, and complaints bodies including the Commission on Human Rights and Administrative Justice, shall take special care to equip themselves to understand and deal with issues affecting the elderly.</p>	<p><b>and political autonomy; and</b></p> <p><b>(f) receive reasonable care and assistance of family and state.</b></p> <p><b>(3) Members of society, with the facilitation of the state, have a duty to plan for their old age.</b></p> <p><b>(4) Older members of society have a responsibility to share their knowledge and skills with others and to remain active in society.</b></p> <p>(5) Relevant ministries, and complaints bodies including the Commission on Human Rights and Administrative Justice, shall take special care to deal with issues affecting the elderly.</p> <p><b>(6) The state shall by legislation establish a Council to define and advise on policies and programs for the care and protection of elderly persons.</b></p> <p><b>(7) In this Constitution, ‘older member of society’ means a person above the age of sixty</b></p>		<p>protection of older persons.</p> <p>There is need to define and establish who exactly qualifies to be classified as an older member of society.</p>
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		<p>years.</p> <p>(8) Within two years of the coming into force of this Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.</p>		
<p><b>36A</b></p> <p><b>The Youth</b></p>	<p><u><b>NEW</b></u></p>	<p>(1) The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, taking into account their unique needs.</p> <p>(2) The state shall take reasonable legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.</p> <p>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth –</p> <p>(a) access to quality and relevant education and training;</p>	<p>NONE</p>	<p>Amendments: New Article 36 A inserted.</p> <p>Rationale: It is important to include provisions for the youth in the Constitution.</p> <p>The youth have been glaringly left out of the Constitution yet they need support in all ways.</p> <p>There is need to define who exactly constitutes ‘the youth’ and to raise the upper age-limit to 35 years.</p>

		<p>(b) full participation in governance;</p> <p>(c) access to gainful employment;</p> <p>(d) adequate opportunities in the social, economic and other spheres of national life;</p> <p>(e) freedom of association to further their legitimate interests;</p> <p>(f) protection from any culture, custom or tradition that could undermine their dignity or quality of life; and</p> <p>(g) a life free from discrimination, exploitation or abuse.</p> <p>(4) Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with issues affecting the youth.</p> <p>(5) In this Constitution, ‘youth’ refers to a woman or man who has attained the age of eighteen years but is not above the age of thirty-five</p>		
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		<b>years.</b>		
<b>37 Children</b>	<p>(1) Children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects: physically, intellectually, emotionally and spiritually, for the benefit of themselves and society as a whole.</p> <p>(2) All children whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.</p> <p>(3) A child's best interests are of paramount importance in every matter concerning the child.</p> <p>(4) A child's mother and father,</p>	<p>(1) Children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects: physically, intellectually, <i>psychologically</i> and spiritually, for the benefit of themselves and society as a whole.</p> <p>(2) All children whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.</p> <p>(3) A child's best interests <i>shall be</i> of paramount importance in every matter concerning the child.</p> <p>(4) A child's mother and father, whether married to each other or not, have an equal duty to</p>	NONE	<p>Amendments:</p> <p>Art. 37 (1): substituted 'emotionally and 'with 'psychologically'.</p> <p>Art. 37 (3): substituted 'are' with 'shall be'</p> <p>Art.37 (5) (i) – (o) renumbered.</p> <p>Art. 37(5) (i) (v) renumbered as Art. 37 (5) (j).</p> <p>Art. 37 (5) (j) renumbered as Art. 37 (5) (k)</p> <p>Art. 37 (7) renumbered as (6) and 'nomadic children' inserted.</p> <p>Art. 37 (8) renumbered as (7).</p> <p>Art. 37 (9) renumbered as (8) and 'Article' substituted with 'Constitution'.</p> <p>Rationale:</p> <p>There is need to include children with disabilities in the provisions of the Article.</p> <p>The use of the word</p>

	<p>whether married to each other or not, have an equal duty to protect and provide for the child.</p> <p>(5) Every child has a right to –</p> <p>(a) a name and a nationality from birth and to have their birth registered;</p> <p>(b) parental care, or to appropriate alternative care where the child is separated from its parents;</p> <p>(c) free basic education which shall be compulsory;</p> <p>(d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;</p> <p>(e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare;</p> <p>(f) adequate nutrition, shelter, basic health care services and social services;</p> <p>(g) be free of corporal punishment or other forms of violence or cruel and</p>	<p>protect and provide for the child.</p> <p>(5) Every child has a right to –</p> <p>(a) a name and a nationality from birth and to have their birth registered;</p> <p>(b) parental care, or to appropriate alternative care where the child is separated from its parents;</p> <p>(c) free basic education which shall be compulsory;</p> <p>(d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;</p> <p>(e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare;</p> <p>(f) adequate nutrition, shelter, basic health care services and social services;</p> <p>(g) be free of corporal punishment or other forms of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;</p> <p>(h) not take part in hostilities or to be recruited into armed</p>		<p>‘Article’ in sub-article (8) limits the provisions to the Article only. The word should be replaced with “Constitution’.</p>
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	<p>inhumane treatment in schools and other institutions responsible for the care of children;</p> <p>(h) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;</p> <p>(i) not be arrested or detained except as a measure of last resort, and where a child is arrested or detained –</p> <p>(i) be so detained only for the shortest appropriate period of time;</p> <p>(ii) be kept separate from adults in custody;</p> <p>(iii) be accorded legal assistance by the state;</p> <p>(iv) be treated in a manner, and to be kept in conditions that take account of the child’s gender and age;</p> <p>(v) have a legal practitioner assigned to the child by the state and at state expense in proceedings affecting the child, if injustice would otherwise result; and</p>	<p>conflicts and to be protected from situations of armed conflict;</p> <p>(i) not be arrested or detained except as a measure of last resort, and where a child is arrested or detained <i>to be treated in a manner that promotes the child’s dignity and self-worth and that pays attention to the child’s rights, including but not limited to the right to –</i></p> <p>(i) be so detained only for the shortest appropriate period of time;</p> <p>(ii) be kept separate from adults in custody;</p> <p>(iii) be accorded legal assistance by the state;</p> <p>(iv) be treated in a manner, and to be kept in conditions that take account of the child’s <i>disability, if any</i>, gender and age;</p> <p>(j) have a legal practitioner assigned to the child by the state and at state expense in proceedings affecting the child, if injustice would</p>		
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	<p>(j) know of decisions affecting the child, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.</p> <p>(6) Children with special needs, including girls, orphans, children with disabilities, refugee children, and homeless children, are entitled to the special protection of the state and society.</p> <p>(7) The state has the obligation to take steps to implement in law and administration the provisions of the Constitution and of international instruments and standards on the rights of the child.</p> <p>(8) <u>In this Article “child” means a person under the age of eighteen years.</u></p>	<p>otherwise result; and</p> <p>(k) know of decisions affecting the child, express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.</p> <p>(6) Children with special needs, including girls, orphans, children with disabilities, <i>nomadic children</i>, refugee children, and homeless children, are entitled to the special protection of the state and society.</p> <p>(7) The state has the obligation to take steps to implement in law and administration the provisions of the Constitution and of international instruments and standards on the rights of the child.</p> <p>(8) <u>In this Constitution “child” means a person under the age of eighteen years.</u></p>		
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<p style="text-align: center;"><b>38</b></p> <p><b>The Family</b></p>	<p>(1) The state shall recognize the family as the natural fundamental unit of society and as the necessary basis of social order</p> <p>(2) The family is entitled to the respect and protection of the state.</p> <p>(3) Every person who is at least eighteen years of age –  (a) <u>has the right to marry, based upon the free consent of the parties; and</u>  (b) <u>has the right to found a family.</u></p> <p>(4) Parties to a marriage are entitled to equal rights in the marriage, during the marriage, and at the dissolution of their marriage.</p> <p>(5) Parliament shall enact legislation that, in a manner consistent with this Article and the other provisions of the Constitution, recognizes –  _____  (c) <u>marriages concluded under</u></p>	<p>(1) The state shall recognize the family as the natural fundamental unit of society and as the necessary basis of social order.</p> <p>(2) The family is entitled to the respect and protection of the state.</p> <p>(3) Every person who is at least eighteen years of age –  (a) <u>has the right to marry based upon the free consent of the parties; and</u>  (b) <u>has the right to found a family.</u></p> <p>(4) Parties to a marriage are entitled to equal rights <i>as to the marriage</i>, during the marriage, and at the dissolution of their marriage.</p> <p>(5) <b>Same sex marriage and homosexuality are prohibited.</b></p> <p>(6) Parliament shall enact legislation that, in a manner consistent with this Article and the other provisions of the Constitution, that recognizes –  (a) <u>marriages concluded under</u></p>	<p style="text-align: center;">NONE</p>	<p>Amendments:  Art. 38 (1) &amp; (2) adopted without amendments.  Art. 38 (4): substituted ‘in the marriage’ with ‘as to the marriage’.  New Art. 38 (5) inserted.  Art. 38 (5) renumbered and without amendment.</p>
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	<p><u>any tradition, or system of religious, personal or family law; or</u></p> <p>(d) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.</p>	<p><u>any tradition, or system of religious, personal or family law; or</u></p> <p>(b) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.</p>		
<p><b>39</b></p> <p><b>Persons with disabilities</b></p>	<p>(1) Person with disability are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, and to participate as fully in society as they are able.</p> <p>(2) The state shall, by legislation and policy measures-</p> <p>(a) recognize the right of persons with disabilities to respect and human dignity;</p> <p>(b) educate communities and society on the causes of disability and the need for respect for the dignity and rights of all;</p> <p>(c) ensure that education, institutions and facilities for disabled persons are as integrated into society as a whole as is compatible with the interests of the disabled.</p>	<p>(1) <i>Persons with disabilities</i> are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, and to <i>be full participants in society</i>.</p> <p>(2) The state shall, by legislation and policy measures-</p> <p>(a) recognize the right of <i>persons with disabilities</i> to respect and human dignity;</p> <p>(b) educate communities and society on the causes of disability and the need for respect for the dignity and rights of all;</p> <p>(c) ensure that <i>educational institutions and facilities for persons with disabilities</i> are as integrated into society as a whole as is compatible with <i>their</i> interests.</p>	NONE	<p>Amendments:</p> <p>‘Persons with disability’ substituted with ‘persons with disabilities’ throughout the Article.</p> <p>Art. 39 (1): substitute ‘participate as fully in society as they are able’ with ‘be full participants in society’.</p> <p>Art. 39 (2) (c): substituted ‘education’ with educational;</p> <p>Art. 39 (2) (c): substituted ‘the interests of the disabled’ with ‘their interests’.</p> <p>Art. 39 (2) (d): inserted ‘to houses for use by the public’.</p> <p>Art. 39 (2) (e): substituted ‘encourage the development and’ with</p>

	<p>(d) ensure access to all places, to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access;</p> <p>(e) encourage the development and use of sign language, Braille and other appropriate means of communication;</p> <p>(f) remove from official usage in any language words that are demeaning when applied to persons with disabilities, and to require the same in private use of language;</p> <p>(g) provide for the participation of disabled persons in decision-making at all levels; and</p> <p>(h) facilitate the acquisition of materials and devices to enable the disabled to overcome constraints due to disability.</p> <p>(3) Legislation and policy measures provided for in clause (2) shall, wherever appropriate make special provision for women with</p>	<p>(d) ensure access to all places, to houses <i>for use by the public</i>, to public transport and to information and communications to <i>persons with disabilities</i>, sufficient to overcome physical and other barriers to access;</p> <p>(e) <i>develop and ensure</i> the use of sign language, Braille and other appropriate means of communication;</p> <p>(f) remove from official usage in any language words that are demeaning when applied to <i>persons with disabilities</i>, and <i>encourage</i> the same in private use of language;</p> <p>(g) provide for the <i>inclusion and</i> participation of persons with disabilities in decision-making at all levels; and</p> <p>(h) facilitate the acquisition of materials, <i>facilities</i> and devices to enable the <i>persons with disabilities</i> to overcome constraints <i>arising from</i> disability.</p> <p><b>(i) ensure that persons with disabilities have equal rights as other persons to inherit</b></p>	<p>‘develop and ensure the’.</p> <p>Art. 39 (2) (f): substituted ‘require’ with ‘encourage’.</p> <p>Art. 39 (2) (g): inserted ‘inclusion and’.</p> <p>Art. 39 (2) (h): inserted ‘facilities’.</p> <p>Substituted ‘due to’ with ‘arising from’.</p> <p>Inserted new Art 39 (2) (i) and (j).</p> <p>Art. 39 (3): deleted ‘wherever appropriate’.</p> <p>Art. 39 (4): substituted ‘Article’ with ‘Constitution’;</p> <p>Inserted ‘psychological’; substituted ‘normal’ with ‘ordinary’; deleted paragraph (b)</p> <p>New Art. 39 (5) inserted.</p> <p>Rationale: Persons with disabilities should be referred to as such and not as disabled persons.</p> <p>Persons with disabilities should be fully considered as part of the society and</p>
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	<p>disability.</p> <p>(4) For the purposes of this Article, ‘disability’ includes any physical, sensory, mental or other impairment, condition, or illness that –</p> <p>(a) has, or is perceived, by significant sectors of community to have a substantial or long term adverse effect on a person’s ability to carry out normal day-to-day activities; or</p> <p>(b) forms the basis of unfair discrimination.</p>	<p><b>access and control property; and</b></p> <p><b>(j) ensure that persons with disabilities have the right to equal and fair treatment and opportunities in the political, economic and social spheres as the rest of the society.</b></p> <p>(3) Legislation and policy measures provided for in clause (2) shall make special provision for women with disabilities.</p> <p>(4) For the purposes of this <i>Constitution</i>, ‘disability’ includes any physical, sensory, mental, <i>psychological</i> or other impairment, condition, or illness that has, or is perceived, by significant sectors of community to have a substantial or long term adverse effect on a person’s ability to carry out <i>ordinary</i> day-to-day activities.</p> <p><b>(5) Within three years of the coming into force of this</b></p>		<p>they should be understood and catered for in the Constitution.</p> <p>It is necessary to include autistic disabilities in the Article.</p>
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		Constitution, Parliament shall enact legislation to bring the provisions of this Article into operation.		
<b>39A</b> <b>Minorities and other marginalized groups</b>	<b>NEW</b>	<p>(1) Minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, on a basis of equality, taking into account their special circumstances and needs.</p> <p>(2) The state shall, by policy, legislation and other measures, put in place affirmative action programs, including but not limited to equalization measures designed to benefit minorities and other historically marginalized groups.</p> <p>(3) The measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups –</p> <p>(a) participate and are fully</p>	<b>NONE</b>	<p>Amendments: New Article 39 A inserted.</p> <p>Rationale: A specific Article should be included to deal with minorities and other marginalized groups, just as there are Articles dealing with women, the elderly and children.</p>

		<p>represented in governance and in all other spheres of national life;</p> <p>(b) are accorded special opportunities in the educational and economic fields;</p> <p>(c) are accorded special opportunities for access to gainful employment;</p> <p>(d) are assisted to develop their cultural values, languages and practices;</p> <p>(e) are assisted to have reasonable access to water, health services and transport infrastructure;</p> <p>(f) are assisted and provided with a reasonable opportunity to meet their basic needs; and</p> <p>(g) live a life free from discrimination, exploitation or abuse.</p> <p>(4) Relevant ministries and complaints bodies including the Commission on Human Rights and Administrative Justice shall take special care to equip themselves to understand and deal with</p>		
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		<p>issues affecting minorities and other historically marginalized groups.</p> <p>(5) In this Constitution ‘minorities and other historically marginalized groups’ includes, but is not limited to hunters and gatherers, nomadic pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</p>		
<b>40 Human Dignity</b>	Everyone has inherent dignity and the right to have that dignity respected and protected.	Everyone has inherent dignity and the right to have that dignity respected and protected.	NONE	Adopted without amendments
<b>41 Freedom and security of the person</b>	<p>Everyone has the right to freedom and security of the person, which includes the right –</p> <p>(a) not to be deprived of freedom arbitrarily or without just cause;</p> <p>(b) not to be detained without trial, except during a state of emergency in which case the detention is subject to the provisions of Article 71;</p> <p>(c) to be free from all forms of</p>	<p><b>Everyone has the right to freedom and security of the person, which includes the right –</b></p> <p>(a) not to be deprived of freedom arbitrarily or without just cause;</p> <p>(b) not to be detained without trial, except during a state of emergency in which case the detention is subject to the provisions of Article 71;</p> <p>(c) to be free from all forms of</p>	NONE	Adopted without amendments

	<p>violence from either public or private sources;</p> <p>(d) not to be tortured in any manner, whether physical or psychological; and</p> <p>(e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.</p>	<p>violence from either public or private sources;</p> <p>(d) not to be tortured in any manner, whether physical or psychological; and</p> <p>(e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.</p>		
<p><b>42</b></p> <p><b>Slavery, servitude and forced labor</b></p>	<p>(1) No person may be held in slavery or servitude.</p> <p>(2) No person may be required to perform forced labour.</p>	<p>(1) No person may be held in slavery or servitude.</p> <p>(2) No person may be required to perform forced labour.</p>	NONE	Adopted without amendment
<p><b>43</b></p> <p><b>Privacy</b></p>	<p>Every person has the right to privacy, which includes the right not to have –</p> <p>(a) their person or home searched;</p> <p>(b) their property searched;</p> <p>(c) their possessions seized;</p> <p>(d) information relating to their family or private affairs unnecessarily required or revealed, or</p> <p>(e) the privacy of their communications infringed.</p>	<p>Every person has the right to privacy, which includes the right not to have –</p> <p>(a) their person or home searched;</p> <p>(b) their property searched;</p> <p>(c) their possessions seized;</p> <p>(d) information relating to their family or private affairs unnecessarily required or revealed, or</p> <p>(e) the privacy of their communications infringed.</p>	NONE	Adopted without amendment.
<p><b>44</b></p>	<p>(1) Every person has the right to freedom of conscience,</p>	<p>(1) Every person has the right to freedom of conscience,</p>		Amendments: Art. 44 (1) adopted without

<p><b>Freedom of religion, belief and opinion</b></p>	<p>religion, thought, belief and opinion.</p> <p>(2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.</p> <p>(3) Every religious community is entitled at its own expense to establish and run places of education and to provide religious instruction for persons of that community in the course of providing the education.</p> <p>(4) Religious observances and religious instruction may be conducted at state or state-aided institutions, so long as –</p> <p>(i) they are conducted on an equitable basis so that no religion is privileged; and</p> <p>(ii) attendance at such observances or religious</p>	<p>religion, thought, belief and opinion.</p> <p>(2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, <i>including observance of a day of worship</i>, practice or teaching.</p> <p>(3) Every religious community is entitled at its own expense to establish and run places of education and to provide religious instruction for persons of that community in the course of providing the education.</p> <p>(4) Religious observances and religious instruction may be conducted at state or state-aided institutions, so long as –</p> <p>(i) they are conducted on an equitable basis so that no religion is privileged; and</p> <p>(ii) attendance at such observances or religious instruction is free and</p>	<p>NONE</p>	<p>amendment</p> <p>Art. 44 (2): inserted ‘including observance of day of worship’</p> <p>Art. 44 (3) – (5) adopted without amendments.</p> <p>Art. 44 (6): inserted ‘or private’.</p> <p>Rationale: There are instances in which people are victimized for observance of their day of worship.</p> <p>The amendment originated from current format of a working week, which is organized as though Sunday is the day of rest for all persons.</p> <p>Currently, the Seventh Day Adventists suffer a lot of injustice when they are required to perform duties or even sit national examinations on their Sabbath.</p> <p>The institutions specified should include both the</p>
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	<p>instruction is free and voluntary.</p> <p>(5) A person may not be deprived of access to any institution or employment or facility or the enjoyment of any right for reasons of that person's religious beliefs.</p> <p>(6) A person may not be compelled –</p> <p>(a) to take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold; or</p> <p>(b) to take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;</p> <p>(c) to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;</p>	<p>voluntary.</p> <p>(5) A person may not be deprived of access to any institution or employment or facility for reasons of that person's religious beliefs.</p> <p>(6) A person may not be compelled –</p> <p>(a) to take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold or</p> <p>(b) to take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;</p> <p>(c) to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;</p> <p>(d) by a public <i>or private</i> body to disclose that person's religious convictions or beliefs; or</p> <p>(e) to do any other act that is contrary to that person's</p>		<p>private and public.</p> <p>The phrase 'institutions and facilities' as regards access should be critically examined as the same could mean a mosque or other place of worship.</p>
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	(d) by a public body to disclose that person's religious convictions or beliefs; or (e) to do any other act that is contrary to that person's religion or belief.	religion or belief.		
<b>45</b> <b>Freedom of expression</b>	(1) Every person has the right to freedom of expression which includes: (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.  (2) The right referred to in clause (1) does not extend to –  (a) propaganda for war or war-like activities; (b) incitement to violence; (c) advocacy of hatred that is based on discrimination and that constitutes vilification of others or incitement to cause harm; or	Every person has the right to freedom of expression which includes: (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity <i>including dress</i> (d) academic freedom and freedom of scientific research.	NONE	Amendments: Art. 45 (1) (e): inserted 'including dress'. Art. 45 (2) deleted.  Rationale: Dress is indeed a form of expression  Many men and women have, in the past, been violated for expressing themselves through dress.  Dress should be addressed as a form of expression in appreciation of African culture.  Minority View: The phrase 'artistic creativity' is broad enough to accommodate 'dress'.

	(d) propagation of all forms of prejudice, leading, or likely to lead to armed conflict or loss of life.			
<b>46</b> <b>Publication of opinion</b>	<p>(1) Freedom and independence of electronic and print media of all types are guaranteed.</p> <p>(2) The state shall not -</p> <p>(a) exercise control over, or interfere with , any writer, editor or publisher of a newspaper or other institution of the mass media, or</p> <p>(b) harass or penalize any such person for any editorial opinion or view, or the content of any such publication or dissemination.</p> <p>(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that -</p> <p>(a) are designed to ensure the necessary regulation of the airwaves; and</p> <p>(b) are independent of control by</p>	<p>(1) Freedom and independence of electronic, <i>print and other</i> media are guaranteed.</p> <p>(2) The state shall not -</p> <p>(a) exercise control over, or interfere with, any person or institution concerned with broadcasting or production or circulation of any publication or in the dissemination of information by any other medium; or</p> <p>(b) harass or penalize any such person or institution for any opinion or view or the content.</p> <p>(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that –</p> <p>(a) are designed to ensure the necessary regulation of the airwaves <i>and other forms of signal distribution; and</i></p> <p>(b) are independent of control by government, political interests</p>		<p>Amendments:</p> <p>Art. 46 (1): substituted ‘and print’ with ‘print and other’.</p> <p>Art. 46 (2) deleted and new one inserted.</p> <p>Art. 46 (3) (a): inserted ‘and other forms of signal distribution’</p> <p>Art. 46 (4) &amp; (5) adopted without amendments</p> <p>Art. 46 (6) (a): redrafted.</p> <p>Art. 46 (6) (c) deleted and substituted with new Art 46 (6) (c) and (d).</p> <p>Art. 46 (7) deleted.</p>

	<p>government, political interests or commercial interests.</p> <p>(4) All state-owned media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.</p> <p>(5) Parliament shall not enact any law –</p> <p>(a) requiring prior licensing of any form of publication or dissemination of information, comment or opinion; or</p> <p>(b) permitting censorship of any form of publication or dissemination of information, comment or opinion, except as contemplated in clause (6)</p> <p>(6) Parliament shall enact law that –</p>	<p>or commercial interests.</p> <p>(3) All state-owned media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.</p> <p>(5) Parliament shall not enact any law –</p> <p>(a) requiring prior licensing of any form of publication or dissemination of information, comment or opinion; or</p> <p>(b) permitting censorship of any form of publication or dissemination of information, comment or opinion, except as contemplated in clause (6)</p> <p>(6) Parliament shall enact law that –</p> <p>(a) makes reasonable provision for equitable allocation of airtime by state-owned and other specified categories of broadcasting media, to political parties either generally or during election</p>		
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	<p>(a) provides for reasonable allocation of air time by all broadcasting media to political parties based on proven popular support either generally or during election campaigns.</p> <p>(b) regulates freedom to broadcast in order to ensure fair election campaigning;</p> <p>(c) Provides for reasonable prior censorship of films, video, advertisements or other electronic media, or of live performances, to the extent necessary in the public interests;</p> <p>(7) A law contemplated in clause (6) shall provide for a body independent of government or political control, reasonably reflective of the interests of all affected sections of the community, to exercise any permitted powers of censorship or classification.</p>	<p>campaigns.</p> <p>(b) regulates freedom to broadcast in order to ensure fair election campaigning;</p> <p>(c) <b>sets media standards;</b></p> <p>(d) <b>provides for the establishment of a body independent of government or political control, reflective of the interests of all sections of the community, to regulate and monitor compliance with the media standards referred to under paragraph (c).</b></p>		
	(1) Every citizen has the	(1) Every citizen has the right of		Adopted without

<p style="text-align: center;"><b>47</b></p> <p style="text-align: center;"><b>Access to Information</b></p>	<p style="text-align: center;">right of access to –</p> <p>(a) information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.</p> <p>(2) Every person has the right to demand the correction or deletion of untrue or misleading information which affects the person.</p> <p>(3) The state has the obligation to publish and publicize any important information affecting the life of the nation.</p> <p>(4) Parliament shall, within six months of the coming into force of the Constitution enact legislation to give effect to this right.</p>	<p style="text-align: center;">access to –</p> <p>(a) information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.</p> <p>(2) Every person has the right to demand the correction or deletion of untrue or misleading information which affects the person.</p> <p>(3) The state has the obligation to publish and publicize any important information affecting the life of the nation.</p> <p>(4) Parliament shall, within one year of the coming into force of the Constitution enact legislation to give effect to this right.</p>	<p style="text-align: center;">NONE</p>	<p>amendments</p> <p>Rationale: The public has a right to know what the Government is doing since the Government does it in the name of the public.</p> <p>In the past, the Government has used the <u>Official Secrets Act</u> to muzzle its misdeeds.</p>
<p style="text-align: center;"><b>48</b></p> <p style="text-align: center;"><b>Freedom of</b></p>	<p>(1) Every person has the right to freedom of association.</p> <p>(2) The right applies to the formation, operation and</p>	<p>(1) Every person has the right to freedom of association.</p> <p>(2) The right applies to the formation, operation and</p>	<p style="text-align: center;">NONE</p>	<p>Adopted without amendments</p>

<p><b>association</b></p>	<p>continued existence of organisations.</p> <p>(3) A person may not be compelled to join any association of any kind.</p> <p>(4) The state shall, through legislation and policy measures promote and encourage direct and indirect civil society participation in decision-making and in the management of public affairs at all levels of government.</p> <p>(5) Any legislation that requires civil society organisations to register or otherwise be subject to control shall adhere to the following principles-</p> <p>(a) <u>registration may be required only if there is good reason for it;</u></p> <p>(b) <u>registration shall be in the hands of a body that is independent of Government or political control;</u></p> <p>(c) <u>any fee chargeable shall be no more than is necessary to</u></p>	<p>continued existence of organisations.</p> <p>(3) A person may not be compelled to join any association of any kind.</p> <p>(4) The state shall, through legislation and policy measures promote and encourage direct and indirect civil society participation in decision-making and in the management of public affairs at all levels of government.</p> <p>(5) Any legislation that requires civil society organisations to register or otherwise be subject to control shall adhere to the following principles-</p> <p>(a) <u>registration may be required only if there is good reason for it;</u></p> <p>(b) <u>registration shall be in the hands of a body that is independent of Government or political control;</u></p> <p>(c) <u>any fee chargeable shall be no more than is necessary to defray essential expenditure of</u></p>		
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	<p><u>defray essential expenditure of the procedure.</u></p> <p>(d) <u>there shall be a right to registration, unless there is good reason to the contrary;</u></p> <p>(e) <u>any standards of conduct applied to organisations shall be formulated with input from affected organisations and not imposed by Government; and</u></p> <p>(f) <u>de-registration procedures shall provide for a fair hearing and for a right of appeal to an impartial and reasonably accessible tribunal.</u></p>	<p><u>the procedure.</u></p> <p>(d) <u>there shall be a right to registration, unless there is good reason to the contrary;</u></p> <p>(e) <u>any standards of conduct applied to organisations shall be formulated with input from affected organisations and not imposed by Government; and</u></p> <p>(f) <u>de-registration procedures shall provide for a fair hearing and for a right of appeal to an impartial and reasonably accessible tribunal.</u></p>		
<p><b>49</b></p> <p><b>Assembly, demonstrating, picketing and petition</b></p>	<p>Every person has the right, peaceably and unarmed without the requirement of prior permission, to assemble, to demonstrate, to picket, and to present petitions to public authorities.</p>	<p>Every person has the right, peaceably and unarmed without the requirement of prior permission, to assemble, to demonstrate, to picket, and to present petitions to public authorities.</p>	NONE	Adopted amendments without
<p><b>50</b></p> <p><b>Political Rights</b></p>	<p>(1) Every citizen is free to make political choices, which includes the right –</p> <p>(a) <u>to form, or participate in forming, a political party;</u></p> <p>(b) <u>to participate in the activities</u></p>	<p>(1) Every citizen is free to make political choices, which includes the right –</p> <p>(a) <u>to form, or participate in forming, a political party;</u></p> <p>(b) <u>to participate in the activities</u></p>	NONE	Adopted amendments without  Rationale: The Article addresses the political rights of the

	<p><i>of, or recruit members for, a political party; and</i>  (c) <i>to campaign for a political party or cause.</i></p> <p>(2) Every citizen has the right to free, fair and regular elections for -  (a) <i>any elective public body or office established in terms of the Constitution; and</i>  (b) <i>office bearers of any political party of which they are a member.</i></p> <p>(3) Every adult citizen has the right in accordance with relevant legislation—  (a) <i>to be registered as a voter and to vote by secret ballot in any election referred to in clause (2); and</i>  (b) to stand on conditions of equality, for public office, or office within a political party of which they are a member, and if elected, to hold office.</p>	<p><i>of, or recruit members for, a political party; and</i>  (c) <i>to campaign for a political party or cause.</i></p> <p>(2) Every citizen has the right to free, fair and regular elections for -  (a) <i>any elective public body or office established in terms of the Constitution; and</i>  (b) <i>office bearers of any political party of which they are a member.</i></p> <p>(3) Every adult citizen has the right in accordance with relevant legislation—  (a) <i>to be registered as a voter and to vote by secret ballot in any election referred to in clause (2); and</i>  (b) to stand on conditions of equality, for public office, or office within a political party of which they are a member, and if elected, to hold office.</p>		<p>individual and does not refer to the duties of political parties.</p>
	<p>(1) Every person has the right to freedom of movement.</p>	<p>(1) Every person has the right to freedom of movement.</p>		<p>Adopted without amendments.</p>

<p><b>51</b></p> <p><b>Freedom of movement and residence</b></p>	<p>(2) Every person has the right to leave the Republic.</p> <p>(3) Every citizen has the right to enter into, remain in and reside anywhere in, the Republic.</p>	<p>(2) Every person has the right to leave the Republic.</p> <p>(3) Every citizen has the right to enter into, remain in and reside anywhere in, the Republic.</p>	<p>NONE</p>	<p>Rationale: The challenge will be to sensitize communities, particularly in the case of the minority and marginalized communities, so that they are not exploited.</p>
<p><b>52</b></p> <p><b>Refugees and asylum</b></p>	<p>(1) <u>The right of asylum is recognised and shall be granted in accordance with the provisions of the Constitution.</u></p> <p>(2) <u>A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country or of other treatment which would justify that person's being regarded as a refugee.</u></p> <p>(3) <u>Within one year of the coming into force of this Constitution Parliament shall enact a law in compliance with</u></p>	<p>(1) <u>The right of asylum is recognised and shall be granted in accordance with the provisions of the Constitution.</u></p> <p>(2) <u>A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country or of other treatment which would justify that person's being regarded as a refugee.</u></p> <p>(3) <u>Within one year of the coming into force of this Constitution Parliament shall enact a law in compliance with international law and practice, governing persons who seek refuge or</u></p>	<p>NONE</p>	<p>Adopted without amendments</p>

	<u>international law and practice, governing persons who seek refuge or asylum in Kenya.</u>	<u>asylum in Kenya.</u>		
<b>53</b> <b>Freedom of trade, occupation and profession</b>	(1) Every citizen has the right to choose his or her trade, occupation or profession freely.  (2) The practice of a trade, occupation or profession may be regulated by law.	(1) Every citizen has the right to choose his or her trade, occupation or profession freely.  (2) The practice of a trade, occupation or profession may be regulated by law.	NONE	Adopted without amendments
<b>54</b> <b>Property</b>	(1) Every person has a right to acquire and own property either individually or in association with others.  (2) Parliament shall not enact a law that permits the state, or any person, to arbitrarily -  (a) <u>deprive a person of property of any description; or</u> (b) <u>deprive a person of any interest in, or right over, such property.</u>  (3) The state may not deprive a person of property of any description, or of any	(1) Every person has a right to acquire and own property either individually or in association with others <i>in any part of the Republic.</i>  (2) Parliament shall not enact a law that permits the state, or any person to –  (a) <i>arbitrarily</i> deprive a person of property of any description; or (b) <i>arbitrarily</i> deprive a person of any interest in, or interest over, such property;  (c) <b>limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds</b>	NONE	Amendments: Art. 53 (1): inserted ‘in any part of the Republic’. Art. 53 (2): redrafted New Art. 53 (2) (c) inserted. Art. 53 (3) (b): redrafted  Rationale: The word ‘person’ is appropriate since it means both natural and juristic persons.  Compensation by the government for land acquired should be at

	<p>interest in, or right over, property, unless that deprivation -</p> <p>(a) <u>results from an acquisition of land or an interest in land in accordance with the provisions of Chapter Eleven; or</u></p> <p>(b) <u>is for a public purpose or in the public interest and is carried in accordance with an Act of Parliament that –</u></p> <p>(i) <u>requires prompt payment of fair and adequate compensation to the person, before the property is taken; and</u></p> <p>(ii) <u>allows any person who has an interest in, or right over, that property a right of access to a court of law.</u></p> <p>(4) <u>The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.</u></p>	<p><b>set out under Article 34 (1).</b></p> <p>(3) The state may not deprive a person of property of any description, or of any interest in, or right over, property, unless that deprivation –</p> <p>(a) results from an acquisition of land or an interest in land in accordance with the provisions of Chapter Eleven; or</p> <p>(b) is for public purpose or in the public interest and is carried in accordance with an Act of Parliament that-</p> <p>(i) requires the prompt payment in full, of a just compensation to the person, before the property is taken.</p> <p>(ii) allows any person who has interest in, or right over, that property a right of access to a court of law.</p> <p>(4) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.</p>		<p>market value and should be fair.</p> <p>In the past, the government has made arbitrary and unilateral decisions on what it is to pay persons for compulsory acquisition of their land and has used the word ‘full’ to give unfair compensation.</p> <p><b>MINORITY VIEW</b> The word ‘person’ is normally interpreted to mean man and not both man and woman.</p>
	(1) <u>Everyone has the right to fair</u>	(1) Everyone has the right to fair		Amendments:

<p style="text-align: center;"><b>55</b></p> <p><b>Labour relations</b></p>	<p><u>labour practices.</u></p> <p>(2) Every worker has the right to-</p> <p>(a) a fair remuneration;</p> <p>(b) reasonable working conditions</p> <p>(c) <u>form, join, or participate in the activities and programmes of a trade union; and</u></p> <p>(d) <u>strike.</u></p> <p>(3) Every employer has the right to-</p> <p>(a) <u>form and join an employers' organisation; and</u></p> <p>(b) <u>participate in the activities and programmes of an employers' organisation.</u></p> <p>(4) Every trade union and every employers' organisation has the right to -</p> <p>(a) <u>determine its own administration, programmes and activities;</u></p> <p>(b) <u>organise; and</u></p> <p>(c) <u>form and join a federation.</u></p> <p>(5) <u>Every trade union, employers' organisation and</u></p>	<p>labor practices.</p> <p>(2) Every worker has the right to –</p> <p>(a) a fair remuneration;</p> <p>(b) reasonable working conditions;</p> <p>(c) form, join or participate in the activities and programmes of a trade union; and</p> <p>(d) strike</p> <p>(3) every employer has the right to –</p> <p>(a) form and join an employers' organisation; and</p> <p>(b) participate in the activities and programmes of an employers' organization.</p> <p>(4) Every trade union and every employers' organization has the right to –</p> <p>(a) determine its own administration, programmes and activities;</p> <p>(b) organize; and</p> <p>(c) form and join a federation.</p> <p>(5) Every trade union, employers' organization and employer has the right to engage in collective bargaining.</p>	<p>Title to be amended to read</p> <p><b>'Fair Labor Practices'</b></p>	<p>New Art. 55 (6) inserted.</p> <p>Rationale: A time frame within which Parliament should enact the relevant legislation is important so that it can be held accountable.</p>
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	<i>employer has the right to engage in collective bargaining.</i>	<b>(6) Parliament shall within two years of the coming into force of the Constitution, enact legislation to give effect to this Article.</b>		
<b>56</b> <b>Social security</b>	Every person has the right to social security, including, if they are unable to support themselves and their dependants, appropriate social security assistance by the state.	(1) Every person has a right to social security.  (2) The state shall provide appropriate social security assistance to persons who are unable to support themselves or their dependants.  <b>(3) Parliament shall within three years of the coming into force of the Constitution enact legislation to give effect to this Article.</b>	NONE	Amendments: Article redrafted to form Art. 56 (1) and (2). New Art. 56 (3) inserted.
<b>57</b> <b>Health</b>	(1) Every person has the right to health, which includes the right to health care services, including reproductive health care.  (2) No person may be refused emergency medical treatment.	(1) Every person has the right to health, which includes the right to health care services, including reproductive health care.  (2) No person may be refused emergency medical treatment.	NONE	Adopted without amendment
<b>58</b> <b>Education</b>	(1) <u>Every person has the right to a basic education, including pre-primary, primary and secondary education.</u>	(1) Every person has the right to education.  (2) The Government shall institute a programme to implement the	NONE	Amendments: Art. 58 (1): deleted all words after 'education'. Art. 58 (3): inserted 'secondary and'.

	<p>(2) The Government shall institute a programme to implement the right of every child to free and compulsory primary education.</p> <p>(3) The state, through reasonable measures, shall make progressively available and accessible post-secondary education.</p> <p>(4) Every person has the right to establish and maintain, at their own expense, independent educational institutions that meet standards laid down in legislation; and comply with the requirements of the Constitution.</p>	<p>right of every child to free and compulsory pre-primary and primary education and in so doing the Government shall pay particular attention to children with special needs.</p> <p>(3) The state, through reasonable measures, shall make progressively available and accessible <i>secondary and</i> post-secondary education.</p> <p>(4) Every person has the right to establish and maintain, at their own expense, independent educational institutions that meet standards laid down in legislation; and comply with the requirements of the Constitution.</p>		<p>Art. 58 (4) adopted without amendment.</p> <p>Rationale: Every person has the right to education regardless of how the same is acquired.</p> <p>The Article should provide for children with disabilities.</p>
<p><b>59</b></p> <p><b>Housing</b></p>	<p>(1) Every person has the right to have access to adequate housing.</p> <p>(2) No person may be evicted from their home, or have their home demolished, without an order of court made after considering all</p>	<p>(1) Every person has the right to <i>adequate and accessible housing</i>.</p> <p>(2) No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.</p>	NONE	<p>Amendments: Art. 59 (1): substituted 'have access to adequate' with 'adequate and accessible housing'. Art. 59 (2) &amp; (3) adopted without amendments.</p>

	the relevant circumstances. (3) Parliament may not enact any law that permits or authorizes arbitrary eviction.	(3) Parliament may not enact any law that permits or authorizes arbitrary eviction.		Rationale: Housing should be made accessible particularly for persons with disabilities.
<b>60</b> <b>Food</b>	Everyone has the right to be free from hunger and to have access to food in adequate quantities and of adequate quality and cultural acceptability.	Everyone has the right to be free from hunger and to have access to <i>adequate food</i> of adequate quality and cultural acceptability.	NONE	Amendments: Substitute ‘food in adequate quantities and’ with ‘adequate food’
<b>61</b> <b>Water</b>	Everyone has the right to water in adequate quantities and of satisfactory quality.	Everyone has the right to <i>access to</i> water in adequate quantities and of satisfactory quality.	NONE	Amendments: Inserted ‘ access to’  Rationale: Water should be accessible to all.
<b>62</b> <b>Sanitation</b>	Everyone has the right to a reasonable standard of sanitation, including the ability to dispose of the bodies of the dead with decency.	Everyone has the right to a reasonable standard of sanitation, including the ability to dispose of the bodies of the dead with decency.	NONE	Adopted without amendment
<b>63</b> <b>Environment</b>	Everyone has the right – (a) to an environment that is safe for life and health. (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and	Everyone has the right – (a) to an environment that is safe for life and health. (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and ecological degradation;	NONE	Adopted without amendment

	<p>ecological degradation;</p> <p>(ii) promote conservation; and</p> <p>(iii) secure ecologically sustainable development and the use of natural resources while promoting economic and social development.</p> <p>(c) to free access to information about the environment situation.</p> <p>(d) to compensation for damage arising from the violation of the rights recognized under this Article</p>	<p>(ii) promote conservation; and</p> <p>(iii) secure ecologically sustainable development and the use of natural resources while promoting economic and social development.</p> <p>(c) to free access to information about the environment situation.</p> <p>(d) to compensation for damage arising from the violation of the rights recognized under this Article.</p>		
<p>63 A</p> <p><b>Language and Culture</b></p>	<p>(1) <u>Everyone has the right to use the language, and to participate in the cultural life, of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of this Bill of Rights.</u></p> <p>(2) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that</p>	<p>(1) Everyone has the right to use the language, and to participate in the cultural life, of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of this Bill of Rights.</p> <p>(2) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –</p> <p>(a) to enjoy their culture, practise</p>		<p>Adopted without amendment</p>

	<p>community-</p> <p>(a) <u>to enjoy their culture, practise their religion and use their language; or</u></p> <p>(b) <u>to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.</u></p> <p>(3) No person may compel another person to perform, observe or undergo any cultural or religious practice or rite.</p> <p>(4) No person may be compelled to indicate or define his or her ethnic or racial affiliation.</p>	<p>their religion and use their language; or</p> <p>(b) to form, join or maintain cultural, religious and linguistic associations and other organs of civil society.</p> <p>(3) No person may compel another person to perform, observe or undergo any cultural or religious practice or rite.</p> <p>(4) No person may be compelled to indicate or define his or her ethnic or racial affiliation.</p>		
<p><b>64</b></p> <p><b>Consumer rights</b></p>	<p>(1) Consumers have the right to -</p> <p>(a) goods and services of appropriate quality;</p> <p>(b) the information necessary for them to gain full benefit from the goods and services;</p> <p>(c) the protection of their health, safety, and economic interests; and</p>	<p>(1) Consumers have the right to –</p> <p>(a) goods and services of appropriate quality;</p> <p>(b) the information necessary for them to gain full benefit from the goods and services;</p> <p>(c) the protection of their health, safety and economic interests; and</p> <p>(d) compensation for loss or injury</p>	NONE	<p>Amendments:</p> <p>Art. 64 (1) adopted without amendment.</p> <p>Art. 64 (2): inserted ‘goods and’</p> <p>Art. 64 (3) &amp; (4) adopted without amendment.</p> <p>Art. 64 (5): inserted ‘within three years of the coming into force of the Constitution’</p>

	<p>(d) compensation for defects that cause them loss or injury.</p> <p>(2) Those who offer services shall endeavor to consult consumers and consumer organizations in connection with issues that affect them</p> <p>(3) The principles of this Article apply to goods and services offered by the public and private persons and entities, whether in return for consideration or for taxes and other forms of revenue, or offered free of charge</p> <p>(4) An Act of Parliament shall provide for consumer protection and for fair, honest and decent advertising.</p> <p>(5) Parliament shall enact legislation to give effect to the rights in clause (1) and (2), and such legislation shall -</p> <p>(a) <i>provide for the review of</i></p>	<p>arising from defects in goods and services.</p> <p>(2) Those who offer <i>goods and</i> services shall endeavor to consult consumer organizations in connection with issues that affect them.</p> <p>(3) The principles of this Article apply to goods and services offered by the public and private persons and entities, whether in return for consideration or for taxes and other forms of revenue, or offered free of charge.</p> <p>(4) An Act of Parliament shall provide for consumer protection and for fair, honest and decent advertising.</p> <p>(5) Parliament shall <i>within three years of the coming into force of the Constitution</i> enact legislation to give effect to the rights in clause (1) and (2), and such legislation shall -</p> <p>(a) provide for the review of administrative action by a</p>		
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	<p><i>administrative action by a court or, where appropriate, an independent and impartial tribunal; and</i></p> <p>(b) promote an efficient administration.</p>	<p>court or, where appropriate, an independent and impartial tribunal; and</p> <p>(b) promote an efficient administration.</p>		
<p><b>65</b></p> <p><b>Fair</b></p> <p><b>administration</b></p>	<p>(1) <u>Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.</u></p> <p>(2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.</p> <p>(3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall -</p> <p>(a) <u>provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and</u></p> <p>(b) <u>promote an efficient administration.</u></p>	<p>(1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.</p> <p>(2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.</p> <p>(3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall -</p> <p>(a) provide for the review of administrative action by a court, or where appropriate, an independent and impartial tribunal; and</p> <p>(b) promote an efficient administration.</p>	NONE	<p>Adopted without amendments</p> <p>Rationale: Many citizens have in the past suffered due to decisions made by Administrators.</p>
	(1) Every person has a right not	(1) Every person has a right not to		Adopted without

<p><b>66</b></p> <p><b>Right not to obey unlawful instructions</b></p>	<p>to obey unlawful instructions.</p> <p>(2) No person is liable to punishment under any law for disobeying unlawful instructions.</p>	<p>obey unlawful instructions.</p> <p>(2) No person is liable to punishment under any law for disobeying unlawful instructions.</p>	<p>NONE</p>	<p>amendment</p>
<p><b>67</b></p> <p><b>Access to Courts</b></p>	<p>Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.</p>	<p>(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.</p> <p><b>(2) The court or other tribunal referred to in clause (1) shall be accessible and affordable so as to enhance access to justice.</b></p>	<p>NONE</p>	<p>Amendments: Art. 67: renumbered as Art. 67 (1) New Art. 67 (2) inserted</p> <p>Rationale: Art. 67 (2) was initially under the Chapter 9 on Judicial and Legal Systems and was referred to Bill of Rights.</p>
<p><b>68</b></p> <p><b>Rights of arrested persons</b></p>	<p>(1) Every person who is arrested for allegedly committing an offence has the right -</p> <p><i>(a) to remain silent;</i></p> <p><i>(b) to be informed promptly in a language they understand -</i></p> <p>(i) of the right to remain silent; and</p> <p>(ii) of the consequences of not remaining silent;</p>	<p>(1) Every person who is arrested for allegedly committing an offence has the right -</p> <p>(a) to remain silent;</p> <p>(b) to be informed promptly in a language they understand –</p> <p>(i) of the right to remain silent; and</p> <p>(ii) of the consequences of not remaining silent;</p>	<p>NONE</p>	<p>Adopted amendment without</p>

	<p>(c) <u>not to be compelled to make any confession or admission that could be used in evidence against that person and where any such person freely chooses to make any confession, such confession shall be made before a Court or Magistrate;</u></p> <p>(d) <u>to be held separately from persons who are serving sentence;</u></p> <p>(e) <u>to be brought before a court as soon as reasonably possible, but not later than 48 hours after being arrested or -</u></p> <p>(i) not later than the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day that is not an ordinary court day; or</p> <p>(ii) if the person is arrested far from a court, as speedily as possible.</p> <p>(f) <u>at the first court appearance</u></p>	<p>(c) not to be compelled to make any confession or admission that could be used in evidence against that person and where such person freely chooses to make any confession, such confession shall be made before a Court or Magistrate;</p> <p>(d) to be held separately from persons who are serving sentence;</p> <p>(e) to be brought before a court as soon as possible, but not later than 48 hours after being arrested or –</p> <p>(i) not later than the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day that is not an ordinary court day; or</p> <p>(ii) if the person is arrested far from a court, as speedily as possible;</p> <p>(f) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or be released; and</p>		
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	<p><i>after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and</i></p> <p><i>(g) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.</i></p> <p><i>(2) No person may be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment of not more than six months.</i></p>	<p>(g) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.</p> <p>(2) No person may be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment of not more than six months.</p>		
<p><b>69</b></p> <p><b>Fair trial</b></p>	<p>(1) <u>Every accused person has the right to a fair trial, which includes the right -</u></p> <p>(a) to be presumed innocent until the contrary is proved;</p> <p>(b) to be informed of the charge with sufficient detail to answer it;</p> <p>(c) to have adequate time and facilities to prepare a defence;</p> <p>(d) to a public trial before an ordinary court or tribunal;</p> <p>(e) to have the trial begin and</p>	<p>(1) <u>Every accused person has the right to a fair trial, which includes the right –</u></p> <p>(a) to be presumed innocent until the contrary is proved;</p> <p>(b) to be informed of the charge with sufficient detail to answer it;</p> <p>(c) to have adequate time and facilities to prepare a defence;</p> <p>(d) to a public trial before an ordinary court or tribunal;</p> <p>(e) to have the trial begin and</p>	NONE	Adopted amendment without

	<p>conclude without unreasonable delay;</p> <p>(f) to be present when being tried;</p> <p>(g) to choose, and be represented by, an advocate and to be informed of this right promptly;</p> <p>(h) to have an advocate assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;</p> <p>(i) to remain silent, and not to testify during the proceedings;</p> <p>(j) to adduce and challenge evidence;</p> <p>(k) not to be compelled to give self-incriminating evidence;</p> <p>(l) to have without payment the assistance of an interpreter where the accused person cannot understand the language used at the trial;</p> <p>(m) not to be convicted for an act, or omission, that was not an offence at the time it was committed or omitted; but this paragraph does not</p>	<p>conclude without unreasonable delay;</p> <p>(f) to be present when being tried;</p> <p>(g) to choose, and be represented by, an advocate and to be informed of this right promptly;</p> <p>(h) to have an advocate assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;</p> <p>(i) to remain silent, and not to testify during the proceedings;</p> <p>(j) to adduce and challenge evidence;</p> <p>(k) not to be compelled to give self-incriminating evidence;</p> <p>(l) to have without payment the assistance of an interpreter where the accused person cannot understand the language used at the trial;</p> <p>(m) not to be convicted for an act, or omission, that was not an offence at the time it was committed or omitted; but this paragraph does not prevent conviction and punishment for an act, or omission, which at</p>		
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	<p>prevent conviction and punishment for an act, or omission, which at the time it was committed was a crime under general principles of law recognized by the major legal systems;</p> <p>(n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;</p> <p>(o) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that the offence was committed, and the time of sentencing; and</p> <p>(p) of appeal to, or review by, a higher court.</p> <p>(2) Whenever this Article requires information to be given to a person, that information shall be given in a language that the person understands.</p> <p>(3) Evidence obtained in a manner that violates any</p>	<p>the time it was committed was a crime under general principles of law recognized by the major legal systems;</p> <p>(n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;</p> <p>(o) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that the offence was committed, and the time of sentencing; and</p> <p>(p) of appeal to, or review by, a higher court.</p> <p>(2) Whenever this Article requires information to be given to a person, that information shall be given in a language that the person understands.</p> <p>(3) Evidence obtained in a manner that violates any right in this Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or otherwise be</p>		
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	<p>right in this Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.</p> <p>(4) An accused person charged with an offence other than an offence that the court may try by summary procedures shall be entitled, if they so require, to a transcript of the proceedings of the trial.</p> <p>(5) An accused person has the right to a copy of the record of proceedings within fourteen days after they are concluded and in return for a reasonable fee if prescribed by law.</p> <p>(6) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which they are entitled to appeal, may petition the Supreme Court for a new trial where new and compelling</p>	<p>detrimental to the administration of justice.</p> <p>(4) An accused person charged with an offence other than an offence that the court may try by summary procedures shall be entitled, if they so require, to a transcript of the proceedings of the trial.</p> <p>(5) An accused person has the right to a copy of the record of proceedings within fourteen days after they are concluded and in return for a reasonable fee if prescribed by law.</p> <p>(6) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which they are entitled to appeal, may petition the Supreme Court for a new trial where new and compelling evidence has become available.</p>		
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	evidence has become available.			
<b>70</b> <b>Rights of persons held in custody</b>	<p>(1) Persons who are held in custody under the law, whether sentenced or not, retain all their fundamental rights under the Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.</p> <p>(2) A person held in custody has the right -</p> <p>(a) to be treated in a way that respects their human dignity, and not be subject to discrimination on the basis of any prohibited ground;</p> <p>(b) not to be exploited or abused by staff or fellow prisoners, and the state shall take adequate steps to ensure their protection;</p> <p>(c) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health, and sanitation guaranteed elsewhere in this Bill of Rights;</p>	<p>(1) Persons who are held in custody under the law, whether sentenced or not, retain all their fundamental rights under the Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.</p> <p>(2) A person held in custody has the right -</p> <p>(a) to be treated in a way that respects their human dignity, and not be subject to discrimination on the basis of any prohibited ground;</p> <p>(b) not to be exploited or abused by staff or fellow prisoners, and the state shall take adequate steps to ensure their protection;</p> <p>(c) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health, and sanitation guaranteed elsewhere in this Bill of Rights;</p> <p>(d) to reasonable health care at</p>	NONE	<p>Amendments:</p> <p>Art. 70 (1) adopted without amendment</p> <p>Art. 70 (2) (h): deleted ‘prison’</p> <p>Art. 70 (2) (j): inserted ‘by authorized persons’</p> <p>Art. 70 (2) (k): deleted ‘prison’</p> <p>Art. 70 (2) (n): deleted all words after ‘to vote’</p> <p>New Art 70 (2) (o) inserted</p> <p>Art. 70 (3) adopted without amendment</p> <p>Rationale:</p> <p>Use of the word ‘prison’ is redundant with respect to the discipline since it is already clear that the discipline relates to that which takes place in prison.</p>

	<p>(d) <u>to reasonable health care at public expense, and to pay for their own health care by their own doctors if necessary;</u></p> <p>(e) to exercise, education, and to work, in return for reasonable remuneration;</p> <p>(f) to observe their religion, and not to be subjected to treatment that violates their religious practices and convictions;</p> <p>(g) to communicate with their lawyers, other persons whose assistance is necessary, religious advisers, close family, including spouses, and are entitled to visits of reasonable frequency and duration;</p> <p>(h) to privacy, including the separation of women and men, and children and adults, to the extent compatible with the preservation of law and order and prison discipline;</p> <p>(i) to the separation of women from men and children from adults;</p> <p>(j) to be informed of the rules and decisions that affect</p>	<p>public expense, and to pay for their own health care by their own doctors if necessary;</p> <p>(e) to exercise, education, and to work, in return for reasonable remuneration;</p> <p>(f) to observe their religion, and not to be subjected to treatment that violates their religious practices and convictions;</p> <p>(g) to communicate with their lawyers, other persons whose assistance is necessary, religious advisers, close family, including spouses, and are entitled to visits of reasonable frequency and duration;</p> <p>(h) to privacy, including the separation of women and men, and children and adults, to the extent compatible with the preservation of law and order and discipline;</p> <p>(i) to the separation of women from men and children from adults;</p> <p>(j) to be informed <i>by authorised persons</i> of the rules and decisions that affect them;</p> <p>(k) to a fair hearing in any disciplinary proceedings;</p>		
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	<p>them;</p> <p>(k) to a fair hearing in any prison disciplinary proceedings;</p> <p>(l) to fair consideration for parole or remission of sentence and for other rehabilitative measures;</p> <p>(m) to complain to the prison authorities, the Commission on Human Rights and Administrative Justice or any similar institution, and to communicate with the press; and</p> <p>(n) to vote, but Parliament may enact laws restricting the right to vote of a person sentenced to a term of imprisonment of two years or more.</p> <p>(3) The state shall ensure that the prison system, so far as it relates to convicted prisoners, observes the minimum standards laid down under relevant international law and international standards.</p>	<p>(l) to fair consideration for parole or remission of sentence and for other rehabilitative measures;</p> <p>(m) to complain to the prison authorities, the Commission on Human Rights and Administrative Justice or any similar institution, and to communicate with the press; and</p> <p>(n) to vote,</p> <p>(o) <b>in the case of persons with disabilities, to facilities modified as necessary to fit the circumstances of such disabilities.</b></p> <p>(3) The state shall ensure that the prison system, so far as it relates to convicted prisoners, observes the minimum standards laid down under relevant international law and international standards.</p>		
71	(1) A state of emergency may be declared only in	(1) A state of emergency may be declared only in accordance		Amendments: Art. 71 (1) adopted without

<p><b>State of emergency</b></p>	<p>accordance with Article 151 (4) and only when-</p> <p>(a) the Republic is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and</p> <p>(b) the declaration is necessary to restore peace and order.</p> <p>(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-</p> <p>(a) prospectively; and</p> <p>(b) for no more than twenty one days from the date of the declaration, unless the Parliament resolves to extend the declaration.</p> <p>(3) Parliament may extend a declaration of a state of emergency -</p> <p>(a) by resolution adopted –</p> <p>(i) following a public debate</p>	<p>with Article 151 (4) and only when-</p> <p>(a) the Republic is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and</p> <p>(b) the declaration is necessary to restore peace and order.</p> <p>(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-</p> <p>(a) prospectively; and</p> <p>(b) for no more than <i>fourteen</i> days from the date of the declaration, unless the Parliament resolves to extend the declaration.</p> <p>(3) Parliament may extend a declaration of a state of emergency -</p> <p>(a) by resolution adopted –</p> <p>(i) following a public debate</p>	<p>NONE</p>	<p>amendment</p> <p>Art. 71 (2) (b): substituted ‘twenty-one’ with ‘fourteen’</p> <p>Art. 71 (3) – (7) adopted without amendments.</p> <p>Rationale: Twenty-one days is too long a period and should be shortened.</p>
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	<p>in Parliament; and</p> <p>(ii) by the majorities set out in clause (4); and</p> <p>(b) for no more than two months at a time.</p> <p>(4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty five per cent of the members of Parliament, and any subsequent extension shall be adopted with a supporting vote of at least seventy five per cent of the members of Parliament.</p> <p>(5) Any competent court may decide on the validity of-</p> <p>(a) a declaration of a state of emergency;</p> <p>(b) any extension of a declaration of a state of emergency; or</p> <p>(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.</p>	<p>in Parliament; and</p> <p>(ii) by the majorities set out in clause (4); and</p> <p>(b) for no more than two months at a time.</p> <p>(4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty five per cent of the members of Parliament, and any subsequent extension shall be adopted with a supporting vote of at least seventy five per cent of the members of Parliament.</p> <p>(5) Any competent court may decide on the validity of-</p> <p>(a) a declaration of a state of emergency;</p> <p>(b) any extension of a declaration of a state of emergency; or</p> <p>(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.</p> <p>(6) Any legislation enacted in consequence of a declaration of a state of emergency may</p>		
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	<p>(6) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from this Bill of Rights only to the extent that -</p> <p>(a) the derogation is strictly required by the emergency; and</p> <p>(b) the legislation -</p> <p>(i) is consistent with Kenya's obligations under international law applicable to states of emergency</p> <p>(ii) conforms to clause (7); and</p> <p>(iii) is published in the Gazette as soon as reasonably practicable after being enacted and does not take effect until it is so published.</p> <p>(7) <u>An Act of Parliament that authorizes a declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration may not permit or authorize</u></p>	<p>derogate from this Bill of Rights only to the extent that -</p> <p>(a) the derogation is strictly required by the emergency; and</p> <p>(b) the legislation -</p> <p>(i) is consistent with Kenya's obligations under international law applicable to states of emergency</p> <p>(ii) conforms to clause (7); and</p> <p>(iii) is published in the Gazette as soon as reasonably practicable after being enacted and does not take effect until it is so published.</p> <p>(7) <u>An Act of Parliament that authorizes a declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration may not permit or authorize indemnifying the state, or any person, in respect of any unlawful act.</u></p>		
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	<u>indemnifying the state, or any person, in respect of any unlawful act.</u>			
<b>72</b> <b>Application of the Bill of Rights</b>	<p>(1) The Bill of Rights applies to the interpretation of all law and binds Parliament, the Executive, the Judiciary, all organs and agencies of the state and all persons.</p> <p>(2) A person enjoys the benefit of any right or freedom in the Bill of Rights, to the greatest extent possible, given the nature of the right, and of the person.</p> <p>(3) A provision of the Bill of Rights binds a natural or a juristic person to the extent possible, given the nature of the right, and the nature of any duty imposed by that right.</p> <p>(4) When applying a provision of the Bill of Rights to a natural or juristic person, as required by clause (2) or (3), a court –</p> <p>(c) in order to give effect to a right or freedom in the Bill of Rights, shall apply, and if</p>	<p>(1) The Bill of Rights applies to the interpretation of all law and binds Parliament, the Executive, the Judiciary, all organs and agencies of the state and all persons.</p> <p>(2) <i>Every person shall enjoy the rights and freedoms in the Bill of Rights</i>, to the greatest extent possible, given the nature of the right, and of the person.</p> <p>(3) A provision of the Bill of Rights binds a natural or a juristic person to the extent possible, given the nature of the right, and the nature of any duty imposed by that right.</p> <p>(4) When applying a provision of the Bill of Rights to a natural or juristic person, as required by clause (2) or (3), a court –</p> <p>(a) in order to give effect to a right or freedom in the Bill of Rights, shall apply, and if necessary, develop, the law to the extent that legislation does not give effect to that right or</p>	NONE	<p>Amendments:  Art. 72 (1) adopted without amendments  Art. 72 (2): substituted ‘ A person enjoys the benefit of any right or freedom’ with ‘Every person shall enjoy the rights or freedoms’.</p>

	<p>necessary, develop, the law to the extent that legislation does not give effect to that right or freedom; and</p> <p>(d) shall adopt the interpretation which most favors the enforcement of a right or freedom; and</p> <p>(e) may develop rules of the common law to limit that right or freedom in a manner consistent with the limitations contemplated in Article 31.</p>	<p>freedom; and</p> <p>(b) shall adopt the interpretation which most favors the enforcement of a right or freedom; and</p> <p>(c) may develop rules of the common law to limit that right or freedom in a manner consistent with the limitations contemplated in Article 31.</p>		
<p><b>73</b> <b>Right to ask the Commission on Human Rights and Administrative Justice or court to uphold the Bill of Rights</b></p>	<p>(1) A person listed in this Article has the right to complain to the Commission on Human Rights and Administrative Justice, or to approach a court of competent jurisdiction, alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened. The persons who may complain to the Commission or approach a court are -</p> <p>(a) a person acting in their own interest;</p> <p>(b) a person acting on behalf of another person who cannot</p>	<p>(1) A person listed in this Article has the right to complain to the Commission on Human Rights and Administrative Justice, or to approach a court of competent jurisdiction, alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened. The persons who may complain to the Commission or approach a court are -</p> <p>(a) a person acting in their own interest;</p> <p>(b) a person acting on behalf of another person who cannot act</p>	NONE	Adopted amendments without

	<p>act in their own name;</p> <p>(c) a person acting as a member or, or in the interest of, a group or class or persons;</p> <p>(d) a person acting in the public interest; and</p> <p>(e) an association acting in the interest of its members.</p> <p>(2) If a person complains to the Commission on Human Rights and Administrative Justice, the Commission shall-</p> <p>(a) investigate the complaint; and</p> <p>(b) provide appropriate redress where human rights have been violated.</p> <p>(3) The Chief Justice shall within one year of the coming into operation of this Constitution, make rules providing for court proceedings contemplated in clause (1), and those rules shall satisfy the following criteria –</p> <p>(a) that the rights of standing</p>	<p>in their own name;</p> <p>(c) a person acting as a member or, or in the interest of, a group or class or persons;</p> <p>(d) a person acting in the public interest; and</p> <p>(e) an association acting in the interest of its members.</p> <p>(2) If a person complains to the Commission on Human Rights and Administrative Justice, the Commission shall-</p> <p>(a) investigate the complaint; and</p> <p>(b) provide appropriate redress where human rights have been violated.</p> <p>(3) The Chief Justice shall within one year of the coming into operation of this Constitution, make rules providing for court proceedings contemplated in clause (1), and those rules shall satisfy the following criteria –</p> <p>(a) that the rights of standing provided in this Article are fully facilitated;</p> <p>(b) that formalities for stating proceedings are kept to the</p>		
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	<p>provided in this Article are fully facilitated;</p> <p>(b) that formalities for stating proceedings are kept to the minimum, in particular that the courts will, if necessary, be prepared to start proceedings on the basis of informal documentation, such as a letter or newspaper report;</p> <p>(c) that the courts, while observing the rules of natural justice, shall respond to the justice of the claim and not be unreasonably restricted by technical requirements;</p> <p>(d) that no fee may be charged for commencing proceedings under the Article; and</p> <p>(e) that organizations or individuals with particular expertise may appear before the court as ‘amicus curiae’ (friend of the court).</p>	<p>minimum, in particular that the courts will, if necessary, be prepared to start proceedings on the basis of informal documentation, such as a letter or newspaper report;</p> <p>(c) that the courts, while observing the rules of natural justice, shall respond to the justice of the claim and not be unreasonably restricted by technical requirements;</p> <p>(d) that no fee may be charged for commencing proceedings under the Article; and</p> <p>(e) that organizations or individuals with particular expertise may appear before the court as ‘amicus curiae’ (friend of the court).</p>		
<p><b>74</b></p> <p><b>Authority of the court to uphold and</b></p>	<p>(1) The High Court has jurisdiction to hear applications for redress for a contravention of the Bill of Rights.</p> <p>(2) Parliament shall enact legislation to give original</p>	<p>(1) The High Court has jurisdiction to hear applications for redress for a contravention of the Bill of Rights.</p> <p>(2) Parliament shall enact legislation to give original</p>	NONE	Adopted amendments without

<p><b>enforce the Bill of Rights</b></p>	<p>jurisdiction in appropriate cases to lower courts.</p> <p>(3) In any matter brought before it in terms of Article 73, a court may grant appropriate relief, including –</p> <p>(a) a declaration of rights;</p> <p>(b) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 31;</p> <p>(c) an order of compensation against the state or any person responsible for the violation of rights; and</p> <p>(d) normal orders of judicial review</p> <p>(4) In proceedings against a public authority for a violation of human rights, a Court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or totally devoid of merit.</p> <p>(5) Without prejudice to the full scope of this Bill, it is the obligation of the state to pass necessary legislation and</p>	<p>jurisdiction in appropriate cases to lower courts.</p> <p>(3) In any matter brought before it in terms of Article 73, a court may grant appropriate relief, including –</p> <p>(a) a declaration of rights;</p> <p>(b) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 31;</p> <p>(c) an order of compensation against the state or any person responsible for the violation of rights; and</p> <p>(d) normal orders of judicial review</p> <p>(4) In proceedings against a public authority for a violation of human rights, a Court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or totally devoid of merit.</p> <p>(5) Without prejudice to the full scope of this Bill, it is the obligation of the state to pass necessary legislation and establish necessary machinery to give the fullest effect to its</p>		
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	establish necessary machinery to give the fullest effect to its provisions.	provisions.		
<b>75</b> <b>Interpretation of the Bill of Rights</b>	<p>(1) When interpreting the Bill of Rights, a court, tribunal or forum-</p> <p>(a) shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom;</p> <p>(b) shall consider international law; and may consider foreign law;</p> <p>(c) may consider foreign law;</p> <p>(2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote the spirit, purport and objects of the Bill of Rights.</p> <p>(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary</p>	<p>(1) When interpreting the Bill of Rights, a court, tribunal or forum-</p> <p>(a) shall promote the values that underlie an open and democratic society based on human dignity, equality, <i>equity</i> and freedom;</p> <p>(b) shall consider international law; and</p> <p>(c) may consider foreign law</p> <p>(2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote the spirit, purpose and objects of the Bill of Rights.</p> <p>(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law, or legislation, <i>unless they are inconsistent with the Bill of</i></p>		<p>Amendments:</p> <p>Art. 75 (1) (a) : inserted 'equity'</p> <p>Art. 75 (2): deleted full stop at end of the clause</p> <p>Art. 75 (3): substituted ' to the extent that they are consistent with the Bill' with ' unless they are inconsistent with the Bill of Rights'.</p> <p>Art. 75 (4) adopted without amendment</p>

	<p>law, or legislation, to the extent that they are consistent with the Bill.</p> <p>(4) When interpreting and applying a particular right or freedom in respect for the state, claims that the state does not have the resources to implement the right or freedom, every state organ, and any court, tribunal or forum, shall be guided by the following principles:</p> <p>(a) It is the responsibility of the state to show that the resources are not available.</p> <p>(b) In allocating resources, the state has an obligation to give priority to ensuring the widest possible enjoyment of the right having regard to prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right;</p> <p>(c) A court, tribunal or a Division of the Human Rights and Administrative Justice Commission may not</p>	<p><i>Rights.</i></p> <p>(4) When interpreting and applying a particular right or freedom in respect for the state, claims that the state does not have the resources to implement the right or freedom, every state organ, and any court, tribunal or forum, shall be guided by the following principles:</p> <p>(a) It is the responsibility of the state to show that the resources are not available.</p> <p>(b) In allocating resources, the state has an obligation to give priority to ensuring the widest possible enjoyment of the right having regard to prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right;</p> <p>(c) A court, tribunal or a Division of the Human Rights and Administrative Justice Commission may not interfere with a decision by an organ of the state concerning the allocation of available resources, solely on the basis</p>		
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	interfere with a decision by an organ of the state concerning the allocation of available resources, solely on the basis that the court, tribunal or forum or the Division would have reached a different conclusion.	that the court, tribunal or forum or the Division would have reached a different conclusion.		
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