

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “C” ON
REPRESENTATION OF THE PEOPLE**

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

	Page:
1. Introduction	4
2. Mandate and Method of Work	4
2.1 Mandate of the Committee	4
2.2 The Committee's method of work	5
2.3 Provisions considered	6
2.4 Issues of procedure	6
3. Issues Arising from Debate on the Main Report	7
3.1 Code of conduct for political parties	7
3.2 Regulation of political parties	8
3.3 Independent candidates	8
3.4 Educational qualifications	9
3.5 Election dates	9
3.6 Delimitation of constituency boundaries	9
3.7 Political party nominations	9
3.8 Registration of voters	9
3.9 Consolidation of electoral laws	10
3.10 Mixed Member Proportional Representation	10
3.11 Labour movement	10
4. Issues Arising from Debate on the Draft Bill	11
5. The Committee's Recommendations and Decisions on the Draft Bill	19

6. Decisions Reached as Recommendations to the Conference	71
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Appendices

Appendix I: Minority Reports	75
Appendix II: Formal Motions for Amendments to Draft Bill	76
Appendix III: List of Committee Members	91
Appendix IV: Agenda And Minutes of Committee Proceedings	93
Appendix V: Legislative Draftperson's Report	360

1. INTRODUCTION:

The Technical Working Committee 'C' is charged with the duty of dealing with the subject of the Representation of the People. It has 47 members with Hon. Mrs. Caroline Ng'ang'a as Convenor. The Rapporteurs are Commissioner Dr. Phoebe Asiyo and Commissioner Dr. K. Mosonik arap Korir.

1.1 Establishment of the Committee

The Committee has been established by the Conference under Regulation 49 (1) of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2003 issued via Legal Notice No. 42 of 2003, which provides for the establishment of the Committee in order to facilitate the expeditious disposal of matters before the Conference.

2. MANDATE AND METHOD OF WORK

2.1 Mandate of the Committee

The committee derives its mandate from the objects and purposes of the Review process under section 3 of the Constitution of Kenya Review Act, that is;

...establishing a free and democratic system of government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity; and promoting the people's participation in the governance of the country through democratic, free and fair elections ...and ensuring the full participation of people in the management of public affairs.

Mandated under Regulation 49 (4) and (5) of the said regulations, the Committee dealt with the topic of Representation of the People, Chapter Six of the Draft Bill and the parts of the Main Report that deal with issues related to the subject of Representation of the People that is; Political Parties, Participatory Governance and the Electoral System and Process. The Technical Committee was required upon the completion of the general debate on the Commission's Report and the Draft Bill, at the consideration stage to debate and amend the Commission's Report and the Draft Bill with respect to issues relating to Representation of the People and propose these amendments to the Conference which shall then cause to be incorporated in the Draft Bill, the amendments (if any) approved during the consideration stage.

- The Rapporteurs of the Committee are required under Regulation 45 (8) to, in consultation with the clerk for the Committee, prepare the Report of the Committee.

- The Rapporteurs of the Committee are further required under Regulation 45 (13) (b) to assist the Rapporteur-General to prepare a consolidated report for presentation to the Steering Committee.
- The Committee is also mandated under Regulation 45 (11) to propose amendments to the contents of the Main Report and the Draft Bill relevant to the subject of Representation of the People.
- Under Regulation 45 (15), the Committee is further required to record any minority report submitted by members of the Committee to accompany the Report of the Committee to the Conference.

2.2 The Committee's Method of Work

The Committee adopted various methods and procedures it considered appropriate for realizing its mandate-

2.2.1 Discussion of the Main Report

At the commencement of its work, the Committee discussed the sections of the Main Report relevant to the subject matter of the Committee. The Rapporteurs first took the Committee members through the relevant parts of the Main Report, explaining how it was developed from the views collected from the people. From the discussion the members were able to understand the background from which the Draft Bill was drawn.

2.2.2 Debate on the Draft Bill

The Committee had been assigned Articles 76-100 (inclusive) of the Draft Bill to deal with. Each Article considered by the committee (including sub-Article, paragraph and sub-paragraph) was read out to the members who debated them by way of motions. The items were adopted with or without amendments, or deferred to an appropriate time for debate. New provisions were proposed and added where this was considered appropriate. In some instances the Committee considered referring some provisions to other Committees, which were felt to be better, placed to deal with them.

2.2.3 Presentations by Experts

The Committee invited and heard presentations by experts on areas, which it felt required such guidance to enable the members to understand the issues involved and therefore contribute meaningfully to the debate ensuing therefrom. In total, the Committee heard six expert presentations:

- (i) Mr. Gabriel Mukele, Commissioner and the Vice Chairman of the Electoral Commission of Kenya made a presentation on behalf of the said Commission on the Electoral Process.
- (ii) Ms. Koki Muli, Executive Director of the Institute for Education in Democracy made a presentation on Mixed Member Proportional Representation.

- (iii) Commissioner Mutakha Kangu similarly contributed on the Mixed Member Proportional Representation.
- (iv) Mr. Francis Atwoli, Secretary General of COTU and the Plantation Workers Union talked on workers' representation in Parliament and their role in socio-economic development.
- (v) Commissioner Dr. Andronico Adede made a presentation to the Committee on Treaty Making and Negotiation where members sought to know how Kenyans could best be represented in making treaties and also representation of Kenyans outside the country; particularly in the legislative bodies of international or regional organizations and diplomatic representation of the country in other countries.
- (vi) Mr. Charles Oyaya from the CKRC also made a presentation to the Committee on the issue of Treaties.

2.2.4 *Guidance and Directions from the Rapporteurs and Draftsperson*

The Rapporteurs were on many occasions called upon by the delegates to give clarifications on various issues arising during debate. Their clarifications and directions often helped the members to better understand the issues being discussed. The Draftsperson would also give directions to the delegates on matters touching on the language and structure of the Draft Bill.

2.2.5 *Presentations by Delegates from other Committees*

During the general debate held as a first item on the daily agenda, the Committee allowed delegates from other Committees to make their presentations. These interventions often contributed to more informed debate on the respective topics.

2.3 Provisions Considered

Twenty-five Articles (76-100, inclusive) have been considered and disposed of. The committee also added some new provisions to the Draft Bill which dealt with issues relating to the subject of Representation of the People but which had not been included in the Draft Bill. The provisions that were added were imported from the Main Report of the Commission while others were from other lobby documents given to the delegates or ideas generated by the delegates themselves. The new provisions added were as follows:

- Nineteen (19) sub-articles
- Six (6) Articles

2.4 Issues of Procedure:

2.4.1 *Procedure for debate*

There were questions as to the manner of raising motions for debate. The Convenor always took time to remind the members of the procedure to be used for moving motions and the general conduct of debate. Later, motions were being written down by delegates as a matter of formality to facilitate debate on them rather than being presented orally.

2.4.2 Observers

Observer status was also an issue that was clarified on various occasions. The Convenor directed that observers had no direct rights to address the Committee and could only address the Committee through the member delegates. However, the observers were furnished with all the materials they required. One of the observers Ms Koki Muli was an expert on Mixed Member Proportional Representation and she was constantly consulted on the subject.

2.4.3 Delegates from other Committees

Delegates from other Committees who attended the Committee meetings were on their part allowed to address the Committee during the time set aside for general debate. Outside this, the Committee resolved that they would not have audience and could address their issues only through the member delegates. The Committee took this stand upon the realization that too much time would be wasted if everybody including non-member delegates were allowed to contribute.

2.4.4 Experts

On experts, the Committee resolved from the beginning that they would be called as and when the need arose. There was consensus that the number of experts would not be limited as the members wanted to benefit from as many of them as possible. However, formal notice of request was to be given by the members desiring to invite an expert so that proper arrangements could be made.

2.4.5 Minority Positions

Also dealt with was the issue of minority positions. The Convenor informed the members that a minority position did not mean the views of the parties that lose at a vote on a motion but rather a strong feeling of those members who lose at a vote, and feel that these views should be deliberated on by the Committee of the whole Conference. The committee disposed off most of the minority positions raised and only present two to the plenary.

3. ISSUES ARISING FROM DEBATE ON THE MAIN REPORT

The Honourable Rapporteurs took the members through the relevant parts of the Main Report that deal with Representation of People, explaining to them the import of the contents of the Main Report. The members discussed the Main Report and the following issues emerged therefrom:

3.1 Code of Conduct for Political Parties

It was observed that the code of conduct for political parties is important, as it would instill discipline on the parties and the politicians. It was suggested that the Electoral Commission, now renamed Electoral and Boundaries Commission should vet the code so as to guard against individual interests.

3.2 Regulation of Political Parties

The delegates were unanimous that there was need for regulation of political parties operating in the country. The need for the regulation arises from the fact that the state shall be funding the registered political parties and therefore the parties should be made accountable to the public through the regulatory body appointed for this purpose. It was proposed that the question of regulation of political parties should remain with the Registrar of Societies. There were also views that the regulation should be done by the Electoral Commission. The members of the committee also resolved that an independent body should do the registration of political parties. Towards this end, the committee created the office of the Registrar of Political Parties to, among others, register political parties. There was opinion that the state should regulate the formation and conduct of political parties. However, there were also views that with other units of representation considered for seats in Parliament, it would no longer be necessary for regulation of political parties.

It was also suggested that the number of political parties should be limited as much as there were sentiments to the contrary.

The nature of political parties to be allowed to operate in the country was also dealt with, whereby it was held that only the parties with a national outlook should be allowed to operate.

It was also proposed that the political parties should be made accountable to the people on all the pledges they make during election campaigns should they win power.

3.3 Independent Candidates

The committee agreed that there should be provision to allow independent candidates to vie for elections. It was observed that the institution of independent candidates should be keenly monitored to prevent it from being abused.

Issue was taken on how the avenue of independent candidature will be harmonized with the call for Affirmative Action.

Another issue was how such independent candidates would be subjected to any code of conduct since the codes apply to political parties only.

The committee proposed that independent candidates would be allowed to contest for elections but must be indigenous citizens and must not have belonged to a political party in the six months preceding the elections for which the independent candidature is sought.

3.4 Educational Qualifications

There was a view that there should be a minimum qualification for elected leaders. There were also views that leadership should not be pegged on education. Others were of the view that the current language tests are adequate. Yet another suggestion was that the test should be Average Human Intelligence Level. The committee exempted the leaders at the locational level of the devolved government from any requirement as to the level of education as long as one is able to read and write.

3.5 Election dates

There was consensus that the election calendar should be fixed and regular in order to make the electoral process clear of any schemes to manipulate it.

3.6 Delimitation of Boundaries of Electoral Units

There were various calls that constituency boundaries be based on other factors not just population. However, many were also of the opinion that population should be the factor to be considered because ultimately representation is of the people and not anything else. There were also calls for abstract constituencies along side the physical ones. The Committee resolved to create special seats for women as well as for special interest groups and did away with direct nominations.

3.7 Political party nominations

There were views that, once a party has conducted nominations, nobody should defect from that party to another. It was also suggested that nominations should be done by the full membership of the political parties involved and further that there should be a minimum period of membership of a political party in order to be nominated by that party. The committee abolished direct nomination of candidates to elective positions.

The committee decided to enjoin the political parties to uphold the principle of affirmative action for women and special interest groups in their process of nomination of candidates for direct elections.

3.8 Registration of Voters

It was a highly controversial issue whether or not registration of voters should be retained. It was argued that registration is undesirable as it disenfranchises many qualified citizens and also makes the electoral process too rigid.

However, those who argued for its retention gave the main reason for this as to enable the Electoral and Boundaries Commission of Kenya (ECBK) to plan for elections, check against rigging and, to some extent, and provide employment opportunities to the local people who are usually engaged in the exercise. The committee resolved to retain the registration of voters but to put in place necessary provisions to ensure that as many Kenyans as possible are registered to vote and also to ensure that the process is not abused.

3.9 Consolidation of electoral laws

This issue arose from the expert presentation from the ECK, which proposed that electoral laws be contained in only two documents: the Constitution and an Electoral Act to be enacted by Parliament.

3.10 Mixed Member Proportional Representation

The members did not fully understand this concept and consequently two experts were invited to give their opinions. After the expert presentations, members debated the topic at length. It was pointed out that MMPR might be a good idea for purposes of taking into account the interests of the hitherto marginalized groups. Even so, the concept was faulted on various fronts:

- The lists on which MMPR would be based will be generated by political parties thus making it just another form of nomination by political parties to Parliament.
- It does not give special definite constituencies to the marginalized groups.
- Personal interests in the party lists may still subsist.

Finally, the Committee decided to drop the concept of MMPR and replace it with reservation of seats for the women and special interest groups in the fora for representation of the people.

3.11 The Labour Movement

The question of labour relations and the need to have representation workers in Parliament formed potent debate in the Committee. From the expert presentation by Mr. Francis Atwoli, Secretary General of COTU, there emerged proposals that since trade unions represent everybody and therefore an alternative source of national guidance, there is need to have workers represented in Parliament through trade unions as a special interest group.

However, the opponents of this idea were of the view that the labour movement itself was large enough to marshal the numbers needed to elect one of their own to Parliament through the usual process, but this would only be possible through

political parties. The committee finally agreed to provide for representation of the workers through the workers organizations in special interest groups

4. ISSUES ARISING FROM DEBATE ON THE DRAFT BILL

Article 76(1):

On this article, the delegates felt that the right to vote should be enjoyed by all Kenyans while that to stand for elections should be left for only indigenous Kenyans citizens. The definition and limitation as to who is an indigenous Kenyan citizen was an issue that was not resolved by the Committee and was left for further consideration by the larger bodies of the Conference. It was also agreed that the rights under this provision be enjoyed by those persons qualified to do so and hence the word 'eligible'.

Articles 76(2) and (3):

The Committee considered that the phrase '**shall be**' is more compulsive than the word '**is/are**' and therefore decided to use the former.

Article 76 (4):

The committee adopted this sub Article without any amendment.

Article 76(5):

In this case the delegates were of the view that all interests of Kenyans should be represented while the foundation of Affirmative Action in Representation of the People ought to be laid here. The Committee sought to clearly enumerate the specific groups to be specifically considered for representation.

There was an animated discussion on the medium for representation of workers. Trade Unions and Labour Movement were proposed but the delegates could not agree on any of these. In the end, the term 'Workers' Organizations' was settled for as compromise.

Article 76(6):

The delegates pointed out that for democracy to thrive elections should be free from all forms of interference and not only those of political nature as the Draft Bill originally stated.

New Article 76(7):

The Committee agreed to include an article to provide for all generations to be taken care of in the electoral process. This was due to the realization that the youth and the elderly are usually left out in the electoral process yet they constitute an important part of the society. For this, the new Sub-Article 76(7) was inserted into the Draft Bill.

New Article 76(8):

The delegates considered the inclusion of this provision on realization that elected leaders tend to stay too long in their positions and thereby learn the arts of survival in the elections at the expense of the fresh candidates. It was also considered that there should be created a provision to enable as many Kenyans as possible to get elected to leadership positions.

Article 77(1):

The Committee majorly adopted the CKRC's Draft Article on this provision except that the electoral units be specifically listed in the Sub-Article to make it clearer.

New Article 77(1A):

This new Sub-Article was inserted to take care of nominations for elections to the Senate the Committee agreed that Senate should be a house of wisdom to guide national policies and issues and therefore should not be affiliated to political parties whatsoever. For this, there was a need to come up with a mechanism through which this would be achieved.

Article 77(2):

The Committee opted to do away with the concept of proportional representation and settled for strict principles of Affirmative Action. Towards this end, there was a need to enjoin political parties to uphold the principle of Affirmative Action when coming up with their candidates for direct elections.

New Article 77(3):

In furtherance of the principle the Committee adopted in Article 77(2) above, the delegates resolved that the Affirmative Action principle be taken to the level of districts in which each would be a unit for the election of women representation.

New Article 77(4):

The Committee decided to include the special interest groups for representation via this Sub-Article. The Committee also agreed to state particular percentages that particular special interest groups should be granted in both chambers of Parliament.

New Article 77(5):

This Article was inserted to take care of Affirmative Action at the devolved levels of government, which were considered to be important in the scheme of representation of the people.

Article 78(2):

This article was also agreed to incorporate the principle that the right to contest elections should be reserved for only the indigenous citizen of Kenya. Civic education being an integral part of the electoral process was also included in this provision to be considered in the administrative arrangements.

Article 78(3):

It was agreed that the day of elections should not coincide with any day of worship. This was considered so that there is ensured the highest voter turn out possible.

Article 79:

The Committee largely adopted the position of the Draft Bill on this Article. It was agreed that there was a need to ensure that prospective voters have genuine link with the units in which they would like to be registered as voters. However, the delegates were of the opinion that the requirement of residence of the people in the country for a long period before one can be registered as a voter was undesirable in this era of globalization. The provision that had this condition was therefore deleted from the Draft Bill.

Article 80:

On this issue and Article, the Committee wholly agreed with the provisions of the Draft Bill and therefore adopted the same.

Article 81:

The Committee sought to entrench a system of voting that would ensure the most accurate results from the elections. The Committee created a provision to allow any method of election to be used but put specific requirements that the results of an election be announced promptly to avoid any chances of the results being tampered with.

The Committee also took into consideration the various groups of Kenyans who, though qualified to vote, are currently not able to vote due to lack of administrative structures to enable them.

The Committee also sought to do away with any form of electoral malpractice. It also sought to take care of any cases of need for reference to the electoral materials after the process is over.

Article 81A:

The committee resolved that there was need to create an avenue for independent candidates. This would take care of those who would like to participate in elections but do not want to get involved in party politics. The committee was of the view that this would widen the democratic space for the people. However the Committee realized that there is need to put conditions to this structure to ensure that it is not abused by politicians therefore the provisions as adopted by the Committee.

Article 82:

The delegates wholly adopted the position of Draft Bill, only adding the requirement that Parliament enacts a law to provide for the expectations of the Article.

PART II Electoral and Boundaries Commission:

From the deliberations of the Committee on Devolution of Powers which had come up with a Boundaries Commission, the Committee resolved to merge the functions of the ECK with those of the proposed Boundaries Commission and therefore the Commission's name was changed to Electoral and Boundaries Commission.

Article 83:

The delegates agreed to conform to the principles set out by the Committee on Constitutional Commissions as regards the number of Commissioners. There was also the need to ensure that all in the electoral process were adequately represented in the Commission. Inter-generational equity in also to be considered.

It was agreed that nomination of the Commissioners would be done by the political parties and approved by the National Assembly. The members also agreed to leave open the opportunity to be chair of the Commission and not restrict it to only to the legal profession. The Committee also agreed on the term of office for the Commissioners and resolved that a Commissioner shall not serve for more than two terms. The membership of the Commission should also be staggered to ensure continuity of the Commission.

Article 84:

The Committee largely adopted the position of the Draft Bill as far as the functions of the Commission are concerned. It however added the duty of vetting the character of all electoral candidates to ensure that those who are elected are of high moral probity.

Article 85:

The committee noted that the Commission should be totally independent and the Commission itself and not an outside body should therefore address staffing needs of the Commission.

Article 86:

The Committee adopted substantially the provisions of the Draft Bill and also added some functions to the Commission.

With regard to delimitation of electoral boundaries the Commission was given the mandate to make recommendations with regard to variation of boundaries of any electoral unit. The delegates resolved that an additional factor to be considered in

coming up with the boundaries was the fact that many votes that do not go to the winner of the elections are usually wasted and therefore there's need to look at proportional representation.

The committee was unanimous on the idea that any change in the boundaries of any electoral unit should be done only after the relevant unit is consulted and its opinion taken into account.

It was also agreed that the boundaries be reviewed after every national census is done.

Article 86A:

The committee felt that currently there is no provision for redress in case a person is aggrieved by a decision to decision to alter the name or boundaries of an electoral unit. For this, the committee created a new Article to take care of appeals for any such decision. Parliament would be required to formulate laws that would put into affect such a machinery for appeals.

Article 86B:

The committee was also of the view that for a long time many election offenders go unpunished because of either lack of law to punish them or poor enforcement of the existing laws. It was therefore imperative that a new Article is created by the committee to take care of punishment of the electoral offenders. The electoral and boundaries commission should initiate the process by reporting the alleged offences to the Director of Public Prosecutions who shall then undertake the prosecution according to the law.

Article 87:

The committee observed that the right to form a political party was a crucial aspect of democratization process and therefore adopted the position taken by the draft bill on the matters.

It was generally agreed that the proposed funding for the political parties would go a long way into making the parties able to undertake the various functions given to them by the constitution.

Article 88:

The Committee wholly adopted the provisions of the Draft Bill with regard to the roles and functions of political parties and no further debate was had on this issue and Article.

Article 89:

On registration of political parties the committee had a long debate. It was pointed out that the position of the Draft Bill was not proper as the Electoral Commission would be the one supervising elections in which political parties take part and therefore it should not be the one to register them. It was however generally agreed that the registration should be moved away from the office of the Attorney General as the case stands presently because this is prone to abuse by the

government in power and which therefore controls the executive. The committee therefore settled on creating an independent office of the Registrar of Political Parties with various functions connected with registration and running of political parties.

Article 90:

On qualifications for registration of political parties the committee was unanimously on the recommendations in the Draft Bill particular emphasis was put on the need for the political party to have a national character and seek to promote unity of the country as well as enhance democratic governance within itself and its operations generally.

Article 91:

It was unanimously agreed that political parties should be bodies corporated as this will enhance their capacity to deliver the services expected of them under the new constitution.

Article 92:

There was debate as to the instances when the registration of a political party should be cancelled. It was easily agreed that a political party that engages in acts that would undermine democratic governance should be deregistered. Other members were of the view that a political party that perpetually fails to win any electoral seat ought to be deregistered. Others however were of the view that election outcome should not determine the fate of a political party but rather, whether or not it has reasonable support should be the factor to be considered.

Article 93:

There was consensus as to the establishment by a political parties fund for the registered political parties. Delegates concurred with one another that this would be a boost in the plight of political parties to be given financial support to meaningfully participate in governance.

Article 94:

The committee generally agreed with the provisions of the Draft Bill as to the sources of money for the political parties fund. The only concern expressed was that the sources of the funds should not be of a nature as to jeopardize the sovereignty of the country, sound governance based on morals and ethics as well as democratic system of governance.

Article 95:

The committee largely agreed with the provision of the Draft Bill on the purposes of the political parties fund. The main purpose of the fund agreed to be to discharge the functions of political parties as laid down by the constitution itself. It was emphasized that there should be limited to only those functions that would benefit the public at large rather than just the political parties on their own.

It was resolved that to a certain extent all political parties should be funded equally to provide them with an equal footing in discharging their functions. The other position was agreed to be distributed in proportion with the success of each political party at elections particularly with regard to promotion of the interest of the women and special interest groups.

Article 96:

On other sources of monies for political parties the committee wholly agreed with the provision of the Draft bill and no much debate was raised on this issue and Article.

Article 96A:

The committee felt that the political parties ought to account to the people how they have used the monies advanced to them by the state. For this, the delegates introduced a new Article to cater for accounts and audited by political parties.

Article 97:

The committee agreed wholly with the provision of the Draft Bill that the political parties need to be regulated. This role was reserved for the Electoral and Boundaries Commission, which would always be dealing with political parties. Of particular importance was the need to regulate the expenditure by political parties in supporting and individuals.

Article 98:

On party discipline, the delegates agreed with the provisions of the Draft Bill but sought to provide a mechanism to ensure that elected leaders do not disown the parties that sponsored them. In this regard a new provision was added binding the elected leaders to the policies, ideologies, philosophy and manifesto of the sponsoring political party.

Article 99:

There was a general consensus that public resources shall not be used by anybody to promote the interest of any political party.

Article 100:

The Committee resolved that there should be a clear decision between public interest and those of political parties. For this, all public officers are disallowed from holding an office in a political party. There was concern however that the holders of high political offices need to lead their respective political parties if they are to remain relevant in their respective political parties.

Article 100 A:

The delegates observed that representation of Kenyans should transcend the national borders and also include representation in international bodies and organizations the delegates were of the view that this was important as the resolution in such international forums have a direct effect on the citizens. This

new Article was therefore created to take care of this concern. Upon the issues raised on the various provisions in the Draft Bill motions were raised, debated and definite decisions made on each issue.

5. RECOMMENDATIONS AND DECISIONS ON THE DRAFT BILL AS AGREED BY THE COMMITTEE

ARTICLE	AS PRINTED IN THE DRAFT BILL	ARTICLES AS ADOPTED BY THE TWC	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
76	<p>General principles</p> <p>76. (1) The electoral system is based on the right of all citizens to vote and to stand for election to legislative and executive bodies.</p> <p>(2) Voting is by secret ballot.</p> <p>(3) Elections are free and fair.</p>	<p>General principles</p> <p>76(1) The electoral system is based on the right of all eligible citizens to vote and only indigenous Kenyan citizens to stand for election to legislative and executive bodies.</p> <p>(2) Voting shall be by secret ballot.</p> <p>(3) Elections shall be free and fair.</p>		<p>76(1)(a) The rights do not accrue to every citizens but only to those who qualify for them hence the word 'eligible'.</p> <p>People from outside the country should not come and take over leadership from the local people using money or any other means. If outsiders take over leadership, this will be a recipe for civil turmoil e.g. the case in Liberia, Sierra Leone etc.</p> <p>76(2) The phrase 'shall be' is more binding than the word 'is'. The Constitution should be compulsive.</p> <p>76(3) The phrase 'shall be' is more binding than the word 'are'. The Construction should be compulsive.</p>

	<p>(4) Elections shall ensure the fair representation of the People.</p> <p>(5) Elections shall ensure fair representation of women, the Disabled, and minorities.</p> <p>(6) Elections are conducted by an independent body free from political interference.</p>	<p>(4) Elections shall ensure the fair representation of the people.</p> <p>(5) Elections shall ensure fair representation of women, persons with disabilities, workers through the Workers' Organizations and marginalized communities, and for that purpose the State shall take the necessary Affirmative Action measures.</p> <p>(6) Elections shall be conducted by an independent body, free from political or any other form of interference.</p>	<p>All generations are already catered for under sub Article 76(4) that reads:</p> <p><i>Elections shall ensure fair representation of the people</i></p> <p>And therefore there is no need to include this sub Article.</p> <p>The electorate determines holders of elective offices.</p> <p>The two-term period is inadequate for anyone elected to achieve much for the people he/she represents.</p> <p>Politics is like any</p>	<p>76(4) the Article remains unamended as it reiterates the principal object of free and fair elections – fair representation of the people.</p> <p>76(5) Other units apart from political parties need to be represented in Parliament and the Constitution needs to expressly state the groups to be so represented. This will strengthen the principle of Affirmative Action.</p> <p>The phrase 'Workers Organizations' is a middle ground between trade unions and the labour movement at large</p> <p>(6): Any form of interference that may make elections not be free and fair should be stamped out. Political interference is just one form of many that may affect elections.</p>
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<i>New (a)</i>		<i>76(7) Elections shall ensure inter-generational equity.</i>	<p>other career in which time is a crucial factor in enabling a person rise up the ladder.</p> <p>Politicians who rise to higher levels of power e.g. presidency have had to be MPs for a long time and therefore to restrict the leaders to two terms will not enable them to mature in politics before assuming higher offices.</p>	<p>76(7) In many cases, the old and the youth are left out of the electoral process, a trend that should change.</p> <p>Every Kenyan has a right to participate in governance.</p>
<i>New (b)</i>		<i>76(8) All persons in elective offices shall be eligible to serve two consecutive terms but may seek re-election after a five-year break.</i>		<p>76(8) Some leaders stay too long in elective offices and build dynasties over the seats. Such leaders become insensitive to the needs of the people.</p> <p>This provision will enable many people to get opportunities to be leaders.</p> <p>With the limitation on the number of presidential terms all elected leaders' terms should also be limited.</p>

<p>77</p>	<p>Elections 77 (1) Subject to any provisions in the Constitution, Parliament shall enact a law to provide for-</p> <p>(a) the number of constituencies for the election of members of Parliament of the Provincial Councils, of the District Councils, Locational Councils, Village Councils and any other local authority.</p> <p>(b) nomination of candidates</p> <p>(c)the manner of voting at elections;</p> <p>(d) the continuous registration of citizens as voters;</p> <p>(e) the conduct of public elections and referenda;</p>	<p>Elections 77 (1) Subject to any provisions in this Constitution, Parliament shall enact a law to provide for –</p> <p>(a) the number and delimitation of electoral units for the election of members of the Senate, National Assembly, Regional Councils, District Councils and Locational Councils;</p> <p>b) the nomination of candidates;</p> <p>(c) the manner of voting at elections;</p> <p>(d) the continuous registration of citizens as voters;</p> <p>(e) the conduct of public elections and referenda;</p>		<p>(a) the levels of election should tally with the levels of devolution of power.</p>
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<p><i>New (c)</i></p>	<p>(f) the efficient supervision of public elections and referenda including voting on the basis of proportional representation; and</p> <p>(g) the registration of, and voting by, citizens who are outside Kenya.</p> <p>(2) A political party shall ensure –</p> <p>(a) that at least one third of</p>	<p>(f) the efficient supervision of public elections and referenda including, where necessary, voting on the basis of proportional representation; and</p> <p>(g) the registration of, and voting by, citizens who are outside Kenya.</p> <p><i>(1A) A person wishing to stand as a candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit.</i></p> <p>(2) A political party shall ensure adherence to the Affirmative Action principles in its nomination</p>	<p>(1A) The Upper House should be a house of wisdom whose members should be able to look at issues from a national point of view and not from political party angles and therefore they should not be drawn from any political party. Direct candidature will ensure this objective is fulfilled.</p> <p>(2) this paragraph is to enhance Affirmative Action which is emphasized throughout the Draft Bill.</p>
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<p><i>New (d)</i></p> <p><i>New (e)</i></p>	<p>its candidates for direct elections are women, and</p> <p>(b) that fifty per cent of its candidates for proportional representation at public elections are women,</p> <p>(c)and that the remaining fifty per cent are distributed among persons with disabilities, the youth, ethnic minorities and other interest groups.</p>	<p>of candidates for direct elections.</p> <p><i>(3) For the purpose of maintaining the at least one-third Affirmative Action principle for women's representation in the National Assembly, every District and borough shall be an electoral unit for the election of women representatives.</i></p> <p><i>(4) In the interest of Affirmative Action, five</i></p>	<p>Mixed Member Proportional Representation should be replaced with Affirmative Action.</p> <p>(3) and (4) are based on the decisions of TWG 'F' on the Legislature and this committee merely adopted the recommendations as passed under Articles 106 and 107 which were based on the districts.</p> <p>The MMPR was dropped and the special constituencies for the representation of women and other special interest groups</p>
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<p><i>New (f)</i></p>		<p><i>percent of the seats in the National Assembly and devolved governments; and eight decimal five percent in the Senate shall be reserved for special interest groups- that is:</i></p> <p><i>(a) persons with disabilities, the youth, workers through the Workers' Organisations and other minorities;</i></p> <p><i>(b) in the case of the Senate, persons with disabilities, the elderly, workers through the Workers' Organizations and other minorities- provided that at least one-third of the seats go to the marginalized gender.</i></p> <p><i>(5) the principle of maintaining at least one-third Affirmative Action for the marginalized gender under sub Article (4) above shall apply to all levels of government and shall further ensure that at no time will one gender have</i></p>		<p>created because the former relies on political party lists which may fall victim of possible political patronage.</p> <p>The creation of these constituencies automatically ensures compliance with the At Least One Third principle.</p> <p>The principle should be upheld in elections at all levels of government.</p> <p>(5) This restriction further bolsters the quest to achieve a reasonable degree of Affirmative Action for the marginalized gender.</p>
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		<i>more than two-thirds representation.</i>		
78	<p>The right to vote</p> <p>78. (1) A citizen who is eighteen years of age and above has the right to vote.</p> <p>(2) Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen's right to vote and stand for elections and shall include a system of continuous registration.</p>	<p>The right to vote</p> <p>78 (1) A citizen who is at least eighteen years of age has the right to vote.</p> <p>(2) Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen's right to vote and an indigenous Kenyan citizen, a right to stand for elections and shall include a system of continuous registration and civic education.</p> <p><i>78(3) The Electoral and Boundaries Commission shall ensure that clause 44(2) of this Constitution, regarding observance of a day of worship, is not</i></p>		<p>(1): No one person can be eighteen year of age and above.</p> <p>(2): Civic education is an important aspect of the electoral process and it should be provided continuously.</p> <p>(3) The right of worship should not be interfered with. This conforms with the provisions of Article 44(2)</p> <p>If the voting day does not</p>
<i>New (g)</i>				

		<i>violated.</i>		coincide with any day of worship, voter turn out is likely to be very high.
79	<p>Qualifications for registration</p> <p>79. (1) A citizen qualifies to be registered as a voter for elections if at the date of the application for registration the citizen,</p> <p>(a) is eighteen years of age and above,</p> <p>(b) has been ordinarily resident in the Republic</p> <p>(i) for a period of not less than one year immediately preceding that date, or</p> <p>(ii) for a total period of, not less than four years in the eight years immediately preceding that date.</p>	<p>Qualifications for registration as a voter</p> <p>79 (1) A citizen qualifies for registration as a voter for public elections or referenda if at the date of the application for registration that citizen -</p> <p>(a) is at least eighteen years of age;</p>	<p>Paragraph (b) should be left, as it would also serve other levels of elections in the devolution system apart from just Parliamentary elections.</p>	<p>79(1)(a) No one person can be eighteen years of age and above.</p> <p>(b) The reason for the deletion is that in the present day of globalization, many people are staying away from the country for various reasons and therefore having the requirement of the original paragraph (b) would disqualify too many Kenyans from participating in elections.</p>

	<p>(c) has, for a period of, or periods amounting in the aggregate to, not less than five months in twelve months immediately preceding that date –</p> <p>(i) been ordinarily resident in the constituency in which the application for the registration is made, or</p> <p>(ii) has been employed there, has carried on business or has lawfully possessed land or residential building in the constituency</p> <p>(2) A citizen who qualifies for registration as a voter shall only be registered at</p>	<p>b) has for a period of, or periods amounting in the aggregate to, not less than five months in the twelve months immediately preceding that date –</p> <p>(i) been ordinarily resident in the electoral unit in which the application for the registration is made; or</p> <p>(ii) has been employed there, carried on business, or has lawfully possessed land or residential building in the electoral unit.</p> <p>(2) A citizen who qualifies for registration as a voter shall only be registered at one place.</p>		<p>(c) renumbered (b)</p> <p>(b) Elections is a social contract between the leaders and the electors and therefore the candidate's interest is shown by having tangible connexion with the area he/she wants to represent via the elections.</p> <p>The word 'constituency' changed to 'electoral units' because there are various levels of devolved government, special constituencies for women and in some instances special interest groups which will now be involved in elections.</p> <p>(2) All voters should be registered at only one place to enable the Electoral Commission effectively manage the elections and to prevent any chance of double voting.</p> <p>This would also ensure that the</p>
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	one place.			smaller communities are protected from larger immigrant communities who may register in large numbers in their areas and take over leadership from them.
80	<p>Disqualification from registration</p> <p>80. (1) A citizen is not qualified to be registered as voter for public election or referenda who-</p> <p>(a) under a law of Kenya is declared to be of unsound mind; or</p> <p>(b) is disqualified by an Act of Parliament for conviction of an election offence .</p> <p>(2) The question whether a citizen is disqualified to be</p>	<p>Disqualification from Registration as a Voter.</p> <p>80 (1) A citizen is disqualified from registration as a voter for public election or referenda who –</p> <p>(a) under a law of Kenya is declared to be of unsound mind; or</p> <p>(b) is disqualified by an Act of Parliament for conviction of an election offence.</p> <p>(2) The question whether a citizen is disqualified to be registered as a voter</p>		<p>(a) Elections are social contracts and therefore a person of unsound mind lacks the capacity to enter such a contract.</p> <p>(b) offences related to elections directly affect the democratization process and therefore the offenders should be denied the right to participate in the elections.</p> <p>(2) the High Court is the best suited to interpret and apply the laws that would affect the</p>

	registered as a voter for public elections or referenda shall be determined by the High Court.	for public election or referenda shall be determined by the High Court.		electoral process.
81	<p>Voting</p> <p>81. At every election the Electoral Commission shall ensure that</p> <p>(a) the voting procedure is simple and precise;</p> <p>(b) the ballot box is transparent; and</p> <p>(c) the votes cast are counted, tabulated and the results announced by the presiding officer at the polling stations</p>	<p>Voting</p> <p>81. At every election, the Electoral and Boundaries Commission shall ensure that -</p> <p>(a) the voting procedure is simple and precise;</p> <p>(b) where a ballot box is used, it is transparent;</p> <p>(c) the votes cast are counted, tabulated and the results promptly announced by the Presiding Officer at the polling station;</p>		<p>(a) a complicated electoral process would open chances for the elections to be interfered with.</p> <p>(b): The amendment makes for provision for an election to be done in any way.</p> <p>(c): this procedure would minimize the chances of rigging elections as the process would be transparent and the results announced promptly.</p>

<p><i>New (h)</i></p>		<p><i>(d) the results from the polling stations are transparently and accurately collated and promptly announced by the Returning Officer;</i></p>		<p>(d) The final outcome of elections should be accurate even after polling stations correctly announce the results. Paragraph (d) completes the process of transparency. The Returning Officer announces the outcome of each polling station separately. The results should be promptly announced to avoid any delay which would create room for manipulation of the results.</p>
<p><i>New (i)</i></p>		<p><i>(e) special arrangements are made to accord members of the Armed Forces, the Police, staff of Diplomatic Missions, citizens living or working abroad, prisoners, election officials and patients admitted in hospitals, opportunity to vote; and</i></p>		<p>(e) Presently these categories of people are disenfranchised. They should be included in order to widen the democratic space.</p> <p>These people also have a right to vote under Article 78(1)(a).</p>
<p><i>New (j)</i></p>		<p><i>(f) appropriate structures and mechanisms to eliminate all forms of electoral malpractice are put in place, including the safe</i></p>		<p>(f) Electoral malpractices hamper democracy and should be totally eliminated.</p> <p>The keeping of electoral</p>

		<i>keeping of all election materials.</i>		materials will help in accurately determining election petitions.
New 1.		<p><i>Independent Candidates</i></p> <p><i>81A. (1) Subject to Article 108, a person is eligible to stand as an independent candidate for election as a Member of Parliament, if that person-</i></p> <p><i>(a) is an indigenous Kenyan citizen;</i></p> <p><i>(b) has not been a member of a registered political party for at least six months prior to the date of the elections for which</i></p>		<p>Not all people may want to be associated with political parties in order to be leaders. People should not be compelled to join political parties if they don't wish to. Under Article 50, everybody has a right to vie for election and this should not be fettered by the requirement to join a political party as a prerequisite.</p> <p>Under Article 48, a person is allowed not to join any association of any kind if (s)he does not want to.</p> <p>(a) People from outside the country should not come and take over leadership from the local people using money or any other means.</p> <p>If outsiders take over leadership, this will be a recipe for civil turmoil e.g. the case in Liberia,</p>

		<p><i>election is sought;</i></p> <p><i>(c) has been registered by the Electoral Commission as an independent candidate and complies with the code of conduct prepared by the Electoral and Boundaries Commission for such candidates; and</i></p> <p><i>(d) has been nominated by at least two hundred registered voters from the constituency in which the person intends to stand as a candidate.</i></p> <p><i>(2) Subject to any qualification set for a member of a Council, a person is eligible to stand as an independent candidate for election as a member of a Regional, District or Locational Council if that person -</i></p> <p><i>(a) is an indigenous Kenyan citizen;</i></p>	<p>Sierra Leone etc.</p>
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		<p><i>(b) has not been a member of a registered political party for at least six months prior to the date of elections for which election is sought;</i></p> <p><i>(b) has been registered by the Electoral and Boundaries Commission as an independent candidate and complies with the code of conduct prepared by the Electoral and Boundaries Commission for such candidates;</i></p> <p><i>(c) has been nominated by the following number of registered voters from the electoral area in which the person intends to stand as a candidate –</i></p> <p><i>(i) in the case of a Location, one hundred registered voters;</i></p> <p><i>(ii) in the case of a District, five hundred</i></p>		
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		<i>registered voters;</i>		
		<i>(iii) in the case of a Region one thousand registered voters.</i>		
<i>New (k)</i>	<p>Unopposed Candidates</p> <p>82.(1) Where only one candidate is nominated on nomination day previous to an election, the election shall nevertheless be held for the purpose of determining the number of votes obtained by each political party at the election.</p> <p>(2)After the votes have been counted the candidate is elected.</p>	<p>Unopposed Candidates</p> <p>82. (1) Subject to Article 95, where only one candidate is nominated on nomination day previous to an election, the election shall nevertheless be held for the purpose of determining the number of votes obtained by each political party at the election.</p> <p>(2) After the votes have been counted for determining votes obtained by each political party, the candidate shall be declared elected</p> <p>(3) <i>Parliament shall make laws</i></p>		<p>(1) The Election is to determine the number of votes for the political party for purposes of sharing monies from the Political Parties Fund. Votes for political party are crucial in gauging the popularity of the party on the ground.</p> <p>(2) 'shall be' is more compulsive than 'is'. The unopposed candidate has to be formally declared the winner of the elections</p> <p>(3) Addition of this paragraph will expressly compel Parliament to make the laws to</p>

		<i>providing for the proper implementation of clause (1).</i>		bring into effect the provisions of this Article.
83	<p><u>Part II - The Electoral Commission</u></p> <p>Establishment of the Electoral Commission</p> <p>83. (1) There is established the Electoral Commission consisting of –</p> <p>(a) the chairperson; and</p> <p>(b) not less than eight and not more than ten other members.</p> <p><i>New (1)</i></p>	<p>Part II – The Electoral and Boundaries Commission.</p> <p>Establishment of the Electoral and Boundaries Commission.</p> <p>83 (1) There is established the Electoral and Boundaries Commission consisting of –</p> <p>(a) the chairperson; and</p> <p>(b) not less than two and not more than ten members, at least one-third of whom shall be from the marginalised gender and one-tenth from persons with disabilities.</p>	Leaving the	<p>The Electoral Commission is merged with the Boundaries Commission as was created by the Committee on Devolution of Powers to give rise to the Electoral and Boundaries Commission which will carry out the functions of both commissions as were proposed.</p> <p>(b) the TWG 'C' complied with the principles laid down by the Committee on Constitutional commissions as regards the composition of constitutional commissions.</p>

	<p>(2) The chairperson and the other members of the Commission shall be appointed by the President with the approval of the National Assembly.</p>	<p>(2) <i>The membership of the Commission shall reflect the principle of inter-generational equity.</i></p> <p>(3) Political parties will nominate persons from whom the President shall, with the approval of the National Assembly, appoint the Chairperson and other members of the Commission.</p>	<p>responsibility of nominating members of the ECK to political parties would negate the concept of special representation of the special groups in the electoral process.</p> <p>Political parties would not be representative enough and are likely to nominate their cronies and ignore the representatives of other interest groups. The preferred Article should be:</p> <p><i>"Political parties, civil societies, women organizations, religious organizations, persons with disabilities and minority groups will nominate members of the Commission from which the President shall appoint the Chairperson and</i></p>	<p>(2): the concept of inter-generational equity should be embraced in all the public bodies where the interest of all generations in the society should be taken into account. Particularly, young persons should be socialized into leadership roles by involving them in the running of bodies such as the ECK.</p> <p>(3) The political parties should nominate the commissioners as this is the practice even at the present.</p> <p>Political parties are the majority in Parliament and directly involved in the elections and therefore should be the nominating bodies. The other groups represented in the Parliament would take part in the vetting process.</p>
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	<p>(3) The Commission shall elect a vice-chairperson from among its members.</p> <p>(4) A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has held or is qualified to hold office as a judge of a superior court of record.</p> <p>(5) A citizen is not qualified to be appointed a member of the Commission if the citizen</p> <p>(a) is a member of Parliament; or</p> <p>(b) holds or is acting in an office in the public service or in the Defense Forces</p>	<p>(4) Taking into account gender balance, the Commission shall elect a vice-chairperson from among its members.</p> <p>(5) A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has experience and adequate qualifications relevant to the functions of the Commission.</p> <p>(6) A citizen is not qualified to be appointed a member of the Commission if the citizen-</p> <p>(a) is a member of Parliament; or</p> <p>(b) holds or is acting in an office in the public service or in the Defence Forces of</p>	<p><i>members of the Commission with the approval of the National Assembly."</i></p>	<p>(4): the amendment takes care of gender equity in the composition of the ECK, which principle is highlighted throughout the Draft Bill.</p>
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	<p>of the Republic.</p> <p>(6) At the time of the initial appointment of commissioners half of the commissioners shall be appointed for a three year period.</p> <p>(7) The office of a member of the Commission becomes vacant</p> <p>(a)at the expiration of a five year term from the date of appointment renewable once only; or</p> <p>(b) if the member becomes disqualified to be appointed a member of the Commission; or</p> <p>(c) if the member is removed from office on the ground of inability to perform the functions of office as member, whether</p>	<p>the Republic.</p> <p>(7) At the time of the initial appointment of the Commissioners, half of the Commissioners shall be appointed for a three-year period.</p> <p>(8) The office of a member of the Commission shall become vacant –</p> <p>(a) at the expiry of a five-year term from the date of appointment;</p> <p>(b) if the member becomes disqualified to be appointed a member of the Commission; or</p> <p>(c) if the member is removed from office on the ground of inability to perform the function of the</p>		
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	<p>arising from infirmity of body or mind or from any other causes or of misbehavior; and</p> <p>(d) if the member dies or resigns from office.</p>	<p>office as member, whether arising from infirmity of body or mind or from any other cause or of misbehaviour; or</p> <p>(d)if the member dies or resigns from office.</p> <p><i>(9) at the expiry of the term of office, the appointment of a member may be renewed for one more term only.</i></p>		
84	<p>Functions of Electoral Commission</p> <p>84. (1) The Electoral Commission is responsible for –</p> <p>(a) the continuous registration of voters;</p>	<p>Functions of the Electoral and Boundaries Commission.</p> <p>84. (1)The Electoral and Boundaries Commission shall be responsible for-</p> <p>(a)the continuous registration of voters;</p>		

	<p>(b) the delimitation of electoral constituencies;</p> <p>(c) the conduct and supervision of elections and referenda;</p> <p>(d) the promotion of free and fair elections and referenda;</p> <p>(e) the supervision of political parties;</p> <p>(f) the management of Political Parties Fund;</p> <p>(g) the settlement of electoral disputes;</p> <p>(h) the promotion of voter education and culture of democracy; and</p> <p>(i) the facilitation of the observation, monitoring and evaluation of elections.</p>	<p>(b)the delimitation of electoral units;</p> <p>(c) the efficient conduct and supervision of elections and referenda;</p> <p>(d) the promotion of free and fair elections and referenda;</p> <p>(e) the supervision of political parties;</p> <p>(f) the management of the Political Parties' Fund;</p> <p>(g) the settlement of electoral disputes;</p> <p>(h) the promotion of voter education and culture of democracy;</p> <p>(i) the facilitation of the observation, monitoring and evaluation of elections;</p>		<p>(c): there is need to include the word "efficient" so that it enjoins the commission to be efficient; failure to which Kenyans would have a ready cause to sue it.</p>
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<p><i>New (m)</i></p>	<p>(2) The Electoral Commission is an independent commission that conducts its work in accordance with the Constitution.</p>	<p><i>(j) the clearing of all presidential, parliamentary and devolved governments' candidates in consultation with the Ethics and Integrity Commission.</i></p> <p>(2) The Electoral and Boundaries Commission shall be an independent Commission that conducts its work in accordance with the Constitution.</p>		<p>(j): The clearance will ensure that the candidates are of high moral standing and honesty and therefore capable of sound leadership.</p>
<p>85</p>	<p>Staff of the Electoral Commission</p> <p>85. The Public Service Commission after consultation with the Electoral Commission, shall appoint officers and other employees of the Commission.</p>	<p>Staff of the Electoral and Boundaries Commission</p> <p>(85) The Electoral and Boundaries Commission shall appoint officers and other employees of the Commission.</p>		<p>(85): the ECK should manage its own staffing needs so as to have complete autonomy. The PSC should only act as a consultant in the recruitment of the staff.</p>

<p>86</p>	<p>Delimitation of constituencies</p> <p>86. (1) The Electoral Commission shall by order determine the names and boundaries of the constituencies.</p> <p>(2) In demarcating the boundaries of constituencies, the Electoral Commission shall-</p> <p>(a) consult with all interested parties; and</p> <p>(b) take account of population</p>	<p>Delimitation of Electoral Units</p> <p>86. (1)The Electoral and Boundaries Commission shall by Statutory Order determine the names and boundaries of the electoral units and also make recommendations concerning the fixing, review and variation of boundaries of regions, districts and locations.</p> <p>(2) In demarcating the boundaries and naming of electoral units, the Commission shall-</p> <p>(a) consult with all interested parties;</p> <p>(b) take into account the population density</p>		<p>The functions that were originally given to the Boundaries Commission are given to the new Commission.</p>
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<p><i>New (n)</i></p>	<p>density and the need to ensure adequate representation for urban and sparsely-populated rural areas, and</p> <p>(i) population trends; (ii) means of communications; (iii) geographical features; (iv) community of interest; (v) the boundaries of administrative areas; and (vi) the latest census of the population in accordance with the law.</p>	<p>and the need to ensure adequate representation for urban and sparsely-populated areas; and-</p> <p>(i) the population trends; (ii) the means of communication; (iii) the geographical features; (iv) community of interest; (v) the boundaries of administrative areas; (vi) the latest census of the population in accordance with the law; and (vii) <i>the Voters Register and the proportional representation of the people to the nearest five thousand registered voters.</i></p> <p><i>(c) have regard to viability, sustainability and effectiveness of the region, district or location taking into account:</i></p>		<p>(vii) All votes should be taken into account. This paragraph will rid the electoral process of gerrymandering.</p>
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<p><i>New (o)</i></p>	<p>(3) Every ten years, after a census of the population or sooner if there is a variation in the boundary of an</p>	<p><i>(i) population and area</i> <i>(ii) historical and cultural ties</i> <i>(iii) economic and natural resources</i> <i>(iv) objects and principles of devolution of government</i> <i>(v) after consultation with the governments of any region, district and location affected and recommendation of the Electoral and Boundaries Commission, Parliament may by enactment vary the boundaries of regions, districts or locations.</i> <i>(vi) no such an enactment can have effect to abolish any region or district or to create a new region or district other than by amendment of the Constitution.</i></p> <p>(3)The Commission shall every after ten years or before the end of that period, review and where necessary,</p>		<p>(3)The review of constituency boundaries should not be tied to censuses.</p>
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	<p>administrative area, the Commission may carry out a review and make the necessary alterations of the names and the boundaries of constituencies.</p> <p>(4) An order made under this Article by the Commission shall be published in the <i>Gazette</i>, and shall come into effect on the dissolution of Parliament after the publication of the order.</p>	<p>make alterations of names and boundaries of electoral units.</p> <p>(4)An order made under clause (1) of this Article shall be published in the <i>Kenya Gazette</i> and shall come into effect on the dissolution of Parliament following the publication of the Order.</p>		
<p>New 2.</p>		<p><i>Appeals from Decisions of the Electoral and Boundaries Commission.</i></p> <p><i>86A (1) Any person aggrieved by a decision or order of the Electoral and Boundaries Commission may appeal to the High Court.</i></p> <p><i>(2) Parliament shall make laws providing for the procedure for the expeditious disposal of appeals under this article.</i></p>		<p>86A: (1) there should be a forum to redress any wrong suffered at the instance of the ECK.</p> <p>(2) The forum for redress should be expedient to enable the aggrieved parties arrest any situation that may need quick action.</p>

New 3.		<p><i>Prosecution of Election Offenders</i></p> <p>86B. <i>The Electoral and Boundaries Commission shall cause the prosecution of election offenders by identifying and forwarding any suspected offenders to the Director of Public Prosecutions who shall, after investigations, expeditiously prosecute the offenders.</i></p>		<p>86B: The Electoral Commission of Kenya should identify all electoral offenders and initiate their prosecution in a court of law because it is the one that will supervise the political parties and the one that monitors their adherence to the code of conduct of political parties</p>
87	<p>Part III – Political Parties</p> <p>The right to form a political party</p> <p>87. (1) In accordance with Article 50 any citizen may form a political party.</p>	<p>PART III- Political Parties</p> <p>The right to form a political party</p> <p>87. (1) In accordance with Article 50, any citizen may form a political party.</p>		

	<p>(2) A political party is entitled to financial support from the state on the basis prescribed in an Act of Parliament.</p> <p>(3) No person may use state resources to support any political party</p> <p>(4) Parliament shall enact a law providing for the regulation of political parties.</p>	<p>(2) A political party shall be entitled to financial support from the State through the Political Parties Fund in accordance with the provisions of Article 95.</p> <p>(3) Parliament shall enact a law regulating political parties.</p>		
88	<p>Roles and functions of political parties</p> <p>88. In order to ensure democracy and the participation of people, a political party has the responsibility to -</p> <p>(a) mobilize public opinion on matters of</p>	<p>Roles and Functions of Political Parties</p> <p>88. In order to ensure democracy and the participation of the people, a political party shall -</p> <p>(a) mobilize public opinion on matters of</p>		

	<p>national interest, and foster national values and outlook;</p> <p>(b) bring together opinions and resources of people with similar views, interests or persuasion so as to generate development of the Republic;</p> <p>(c) provide the means through which the people participate in the political and constitutional processes and exercise their civil and political rights;</p> <p>(d) use its facilities to mediate between civil society and institutions of the state;</p>	<p>national interest, and foster national values and outlook;</p> <p>(b) bring together opinions and resources of people with similar views, interests or persuasion so as to generate development of the Republic;</p> <p>(c) provide the means through which the people participate in the political and constitutional processes as well as exercise their civil and political rights;</p> <p>(d) use its facilities to mediate between civil society and institutions of the state;</p>		
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	<p>(e) use its facilities to secure representation of the people in state institutions and offer them economic, political and social choices through the electoral process, and bring public opinion to bear on the policies of the Government;</p> <p>(f) ensure that cohesion and discipline in the conduct of Government is maintained; and</p> <p>(g) hold the Government accountable to Parliament and the people.</p>	<p>(e) use its facilities to ensure representation of the people in state institutions and offer them economic, political and social alternatives through the electoral process as well as allow public opinion to have a bearing on the policies of the Government;</p> <p>(f) ensure that cohesion and discipline in the conduct of Government is maintained;</p> <p>(g) hold the Government accountable to Parliament and the people.</p>		
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<p>New 4.</p>	<p>Registration of political parties</p> <p>89. (1) The Electoral Commission is the registrar of political parties, and for that purpose shall keep and maintain a register of political parties.</p> <p>(2) Parliament shall by an Act of Parliament provide for the matters which the register shall contain.</p>	<p>Registrar of Political Parties</p> <p>89. (1) <i>There shall be established the office of the Registrar of Political Parties whose functions shall be-</i></p> <p><i>(a) to register, keep and maintain the register of Political Parties;</i></p> <p><i>(b) to arbitrate in intra-party and inter-party disputes;</i></p> <p><i>(c) to maintain a Political Parties Library and Archives; and</i></p> <p><i>(d) to supervise the election of the officials of all registered political parties.</i></p> <p>(2) Parliament shall enact laws providing for the –</p> <p>(i) registration of political parties and other related</p>		<p>In the past the government has been interfering with the Registrar of Societies and therefore there is need to divest the office of any matter touching on political parties.</p> <p>Workers' Organisations, societies, companies have their own registers and so should parties.</p> <p>Internal elections by political are integral in the process of democracy and should be presided over by a separate body.</p>
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		<p>matters; and</p> <p>(ii) the functioning of the office of Registrar of political parties.</p>		
90	<p>Qualifications for registration</p> <p>90. (1) The Electoral Commission shall register a political party if that party by its constitution or Articles of association has a national character with governing body which seeks,</p> <p>(a) to promote and uphold national unity;</p> <p>(b) to abide by democratic principles of governance, and to promote and practice democracy within the party through regular, fair and</p>	<p>Qualifications for Registration of Political Parties</p> <p>90. (1) The Registrar of Political Parties shall register a political party if that party, by its constitution or articles of association, has a national character with a governing body which seeks-</p> <p>(a) to promote and uphold national unity;</p> <p>(b) to abide by democratic principles of good governance, and to promote and practice democracy through regular, fair and free elections within the party;</p>		<p>(1): the Registrar of political parties takes over registration of political parties</p> <p>(b): The word 'good' adds value to the paragraph by being specific on the kind of governance we want.</p>

	<p>free elections within the party;</p> <p>(c) to promote and respect human rights and gender equality and equity;</p> <p>(d) to promote the objects and principles of the Constitution and the rule of law.</p> <p>(2) The Electoral Commission shall not register a political party if that party</p> <p>(a)is founded purely on religious, linguistic, racial, ethnic, sex, corporatist or regional basis or seeks to engage in propaganda based on any of those matters;</p> <p>(b)does not by its constitution or Articles of association subscribe to the Code of Conduct for political parties; and</p>	<p>(c) to promote and respect human rights and gender equality and equity;</p> <p>(d)to promote the objects and principles of the Constitution and the rule of law.</p> <p>(2)The Registrar of Political Parties shall not register a political party if that party-</p> <p>(a) is founded purely on religious, linguistic, racial, ethnic, sex, corporatist or regional basis or seeks to engage in propaganda based on any of those matters;</p> <p>(b)does not, by its constitution or articles of association, subscribe to the code of conduct for political parties; and</p>		<p>(a): Kenyans do not want balkanization of the country into regions since parties should have a national outlook.</p>
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	<p>(c) does not enjoin itself and its members to observe the Code of Conduct applicable to political parties as a legally binding Code.</p> <p>(3)A political party shall not-</p> <p>(a)engage in, or encourage, violence or intimidation of its members, supporters or opponents or any other persons;</p> <p>(b)establish or maintain a paramilitary militia or similar organization.</p> <p>(4) A political party shall keep proper accounts, and proper books and records of account in the form approved by the Auditor-General.</p> <p>(5) Within three months after the end of its financial year, a political party shall submit its accounts and</p>	<p>(c) does not enjoin itself and its members to observe the code of conduct for political parties as a legally binding code.</p> <p>(3)A political party shall not-</p> <p>(a) engage in or encourage violence or intimidation of its members, supporters, or opponents or any other person;</p> <p>(b) establish or maintain a paramilitary militia or similar organization.</p>		
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	<p>books and records of account to the Auditor-General for audit.</p> <p>(6)The Auditor-General shall within three months of the submission under clause(5), audit the accounts and submit the report on the audit to the political party.</p> <p>(7)The political party shall within one month of the receipt of the report of the Auditor-General publish its accounts in the Gazette and in the national newspapers.</p>			
91	<p>Corporate status</p> <p>91. On registration, a political party becomes a body corporate.</p>	<p>Corporate Status of Party</p> <p>91. On registration, a political party shall become a body corporate.</p>		
92	<p>Cancellation of registration</p> <p>92. (1) The Electoral Commission shall</p>	<p>Cancellation of Registration of a Political Party</p> <p>92. (1) The Registrar of Political Parties shall</p>		

	<p>cancel the registration of a political party if satisfied that the political party-</p> <p>(a) is in breach of a provision of Articles 90, 95 and 96 or of a provision of its own constitution or Articles of Association, or</p> <p>(b) has not complied in a material particular with a provision of Articles 90 and 95, or</p> <p>(c) obtained its registration in a fraudulent manner, or</p> <p>(d) instigated or connived in the commission of an election offence, or</p> <p>(e) has not, for each of the two previous general elections secured at least one per cent of the national vote, or</p> <p>(f) has used moneys</p>	<p>cancel the registration of a political party if satisfied that the party-</p> <p>(a) is in breach of or has not complied with any provisions of articles 90,95,or 96 or any provision of its constitution or articles of association;</p> <p>(b) obtained its registration in a fraudulent manner;</p> <p>(c) has instigated or connived in the commission of an election offence;</p> <p>(d) has used moneys allocated to it other than as is provided by Article 95.</p>		
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	<p>allocated to it for purposes not allowed by Article 95.</p> <p>(2) Before the Electoral Commission cancels the registration of a political party, it shall inform the political party of the intention to cancel the registration, and direct the political party within ninety days, to remedy the breach or comply with the law where possible.</p> <p>(3) A member of the party aggrieved by the decision of the Electoral Commission to cancel the registration of a political party may appeal to the High Court.</p>	<p>(2) Before the registration of a Political Party is cancelled, the Registrar of Political Parties shall inform the party concerned of the intention to cancel the registration and direct the party, where possible, to remedy the breach or comply with the law.</p> <p>(3) A member of, or a political party aggrieved by a decision of the Registrar of Political Parties under this article may appeal to the High Court.</p>		
93	<p>Political Parties Fund</p> <p>93. (1) There is established a fund to be known as the Political Parties Fund.</p>	<p>Political Parties' Fund</p> <p>93. (1) There is established a fund to be known as the Political Parties' Fund.</p>		

	(2) The Fund shall be administered by the Electoral Commission	(2) The Fund shall be administered by the Electoral and Boundaries Commission.		
94	<p>Sources of the Fund</p> <p>94.(1)The sources of the Fund are-</p> <p>(a) money provided by Parliament each year equal to not more than decimal three percent of the national budget for the preceding financial year; and</p> <p>(b) contributions and donations to the Fund from any other source.</p> <p>(2) The moneys in the Fund not immediately</p>	<p>Sources of the Fund</p> <p>94. (1) The sources of the Fund shall be-</p> <p>(a) money provided by Parliament each year equal to not more than decimal three percent of the national budget for the preceding financial year;</p> <p>(b) contributions and donations to the Fund from any other source.</p> <p>(2) The moneys in the Fund not</p>		

	required for payment to political parties shall be invested in such securities as may be approved by Treasury.	immediately required for payment to political parties shall be invested in such securities as may be approved by the Treasury		
<i>New (p)</i>	<p>Purposes of the Fund</p> <p>95.</p> <p>(1)Moneys allocated to registered political party from the Fund shall be used only-</p> <p>(a) to cover the election expenses of the political party and the broadcasting of the policies of the political party;</p>	<p>Purposes of The Fund</p> <p><i>95.(1)The purpose of the Fund is to provide financial support to registered political parties in the discharge of their roles and functions under Article 88.</i></p> <p>(2) Moneys allocated to a registered political party from the Fund shall be used only-</p> <p>(a) to cover the election expenses of the political party and the broadcasting of the policies of the political party;</p>		(1) this is to allow the political parties use the funds in the discharge of their roles and functions as spelt out in the constitution or any other statute.

<p><i>New (q)</i></p>	<p>(b)for the organization by the political party of civic education in democracy and the electoral processes; and</p> <p>(c)not more than ten percent for the administrative expenses of the party.</p> <p>(2) Moneys allocated by the Electoral Commission to a political party shall not be used for-</p> <p>(a) paying directly or indirectly remuneration, fees, rewards, or any other benefit to a member or supporter of the party; and</p> <p>(b) any other purpose incompatible with</p>	<p>(b) for the organization by the political party of civic education in democracy and the electoral processes;</p> <p>(c) not more than ten percent for the administrative expenses of the party; or</p> <p><i>(d)for the discharge of any of the roles or functions under Article 88.</i></p> <p>(3) Money allocated to a political party shall not be used for -</p> <p>(a) paying directly or indirectly remuneration, fees, rewards or any other benefit to a member or supporter of the party; and</p> <p>(b)any other purpose incompatible with the</p>		
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<p><i>New (r)</i></p>	<p>the promotion of a multi-party democracy.</p> <p>(3) Fifty per cent of the moneys allocated by Parliament shall be distributed equally among political parties each of which obtained not less than five per cent of the total votes cast at the previous parliamentary elections, and the remaining fifty per cent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women candidates elected in each party.</p>	<p>promotion of a multi-party democracy.</p> <p>(4):Thirty percent of the moneys allocated by Parliament to the Political Parties' Fund shall be distributed equally among the registered Political Parties annually; and the remaining seventy percent shall be paid proportionately by reference to the number of votes secured by each political party in the previous National Assembly elections and the number of women candidates and special interest groups elected or nominated at that election.</p> <p><i>(5) A political party that has not for each of the two previous general elections secured at least one seat in the National Assembly or a</i></p>		<p>(4): this is to act as an incentive for political parties to involve more women and special interest groups in the electoral process.</p> <p>The portion that should be distributed equally is to ensure that all political parties have an equal opportunity in the electoral process.</p>
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		<i>council of devolved government shall not qualify for funding under sub Article (4) above.</i>		
96	<p>Other sources of funds for political parties</p> <p>96. (1) The sources of other funds for a political party are-</p> <p>(a) subscriptions and contributions from the members and supporters; and</p> <p>(b) donations to the party by the members and supporters.</p> <p>(2) Parliament shall specify the maximum donation that an individual or a corporation can make to a political party.</p> <p>(3) A political party</p>	<p>Other Sources of Funds for Political Parties</p> <p>96. (1) The sources of other funds for a political party shall be -</p> <p>(a) subscriptions and contributions from the members and supporters of the party;</p> <p>(b) donations to the party by members and supporters of the party.</p> <p>(2) Parliament shall specify the maximum donation that an individual or a corporation can make to a political party.</p> <p>(3) A political party shall,</p>		(3): the parties should go by the

	<p>shall within three months after the end of its financial year publish the sources of its funds stating</p> <p>(a) the amount of moneys received from the Electoral Commission,</p> <p>(b) the amount of moneys received from its members and supporters, and</p> <p>(c) the donations given to the party, the source of the donation and the amounts of the donations.</p> <p>(4) The accounts of a political party shall be audited by the Auditor-General annually and the accounts so audited and the auditor's report shall be forwarded to Parliament</p>	<p>within three months after the end of the Government financial year, publish the sources of its funds clearly stating amounts received from-</p> <p>(a) the Political Parties Fund;</p> <p>(b) subscriptions and contributions from its members and supporters;</p> <p>c) donations to the party by its members and supporters, giving details of each donation.</p>		<p>government's financial year because they will be funded by the state.</p> <p>(b): the sources of the monies should be clearly stated.</p> <p>(c): the sources of the monies should be clearly stated.</p>
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	<p>and the Electoral Commission.</p> <p>(5) A person who is not a citizen may not make a donation to a political party.</p>			<p>(5): political parties should be allowed to solicit funds from anywhere without any restriction</p>
<p>New 5.</p>		<p><i>Books and Records of Account and Audit</i></p> <p><i>96A (1) A political party shall keep proper books and records of accounts in a form approved by the Auditor General.</i></p> <p><i>(2) Within three months after the end of the Government financial year, a political party shall submit its books and records of accounts to the Auditor General for audit.</i></p> <p><i>(3) The Auditor General shall, within three months of the submission of the accounts to the Auditor General under clause (2),</i></p>		<p>96A encompasses what was in Article 90 (4) to (7).</p>

		<p><i>audit the accounts and submit the report on the audit to the political party.</i></p> <p><i>(4) After receipt of the audited accounts and the Auditor General's report, the political party shall -</i></p> <p><i>(a) within one month publish the accounts and the report in the Kenya Gazette and the national newspapers; and</i></p> <p><i>(b) submit the accounts and report to the Electoral and Boundaries Commission and Parliament.</i></p>		
97	<p>Supervision of political parties</p> <p>97. (1) The Electoral Commission shall supervise the conduct of the elections to offices and committees of a political party.</p>	<p>Supervision of Political Parties</p> <p>97 (1) The Electoral and Boundaries Commission shall supervise the general conduct of political parties.</p>		

	<p>(2) A political party shall, within seven months after the end of its financial year, submit to the Electoral Commission an annual report on its activities including the auditor's report on its accounts.</p> <p>(3) The annual report of a political party may be inspected during normal office hours by any person.</p> <p>(4) The Electoral Commission shall, by order, prescribe the maximum amounts of moneys that a political party may spend on each of its candidate for election to a public office, and the amounts of money that an independent candidate may spend on an election to a</p>	<p>(2) A political party shall, within seven months after the end of the Government financial year, submit to the Electoral and Boundaries Commission an annual report of its activities.</p> <p>(3) The annual report of a political party may be inspected during normal office hours by any person.</p> <p>(4) The Electoral and Boundaries Commission shall, by statutory order, prescribe the maximum amount of money that a political party may spend on each of its candidate, and the amount an independent</p>		<p>(2): the parties should go by the government's financial year because they will be funded by the state.</p>
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	public office	candidate can spend for election to a public office.		
98	<p>Party Discipline 98. (1) The constitution or the Articles of association of a political party shall contain provisions that ensure internal discipline consistent with the principles of democracy, justice and the rule of law.</p> <p>(2) A political party shall not punish a Member of Parliament of the party for anything said in Parliament by the member in exercise of the privileges of freedom of speech in Parliament.</p>	<p>Party Discipline 98. (1) The constitution or the articles of association of a political party shall contain provisions that ensure internal discipline of the members of the party, consistent with the principles of democracy, justice and the rule of law.</p> <p>(2) A political party shall not punish a Member of the National Assembly of the party for anything said in Parliament by that member in the exercise of the privilege of freedom of speech in Parliament.</p>		

<p><i>New (s)</i></p>	<p>(3) A political party shall conduct its affairs in a manner that promotes democracy and peaceful politics.</p> <p>(4) A Member of Parliament or local council who resigns from the political party that sponsored the member's election loses the seat.</p>	<p>(3) A political party shall conduct its affairs in a manner that promotes democracy and peaceful politics.</p> <p>(4) A Member of the National Assembly or a local council who resigns from a political party that sponsored the member's election shall lose the seat in the National Assembly or the Council.</p> <p><i>(5) A person sponsored by a political party for election to a public office shall be bound by the policies, ideology, philosophy and the manifesto of the party.</i></p>		<p>(5): a leader elected on a party's ticket should stand by the party's position. This will make the elected leaders accountable for any actions officially done by the party. It will also maintain discipline among the members of the political party.</p>
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99	<p>Restriction on use of Public Resources</p> <p>99 Except as provided for in this Chapter a person, whether or not a member of a political party, shall not use public resources to promote the interests of a political party.</p>	<p>Restriction on use of Public Resources</p> <p>99.Except as is provided under this Chapter or any law made by Parliament, a person shall not, whether the person is a member of a political party or not, use public resources to promote the interests of a political party.</p>		
100	<p>Restriction on holding of office in political parties</p> <p>100 The President and public officials of and above the rank of Deputy Secretary shall not hold office in a political party.</p>	<p>Restriction on Holding Political Party Office</p> <p>100 The President, Vice-President, Prime Minister, Deputy Prime Minister, a Minister, Deputy Minister or any Public Officer shall not hold any elective office in a Political Party.</p> <p>Representation of the</p>		<p>100: All public officials should remain politically non-partisan and should therefore not be actively involved in the activities of a political party.</p>

<p>New 6</p>		<p>people at international bodies and missions</p> <p>100A (1) Parliament shall enact laws governing:-</p> <p>(a) the Constitution of national delegations to international meetings, conferences or other fora for the negotiation of treaties, conventions and other agreements;</p> <p>(c) the election or nomination of representatives to international legislative bodies subject to the relevant treaties or agreements;</p> <p>(2) In the exercise of his or her duties under Article 151(7)(a) the President shall, among others, be guided by the principles of professionalism, gender equity, integrity, moral probity and the diversity of the people of Kenya.</p>		<p>There is need to have specific criteria on how representatives of Kenya at international fora and treaty making conferences as these agreement affect the people of Kenya.</p>
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6 **DECISIONS REACHED BY THE COMMITTEE AS
RECOMMENDATIONS TO THE CONFERENCE**

- Article 76(1) be adopted with amendment.
- Article 76(2) be adopted with amendment.
- Article 76(3) be adopted with amendment.
- Article 76(4) be adopted without amendment.
- Article 76(5) be adopted with amendment.
- Article 76(6) be adopted with amendment.
- A new sub-Article 76(7) be inserted.
- A new sub-Article 76(8) be inserted.
- Article 77(1) be adopted without amendment.
- Article 77(1) be adopted with amendment.
- Article 77(1) (b) be adopted without amendment.
- Article 77(1) (c) be adopted without amendment.
- Article 77(1) (d) be adopted without amendment.
- Article 77(1) (e) be adopted without amendment.
- Article 77(1)(f) be adopted without amendment.
- Article 77(1)(g) be adopted without amendment.
- Article 77(2) (a) be adopted with amendment.
- Article 77(2)(b): deleted from the Draft Bill.
- Article 77(2)(c): deleted from the Draft Bill.
- A new sub-Article 77(3) inserted into the Draft Bill.
- A new sub- Article 77(4) inserted into the Draft Bill.
- Article 78(1) be adopted without amendment.
- Article 78(2) be adopted with amendment.
- A new sub Article 78(3) be inserted.
- Article 79(1) be adopted without amendment.
- Article 79(1)(a) be adopted without amendment.
- Article 79(1)(b) be deleted from the Draft Bill.
- Article 79(1)(c) to be adopted without amendment.
- Article 79(2) be adopted without amendment.
- Article 80(1) be adopted without amendment.
- Article 80(1)(a) be adopted without amendment.
- Article 80(1)(b) be adopted without amendment.
- Article 80(2) be adopted without amendment.
- Article 81 (Preamble) be adopted without amendment.
- Article 81(a) be adopted without amendment.
- Article 81(b) be adopted with amendment.
- Article 81(c) be adopted without amendment.
- A new paragraph 81(d) be inserted.
- A new paragraph 81(e) be inserted.

- A new paragraph 81(f) be inserted.
 - Article 82(1) be adopted with amendment.
 - Article 82(2) be adopted with amendment.
 - Article 82(3) be inserted into the Draft Bill.
 - Article 83 (1) be adopted without amendment.
 - Article 83(1) (a) be adopted without amendment.
 - Article 83(1) (b) be adopted with amendment.
 - A new sub article 83(1)(c) be inserted.
 - Article 83(2) be adopted with amendment.
 - Article 83 (3) be adopted with amendment:
 - Article 83 (4) be adopted without amendment.
 - Article 83(5) be adopted without amendment.
 - Article 83(6) be adopted without amendment.
 - Article 83(7) be adopted without amendment.
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- Article 84(1)(a) be adopted without amendment.
 - Article 84(1)(b) be adopted without amendment.
 - Article 84(1)(c) be adopted with the amendment.
 - Article 84(1)(d) be adopted without amendment.
 - Article 84(1)(e) be adopted without amendment.
 - Article 84(1)(f) be adopted without amendment.
 - Article 84(1)(g) be adopted without amendment.
 - Article 84(1)(h) be adopted without amendment.
 - Article 84(1)(i) be adopted without amendment.
 - A new Article 84(1)(j) be inserted.
 - Article 84(2) be adopted without amendment.
 - Article 85 be adopted with amendment.
 - Article 86(1) be adopted without amendment.
 - Article 86(2) be adopted with amendment.
 - Article 86(2) (a) be adopted without amendment.
 - Article 86(2) (b) Adopted without amendment.
 - A new sub-article 86(2)(b)(vii) inserted.
 - Article 86(3) Adopted with amendment.
 - Article 86(4) Adopted without amendment.
 - A new article 86A inserted.
 - Article 87(1) Adopted without amendment.
 - Article 87(2) Adopted without amendment.
 - Article 87 (3) Adopted with amendment.
 - Article 88 Adopted without amendment.
 - Article 89 (1): be adopted without amendment.
 - Article 89 (1)(a): be adopted without amendment.
 - Article 89 (1)(b): rejected.
 - Article 89 (1)(c) be adopted without amendment.
 - Article 89 (1)(d): rejected.

- Article 89 (1)(e): rejected.
- Article 89 (1)(f) be adopted without amendment.
- Article 90 (1) be adopted with amendment.
- Article 90 (1) (a) be adopted without amendment.
- Article 90 (1) (b) be adopted with amendment.
- Article 90 (1) (c) be adopted without amendment.
- Article 90 (2) be adopted with amendment.
- Article 90 (2) (a) be adopted without amendment.
- Article 90 (2) (b) be adopted without amendment.
- Article 90 (3) be adopted without amendment.
- Article 90 (4) be adopted without amendment.
- Article 90 (5) be adopted without amendment.
- Article 90 (6) be adopted without amendment.
- Article 90 (7) be adopted without amendment.
- Article 91 be adopted without amendment.
- Article 92 (1) be adopted with amendment.
- Article 92(1)(a) be adopted without amendment.
- Article 92(1)(b) be adopted without amendment.
- Article 92 (1) (c) be adopted without amendment.
- Article 92 (1) (d) be adopted without amendment.
- Article 92 (1)(e) be adopted with amendment.
- Article 92(1)(f) be adopted without amendment.
- Article 92 (2) be adopted with amendment.
- Article 92 (3) be adopted with amendment.
- Article 93 (1) be adopted without amendment.
- Article 93 (2) be adopted without amendment.
- Article 94 (1) be adopted without amendment.
- Article 94 (1) (a) be adopted without amendment.
- Article 95(3) adopted with amendment.
- Article 96(1) be adopted without amendment.
- Article 96(1)(a) be adopted without amendment.
- Article 96(1)(b) be adopted without amendment.
- Article 96(2) be adopted without amendment.
- Article 96(3) be adopted with amendment.
- Article 96(3)(a) be adopted without amendment.
- Article 96(3)(b) be adopted with amendment.
- Article 96(3)(c) be adopted with amendment.
- Article 96(4) be adopted without amendment.
- Article 96(5) be deleted from the Draft Bill.
- Article 97(1) be adopted without amendment.
- Article 97(2) be adopted with amendment.
- Article 97(3) be adopted without amendment.
- Article 97(4) be adopted without amendment.
- Article 98(1) be adopted without amendment.

- Article 98(2) be adopted without amendment.
- Article 98(3) be adopted without amendment.
- Article 98(4) be adopted without amendment.
- A new Article 98(5) be inserted into the Draft Bill.
- Article 99 be adopted without amendment.
- Article 100 be adopted with amendment.

APPENDICES

APPENDIX I: MINORITY REPORT

General principles

Delegates opposed to the amendment made to Article 76 to include the new sub Article (7) were of the view that all generations are already catered for under sub Article 76(4) which states that:-

Elections shall ensure fair representation of the people

- Minority delegates were of the view that the word '**people**' applies to all generations hence the proposed sub Article 76(7) is rendered otiose since it is accommodated under sub Article 76(4).

Minority position requested to be reported and stated by Hon. delegate Joshua Toro (168, MP)

- Delegates opposed to the amendment made to Article 76 to include the new sub Article (8) were of the view that the proposed sub Article (8) is inappropriate because holders of elective offices are determined by the electorate. As such, the electorate should be left to determine who represents them. They further argued that the two-term period is inadequate for anyone elected to achieve much for the people he/she represents. They also added that politics is like any other career in which time is a crucial factor in enabling a person rise up the ladder pointing out that those politicians who rise to higher levels of power e.g. presidency have had to be MPs for a long time and therefore to restrict them to two terms will not enable leaders to mature in politics before assuming higher offices.

Minority position requested to be reported and stated by Hon. delegate Joshua Toro (168, MP)

- Delegates who were opposed to the deletion of Article 79(1)(b) were of the opinion that it should be left as the paragraph would also serve other levels of elections in the devolution system apart from just Parliamentary elections.

Minority position requested to be reported and stated by Hon. delegate Isaac Kibwage (482, Professional Organizations)

APPENDIX II
FORMAL MOTIONS FOR AMENDMENT OF THE DRAFT BILL

1. That Article 76(1) be amended by inserting the word **'eligible'** between the words **'citizens'** and **'to'**
(Hon. Richard Kibagendi 428, Nyamira)
2. That Article 76(1) be amended by inserting the words **“only indigenous Kenyan citizens”** between the words **‘and’** and **‘to’** in the Sub-Article.
(Hon. Ngorongo Makanga 605, Political Parties)
3. That Article 76(1) as amended be further amended by deleting the words **'legislative and executive'** and inserting the words **'all elective'** in place thereof.
(Hon. Jane Kamwaga, 309, Muranga)
4. That Article 76 (2) be amended by deleting the word **'is'** and inserting the words **'shall be'** in place thereof.
(Hon. Isaac Kibwage, 482, professional organizations)
5. That Article 76(3) be amended by inserting the words **'campaigns, nominations and'** before the word **'elections'**
(Hon. Geoffrey Mbuba M'thigaa, 277, Meru South)
6. That sub Article 76(3) be amended by deleting the word **'are'** and inserting the words **'shall be'** in place thereof
(Hon. Rashmin Chitnis, 543, Religious Organizations)
7. That Article 76(4) as renumbered be amended by deleting the words **'fair'** and **'the people'** and inserting the words **'equitable'** and **'men and women'** respectively in place thereof.
(Hon. Mary Kanyi, 467, NGOs)
8. That Article 76(5) as renumbered be amended by deleting the words **'the disabled and minorities'** and inserting the words **'workers through the labour movement and marginalized communities and for that purpose the state shall take the necessary Affirmative Action'**
(Hon. Ngorongo Makanga, 605, political parties)
9. That Article 76(5) as amended be further amended to read:
elections shall ensure fair representation of women, persons with disability, workers through the labour movement and marginalized communities and for that purpose the state shall take the necessary Affirmative Action measures.
(Hon. Ngorongo Makanga, 605, political parties)

10. That Article 76(5) of the Zero Draft be amended by adding the word **“including Kenyans in the Diaspora”** between the words ‘communities’ and ‘and’ to read:
Elections shall ensure fair representation of women, persons with disabilities, workers through the workers’ organizations and marginalized communities, including Kenyans in the Diaspora, and for that purpose the state shall take the necessary affirmative action measures.
(Hon. Luseno Liyai)
11. That Article 76 (5) as amended be further amended to read:
Elections shall ensure the upholding of the principle of equity and equality of representation of both women and men, exercise Affirmative Action for people with disability, workers through their trade unions and other marginalized groups and communities.
(Hon. Maria Nzomo, 498, women's organizations)
12. That the words **“Labour Movement”** be deleted wherever they appear in Chapter Six and the words **“Workers Organizations”** be inserted in place thereof.
(Hon. Mbuba M’thigaa)
14. That Article 76(6) be amended by deleting the word **'are'** and the words **'shall be'** inserted in the place thereof.
(Hon. Mbuba M’thigaa, 277, Meru South)
15. That Article 76(6) as amended be further amended by inserting the words **'or any form of'** between the words **'political'** and **'interference'**.
(Hon. Maria Nzomo, 498, women's organizations)
16. That Article 76 be further amended by inserting a new sub Article 76(7) immediately after Article 76(6) to read:
Elections shall ensure inter-generational equity
(Hon. Kenneth Njiru, 609, political parties)
17. That Article 76 be further amended by inserting a new sub Article 76(8) immediately after sub Article 76(7) to read:
All those in elective offices shall serve for two terms and may seek re-election after a five-year break.
(Hon. Luseno Liyai, 601, political parties)
18. **That Article 76(8) be deleted in its entirety from the Zero Draft.**
(Hon. David Wakahu)
19. That Article 77(1) be amended by deleting the words **'subject to any provisions in the constitution'** appearing in the first line.
(Hon. Maria Nzomo, 498, women's organizations)

20. That Article 77(1) (b) be **deleted** form the Draft Bill
(Hon. George Muchai, 409, trade unions)
21. That Sub-Article 77(1)(a) be amended to read as follows;
“**the number of Constituencies for the election of Members of Parliament, Regional Councils, District Councils and Locational Councils;**“
(Hon. Richard Kibagendi)
22. That, article 77(1)(a) be amended to read as follows:-
“**the number and delimitation of the Constituencies for the election for the elections of Members of the Senate, National Assembly, Regional Councils, District Councils and Locational Councils.**”
(Hon. Richard Kibagendi)
23. That, article 77(1)(c) be renumbered (d) and a new article 77(1)(c) be inserted to read as follows:

“**the nomination of candidates for the election of members to the Senate, which shall be on non-partisan basis.**”
(Hon. Richard Kibagendi)
24. That, a new Sub-Article 77(1)(h) be inserted immediately after 77(1)(g) to read as follows;
“**the application of proportional representation of the people to the nearest five thousand votes cast in an election in order to reduce representation imbalances-**”
(Hon. Ngorongo Makanga)
25. That, Sub-Article 77(2)(a) be amended to read as follows;
“**A Political Party shall adhere to the affirmative action principles in its nominations for direct elections.**”
(Hon. Mary Kanyi)
26. That, Sub-Article 77(2)(b) and (c) be **deleted**.
(Hon. Kenneth Njiru)
27. That Article 77(2) be amended by deleting the whole of the Sub-Article and replacing with the following 77(2). “**A person wishing to stand as a candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit**”.

(Hon. Richard Kibagendi)
28. That Article 77(1)(d) be **deleted** from the Draft Bill.
(Hon. Rashmin Chitnis,543, Religious Organizations)

29. That, a new Sub-Article 77(3) be inserted immediately after Sub-Article 77(2) to read as follows;
“In order to ensure that at least the one third principle of Affirmative Action for women representations in the Lower House, every District or Borough shall be considered an electoral unit for that purpose.”
(Hon. Rhoda Loyor)
30. That, a new Sub-Article 77(4) be inserted immediately after Sub-Article 77(3) to read as follows;
“Five per cent of the seats in the Lower House shall be reserved for special interest groups, that is, persons with disability, the youth, workers through Trade Union Movement and other minorities; and at least one third of the members in these categories shall be women.”
(Hon. Miriam Muto)
31. That, article 77(4) be amended to read as follow:
“In the interest of Affirmative Action five per cent of the seats in the National Assembly and eight point five percent in the Senate shall be reserved for special interest groups, that is, persons with disability, the aged, workers through the Labour Movement and other minorities; provided that at least one third of the seats go to the marginalized gender.”
(Hon. Richard Kibagendi)
32. That Article 77(6) renumbered 77(5) of the Zero Draft be amended by inserting the words “and devolved governments” between the words ‘Assembly’ and ‘eight’ in the preamble of the Article
(Hon. George Muchai)
33. That, a new Sub-Article 77(6) be included in the Zero Draft to read as follows:
the Principle of maintaining at least one-third Affirmative Action for the marginalized gender under Sub-Article (4) above shall apply for the Senate and devolved governments and shall further ensure that at no time will one gender have more than two-thirds representation.
(Hon. George Muchai)
34. That Article 78(1) be amended by deleting the word 'eighteen' and inserting the words 'twenty one' in place thereof.
(Hon. David Wakahu, 612, political parties)
35. That Article 78(1) be amended to read:
All citizens who have attained the age of eighteen years have a right to vote.
(Hon. Luseno Liyai, 601, political parties)
36. That Article 78(1) be amended by inserting the words 'and who is of sound mind' between the words 'above' and 'has'
(Hon. Mary Kanyi, 467, NGOs)

37. That Article 78(2) be amended to read as follows:
Administrative arrangement for the registration of voters and the conduct of elections shall not:
- i) **deny a citizen's right to vote**
 - ii) **deny citizen's right to stand for elections and shall include a system of continuous registration**
 - iii) **deny citizens the right to have continuous registration**
- (Hon. Luseno Liyai 601, political parties)**
38. That Article 78(2) be amended by deleting the words 'or' and therefore inserting the words 'and an indigenous Kenyan citizen.'
(Hon. Ngorongo Makanga)
39. That Article be amended by inserting the words 'civic education' after the word 'registration' appearing in the third line.
(Hon. Raphael Bombo Ndeme, 232, Kwale)
40. That Article 78 be amended by inserting a new sub Article 78(3) immediately after sub Article 78(2) to read:
Voting shall be compulsory for all the registered voters
(Hon. Jacob Ochino, 578, political parties)
41. That Article 78 be amended by inserting a new sub Article 78(3) immediately after sub Article 78(2) to read:
Voting shall be compulsory for all registered voters including prisoners, members of the Armed Forces and staff of diplomatic missions
(Hon. Joel Onyancha, 169, MP)
42. That Article 78 be amended by inserting a new sub Article 78(3) immediately after sub Article 78(2) to read:
Voting shall ensure that the provisions of Article 44(2) of the Draft Bill with regard to observing a day of worship shall not be violated
(Hon. Luseno Liyai, 601, political parties)
43. That Article 79(1)(b) be **deleted** from the Draft Bill:
(Hon. Joshua Toro, 198, MP)
44. That Article 79(1)(c) be **renumbered** 79(1)(b)
(Hon. Richard Kibagendi, 428, Nyamira)
45. That Article 79(b) as renumbered be **deleted** from the Draft Bill
(Hon. Joshua Toro, 198, MP)
46. That Article 80(1)(a) be **deleted** from the Draft Bill
(Hon. Joshua Toro, 198, MP)

47. That Article 80(1) (b) be **deleted** from the Draft Bill
(Hon. George Muchai, 439, Trade unions)
48. That Article 80(2) be amended by deleting the words '**High Court**' and inserting the words '**Electoral Commission of Kenya**' in place thereof.
(Hon. Jacob Ochino, 578, political parties)
49. That Article 81(b) be amended to read:
Where the ballot box is used, it shall be transparent
(Hon. Rhoda Loyor, 321, Turkana)
50. That Article 81(c) be amended to read:
The votes cast shall be counted, tabulated and the results announced immediately by the presiding officer at the polling station
(Hon. Luseno Liyai, 601, political parties)
51. That a new paragraph 81(d) be inserted immediately after sub Article 81(b) to read:

The results from the polling station are transparently and accurately collated and announced by the Returning Officer.
(Hon. Richard Kibagendi, 428, Nyamira)
52. That a new paragraph 81(e) is inserted immediately after sub Article 81(d) to read:
Where an electronic system is used, it shall be simple and validated
(Hon. Isaac Kibwage, 482, professional organizations)
53. That a new paragraph 81(e) be inserted immediately after sub Article 81(d) to read:
If the total votes cast are less than 33% of the registered voters, then the Returning Officer shall declare that particular constituency unrepresented for that electoral period
(Hon. Kenneth Njiru, 609, political parties)
54. That a new sub Article 81(e) be inserted immediately after sub Article 81(d) to read:
Special arrangements are made to accord members of the Armed Forces, police, staff of diplomatic missions, those living or working abroad, prisoners, election officials and those admitted in hospitals opportunity to vote.
(Hon. George Muchai, 439, Trade Unions)
55. That a new paragraph 81(f) be inserted immediately after sub Article 81(e) to read:

There is a provision for a 'none of the above' vote

- i) In the event that half of the votes cast are 'none of the above', the Returning Officer shall declare that particular election void**
- ii) Following such declaration, the Electoral Commission shall organize within four months of the 'none of the above' vote, a new election, and**
- iii) All candidates against whom such vote was cast shall be ineligible for the subsequent election.**

(Hon. Kenneth Njiru, 609, political parties)

56. That a new paragraph 81(f) be inserted immediately after sub Article 81(e) to read:

Where no candidate garners more than 50% of the votes cast a second election is held between the two lead candidates within two months.

(Hon. Isaac Kibwage, 482, professional organizations)

57. That a new paragraph 81(f) be inserted immediately after sub Article 81(e) to read:

Appropriate structures and mechanisms to eliminate all forms of electoral malpractices are put in place, including the safe keeping of all election materials.

(Hon. Mary Kanyi, 467, NGOs)

58. That a new paragraph 81(g) be inserted immediately after sub Article 81(f) to read:

The election date shall fall within the months of a dry season preferably the month of August on any Tuesday.

(Hon. Jacob Ochino, 578, political parties)

59. That, Sub-Article 82(2) be amended to read as follows;

“After the votes have been counted under clause (I) the candidate shall be declared elected.”

(Hon. Richard Kibagendi)

60. That a new Sub-Article 82(3) be inserted immediately after 82(2) to read as follows;
“Parliament shall enact legislation to provide for the implementation of the provisions of clause (1).”

(Hon. Kenneth Njiru)

61. That Sub-Article (1)(a) (of the Draft new Articles) be amended to read as follows;

“is an indigenous Kenyan citizen.”

(Hon. Mary Kanyi)

62. That Sub-Article (1)(d) be amended to read as follows;

“is nominated by at least 100 delegates at the Locational level, 200 delegates at the Constituency level, 500 delegates at the district level and 1000 delegates at the Regional level.”

(Hon. Peter Nyanducha)

63. That, Sub-Article 1(f) be amended to read as follow;
“has attained at least form four, standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified and provided that for Locational Councils one will only be required to be able to read and write; and”

(Hon. Godfrey Mbuba M’thigaa)

64. That, Sub-Article (1)(g) be amended to read as follows:
“satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament.”

(Hon Kenneth Njiru)

65. That, the title of Part II be changed to “Electoral and Boundaries Commission”

(Hon. Isaac Kibwage)

66. That sub-article 83(1)(b) be amended by inserting the following words immediately after the word **“members”** appearing in the third line **“of whom one third shall be from the marginalized gender and twenty per cent from persons with disability.”**

(Hon. Miriam Muto)

67. That, sub-article 83(1)(b) be further amended to read as follows:-

“Not less than eight and not more than twenty-one members of whom one third shall be from the marginalized gender and ten per cent from persons with disability.”

(Hon. Joshua Toro)

68. That, Sub-Article 83(1)(b) as amended be further amended to read as follows;

“not less than eight and not more than twenty-one other members consisting of proportionality of men and women, one third from women organizations, people with disability, from non-governmental organizations, religious organizations, political parties, the labour movement, professional organizations, special interest groups and marginalized communities and one third of whom shall be women.”

(Hon. Luseno Liyai)

69. That Article 83(1)(b) be amended by deleting the words **“eight”** and **“twenty-one”** in the paragraph and inserting the words **“two”** and **“ten”** respectively in places thereof.

(Hon. Luseno Liyai)

70. That a new paragraph 83(1)(c) be inserted immediately after 83(1)(b) to read as follows:
“(c) Membership whose outlook shall reflect the principle of inter-generational equity.”
(Hon. Danny Irungu)
71. That, Sub-Article 83(2) be amended to read as follows:
“The Chairperson and other Members of the Commission shall be nominated by the National Assembly and appointed by the President.”
(Hon. Sophie Lepuchirit)
72. That, Sub-Article 83(2) be amended to read as follows;
“Political parties shall nominate members of the Commission from which the President shall appoint the Chairperson and members of the Commission with approval of the National Assembly.”
(Hon. Richard Kibagendi)
73. That, article 83(2) be further amended to read as follows;
“political parties, civil society, women organizations, religious organizations, persons with disabilities and minority groups will nominate members of the Commission from which the president shall appoint the Chairperson and members of the Commission with the approval of the National Assembly.”
(Hon. Danny Irungu)
74. That Sub-Article 83(3) be amended by inserting the words **“who will be of the opposite gender from the Chairperson”** between the words **“Vice-Chairperson”** and **“from”**
(Hon. Jane Kamwaga)
75. That Article 83(5) be amended by deleting the words **“held or is qualified to hold office of a judge of Superior Court of Record”** and inserting the words **“experience and adequate qualifications relevant to the functions of the Commission”** in place thereof.
(Hon. Richard Kibagendi)
76. That sub-article 84(1)(b) be amended by inserting the word **“efficient’** between the words **“the”** and **“conduct.”**
(Hon. George Muchai)
77. That Sub-Article 84(1)(e) be **deleted.**
(Hon. Luseno Liyai)
78. That Sub-Article 84(1)(g) be **deleted;**
(Hon. Raphel Ndeme)

79. The at a new Sub-Article 84(1)(j) be inserted immediately after Sub-Article 84(1)(i) to read as follows:
“clearing of all Presidential, Parliamentary and devolved governments candidates in consultation with the Ethics and Integrity Commission.”
(Hon. Luseno Liyai)
80. That, Article 85 be amended to read as follows;
“The Electoral Commission shall appoint the officers and other employees of the Commission except for the Administrative Secretary who shall be appointed by the President with the approval of the National Assembly.”
(Hon. Richard Kibagendi)
81. That, Article 85 as amended be further amended to read as follows;
“The Electoral Commission shall appoint the officers and other employees of the Commission.”
(Hon. Orwa Ojode)
82. That Article 86(1) of the Zero Draft be amended by adding the words **“ and also make recommendations concerning the fixing, review and variation of boundaries of regions, districts and locations”** at the end of the Sub-Article.
(Hon. Kathini Maloba Caines)
83. That, Sub-Article 86(2) be amended by inserting the words **“and naming”** between words **“boundaries”** and **“of.”**
(Hon. Orwa Ojode)
84. That, Sub-Article 86(2)(b) be amended to read as follows;
“take account of population density and the need to ensure adequate representation for urban and sparsely populated rural areas and”
(Hon. Sophie Lepuchirit)
85. That, a new Sub-Article 86(2)(b)(vii) be inserted immediately after Sub-Article 86(2)(b)(vi) to read as follows:
“the voters’ register and the proportional representation to the nearest five thousand registered voters.”
(Hon. Ngorongo Makanga)
86. That, a new Sub-Article 86(2)(c) be inserted immediately after Sub-Article 86(2)(vii) to read as follows;
“That the Electoral Commission shall ensure that all existing districts and future ones shall have a minimum of two (2) Parliamentary Constituencies.”
(Hon. Godfrey Mbuba M’thigaa)
87. That a new sub-Article 86(2)(c) be inserted immediately after sub-Article 86(2)(b)(vii) to read as follows:

(2)(c) have regarded to viability, sustainability and effectiveness of the region, districts or location taking into account:-

- i) Population and area
- ii) Historical and cultural ties
- iii) Economic and natural resources
- iv) Objects and principles of devolution of government.
- v) after consultation with the governments of any region, district and location affected and recommendation of the electoral commission, Parliament may by enactment vary the boundaries of regions, districts or locations.
- vi) no such an enactment can have effect to abolish any region or district or to create a new region or district otherwise than by amendment of the constitution.

(Hon. Kathini Maloba Caines)

88. That, Sub-Article 86(3) be amended to read as follows;
“the Commission shall every ten years or sooner carry out a review and make necessary alterations of the names and boundaries of constituencies.”
(Hon. Orwa Ojode)

89. That a new Article 86A be inserted immediately after Article 86 to read as follows;
“86A Appeal on Decision or Order of Electoral Commission.
Any person aggrieved by a decision or order of Electoral Commission in the discharge of its functions may appeal to a court of law and Parliament shall enact a law providing for the procedure and the shortest period within which a court may dispose of the appeal.”
(Hon. George Muchai)

90. That a new article 86B be inserted immediately after the Article 86A to read as follows;

86B - Electoral Offences

“The Electoral Commission shall prosecute all electoral offences in a court of law.”

(Hon. Kenneth Njiru)

91. That Sub-Article 87(3) be amended by deleting the word “may” and inserting the word “shall” in place thereof.

(Hon. David Mpilei)

92. That Article 89 be amended to read as follows:

89(1) There shall be established the office of the Registrar of Political Parties under the office of the Attorney General whose functions shall be-

- (a) to register, keep and maintain the register of all political parties;
- (b) to supervise the activities of political parties;
- (c) to arbitrate in party and inter-party disputes;
- (d) to promote civic education in democracy; and
- (e) to maintain political parties library and archives.

(Hon. Luseno Liyai)

93. That, Sub-Article 89(1) be amended to read as follows;
“There shall be an independent office of Registrar of Political Parties which shall register, keep and maintain a register of political parties.”
 (Hon. George Muchai)
94. That Article 89(1) be amended by deleting the words “under the office of the Attorney General’ in the paragraph.
 (Hon. Richard Kibagendi)
95. That, Sub-Article 89(2) be amended to read as follows;
“Parliament shall enact a law to provide for matters which the register shall contain and for officers who shall work under the Registrar of political parties.”
 (Hon. George Muchai)
96. That a new Sub-Article 89(1)(d) be inserted immediately after Article 89(1)(c) in the draft article to read as follows:
“Supervision of elections of all registered political parties.”
 (Richard Kibagendi)
97. That, Sub-Article 90(1) be amended by deleting the words **“Electoral Commission”** and inserting the word **“Registrar of political parties”** in place thereof.
 (Hon Mary Kanyi)
98. That, Sub-Article 90(1)(a) be amended by inserting the following words immediately after the word **“unity.”**
“and conduct its business in a transparent manner”
 (Hon. David Wakahu)
99. That, Sub-Article 90(1)(b) be amended by inserting the word **“good”** between the words **“of”** and **“governance.”**
 (Hon. Mary Kanyi)
100. That Sub-Article 90(2) be amended by deleting the word **“Electoral Commission”** and inserting the word **“Registrar of political parties”** in place thereof.
 (Hon. Winston Ogolla Adhiambo)

101. That, Sub-Article 90(2)(a) be amended by deleting the words **“or regional”** appearing in the second line.
(Hon. Winston Ogolla Adhiambo)
102. That, a New Sub-Article 90(2)(c) be inserted immediately after sub-article 90(2)(b) to read as follows;
“does not adhere to the provisions of Article 90(1).”
(Hon. Mary Kanyi)
103. That a new Sub-Article 90(8) be inserted immediately after Sub-Article 90(7) to read as follows;
“The political party shall be prohibited from administering oaths on its members.”
(Hon. Jacob Ochino Ogundo)
104. That Sub Article 92(d) be **deleted** from the Zero Draft.
(Hon. Isaac Kibwage)
105. That Sub-Article 92(1)(e) be **deleted** from the Zero Draft.
(Hon. Winston Ogola Adhiambo)
106. That, Sub-Article 92(1)(e) be amended to read as follows;
“has not in any of the two previous general elections secured at least one member of either National Assembly or devolved government levels.”
(Hon. Francis Kagwima)
107. That, Sub-Article 94(1)(b) be amended by inserting the following words immediately after the word **“source”** appearing in the second line **“except non-citizens”**
(Hon. Mohammed Juma Abuti)
108. That, Sub-Article 95(3) be amended by splitting it into (a) and (b) to read as follows;
(a) “All moneys allocated yearly by Parliament to the Political Parties Fund shall be distributed equally to all political parties whose organizational structure shall comprise one third of the marginalized gender and one tenth of persons with disability.
(b) After General Elections, fifty per cent of the Political Parties Fund shall be paid proportionately by reference to the political parties and the number of women candidates elected in each political party”.
(Hon. David Wakahu)
109. That, Sub-Article 95(3) be amended by splitting it into (a) and (b) to read as follows;

(a) **“All moneys allocated yearly by Parliament to the Political Parties Fund shall be distributed equally to all political parties whose organizational structure shall comprise one third of the marginalized gender and one tenth of persons with disability.**

(b) **After General Elections, fifty per cent of the Political Parties Fund shall be paid proportionately by reference to the political parties and the number of women candidates elected in each political party”.**

(Hon. David Wakahu)

110. That a new Sub Article 95 (5) be inserted into the Zero Draft to read as follows:-
“A political party that has not, for each of the two previous general elections secured at least one seat in the National Assembly or a Council of a devolved government shall not qualify for funding under Sub Article (4) above.”

(Hon. Isaac Kibwage (482, Professional Organisations)

111. That, Sub-Article 96(2) be amended by deleting the word **“shall”** and inserting the word **“may”** in place thereof.

(Hon. Rhoda A. Loyor)

112. That, Sub-Article 96(3) be amended by deleting the word **“its”** appearing before the word **“financial”** and inserting the words **“the Government’s”**

(Hon. Orwa Ojode)

113. That, Sub-Article 96(3) be amended by combining (a) and (b) and moving (c) to (b).

(Hon. Orwa Ojode)

114. That Sub-Article 96(3)(b) be amended to read as follows;
“the amount of moneys received as subscription and contributions from its members and supporters; and”

(Hon. Kenneth Njiru)

115. That, Sub-Article 96(5) be **deleted**

(Hon. Joshua Toro)

116. That Sub-Article 97(2) be amended by deleting all the words appearing after the word **“activities”**.

(Hon. Luseno Liyai)

117. That, Sub-Article 97(3) be amended by inserting the word **“interested”** between the words **“any”** and **“person.”**

Hon. Winston Ogola Adhiambo)

118. That, a new Sub-Article 98(5) be inserted immediately after the Sub-Article 98(4) to read as follows;
“Any person sponsored by a political party shall be bound by the policies, ideology, philosophy and the manifesto of the party”
(Hon. Kenneth Njiru)
119. That, Article 100 be amended to read as follows;
“The President, Vice-President, Prime Minister, Deputy Prime Minister, a Minister or Deputy Minister shall not hold office in a political party.
(Hon. Mbuba M’thigaa)
120. That a new Article 100A be included in the Zero Draft immediately after Article 100 to read as follows:-
100A(1) Parliament shall enact laws governing:-
(a) the constitution of national delegations to international meetings conferences or other fora for the negotiation of treaties, conventions and other agreements;
(b) subject to the relevant treaties or agreements, the election or nomination of representatives to international legislative bodies;
- 100A (2) In the exercise of his or her duties under Article 151(7)(a) the President shall, among others, be guided by the principles of professionalism, gender equity, integrity, moral probity and the diversity of the people of Kenya.**
(Hon. Francis Kagwima)

APPENDIX III

TECHNICAL WORKING GROUP C MEMBERS

Convenor: Ms. Caroline Ng'ang'a

	NAME	DELEGATE NUMBER
1	Asenath Nyamu	495
2	Apollo Warrens Tsalwa	383
3	Asiya Mwanzi	537
4	Caroline Ng'ang'a	587
5	Carolyne Ruto	366
6	Danny Irungu	627
7	David O. Mpilei	359
8	David Wakahu	612
9	Emmy Kipsoi	333
10	Eng. Toro	198
11	Fares Ogada	404
12	Fatuma B. Jaldesa	267
13	Francis Kagwima	034
14	Francis Ng'ang'a	436
15	George Muchai	439
16	Helen Mung'athia	533
17	Isaac O. Kibwage	482
18	J. Kirangari Kamwanga	309
19	Jacob Odino	578
20	James Ngusi	450
21	Justus Musyoki Mutweti	293
22	Kenneth Njiru	609
23	Luseno Liyai	601
24	M'thigaa Godfrey Mbuba	277
25	Maria Nzomo	498
26	Mariam Muto	472
27	Mary Wambui Kanyi	467
28	Mohammed Ahmed Khalif	051

29	Mohammed Juma abuti	240
30	Mukhisa Kituyi	067
31	Naftali K. Chelagat	347
32	Nancy C. Ngeywa	387
33	Ngalaatu Musau	295
34	Njoki S. Ndungu	219
35	Onyancha Joel Omagwa	169
36	Orwa Ochieng	418
37	Orwa Ojode	160
38	Peter Nyanducha	434
39	Raphael Ndeme	232
40	Rasmin P. Chitris	543
41	Richard Kibagendi	428
42	Rose Otieno	431
43	Sophia Lepuchirit	327
44	Stephen Tarus	196
45	Winston A. Adhiambo	603

**APPENDIX IV:
AGENDA AND MINUTES OF THE COMMITTEE'S PROCEEDINGS**

NATIONAL CONSTITUTIONAL CONFERENCE

May 26, 2003

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents his compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Monday, May 26, 2003 in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Briefing and introduction of the Committee's mandate
3. Election of Convenor
4. Consideration of Business
5. Any Other Business
6. Date of the Next Sitting

Approved for circulation –Convenor

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIRST SITTING OF TECHNICAL WORKING GROUP NO. C ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY MAY 26, 2003 AT 11.30 A.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

Name	Organization	
1. Hon. Phoebe Asiyu	-	Rapporteur
2. Hon. Adelina Mwau	-	Eastern
3. Hon. Miriam Muto	-	Persons with disabilities
4. Hon. Raphael Ndeme	-	Coast
5. Hon. Chelagat K. Naftali	-	Rift Valley
6. Hon. Mohammed Juma Abuti-		Coast
7. Hon. Fatuma Boru Jaldesa	-	Eastern
8. Hon. Jane K. Kamwaga	-	Central
9. Hon. Hannah N. Kimani	-	Central
10. Hon. Fredrick R. Nderitu	-	Central
11. Hon. Richard N. Kibagendi	-	Nyanza
12. Hon. Rhoda A. Loyor	-	Rift Valley
13. Hon. (Prof.) Maria Nzomo	-	Women
Organization		
14. Hon. Luseno Liyai	-	Political
parties		
15. Hon. Beatrice Kamamia	-	Central
16. Hon. James Ngusi	-	Trade Unions
17. Hon. Hellen Mung'athia	-	Eastern
18. Hon. George Orwa Ochieng	-	Nyanza
19. Hon. Caroline Ng'ang'a	-	Political
Parties		
20. Hon. David Mpilei	-	Rift Valley
21. Hon. Justus M. Mutweti	-	Eastern
22. Hon. Danny Irungu	-	Civil Society
23. Hon. Saipstone Ngalatu Musau	-	Eastern
24. Hon. Apollo Tsalwa	-	Western
25. Hon. Jacob Ochino	-	Political
Parties		
26. Hon. Joel Onyancha	-	Nyanza
27. Hon. Peter Nyanducha	-	Nyanza

28. Hon. Kenneth Njiru Parties	-	Political
29. Hon. Godfrey Mbuba M’thigaa	-	Eastern
30. Hon. Gacuru Wa Karengi	-	Central
31. Hon. Fares Ogada Agua	-	Nyanza
32. Hon. Tabitha Seii Organizations	-	Women
33. Hon. Hezron Nyerere	-	Western
34. Hon. Zeruiya Otawari	-	Western
35. Hon. Raphael Livu	-	Coast
36. Hon. Kigen David	-	Rift Valley

ABSENT

1. Hon. George Muchai	-	Trade Unions
2. Hon. Francis Kagwima	-	Eastern
3. Hon. Isaiah K. Cheruiyot	-	Rift Valley
4. Hon. Sophie Lepuchirit	-	Rift Valley
5. Hon. Emmpy Kipsoi	-	Rift Valley
6. Hon. Sang K.M.	-	Rift Valley
7. Hon. (Eng.) Joshua Toro	-	Central
8. Hon. Orwa Ojode	-	Nyanza
9. Hon. Rose Otieno	-	Nyanza
10. Hon. Njoki S. Ndungu	-	Nairobi
11. Hon. Asiya Mwanzi Organizations	-	Religious
12. Hon. Mohammed A. Khalif	-	North Eastern
13. Hon. Sophia Abdi	-	North Eastern
14. Hon. Isaac O. Kibwage Organizations	-	Professional
15. Hon. (Prof.) Ruth Oniang’o	-	Western
16. Hon. Manu Chandaria Interest Group	-	Special

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Maurice Kepoi Kenya Review Commission	-	Constitutional of

MIN.NO.1/2003 **RAPPORTEUR**

REMARKS BY HON. PHOEBE ASIYO –

Hon. Phoebe Asiyu, Rapporteur, welcomed Members of the Committee to the meeting and briefed them on the rules of procedure governing the elections of the Convenor/Chairperson.

MIN.NO.2/2003

ELECTION OF CONVENOR

The Rapporteur invited Committee members to submit proposals for the post of Convenor.

Hon. Gacuru Wa Kareng'e informed the Committee that the Convenor should be a delegate from Central Province as per a recommendation by the Steering Committee.

This suggestion was rejected by Members of the Committee who reasoned that if the Steering Committee had made a decision then it should have been communicated to the delegates in the plenary but not by one of the Committee Members. The Committee was also of the view that Chairpersonship should be pegged on competence and not on a pre-determined suggestion.

Consequently, three names were proposed and seconded as follows:-

Hon. Caroline Ng'ang'a was proposed by Hon. Raphael Ndeme and seconded by Hon. George Ochieng; Hon. Fredrick Nderitu was proposed by Hon. Gacuru Wa Kareng'e and seconded by Hon. Beatrice Kamamia, while Hon. Maria Nzomo was proposed by Hon. Adelina Mwau and seconded by Hon. Miriam Ruto.

Voting ensued in which Hon. Caroline Ng'ang'a got eight (8) votes, Hon. Fredric Nderitu got nine (9) votes while Hon. Maria Nzomo got twenty (20) votes.

Thereupon the Rapporteur declared Hon. Maria Nzomo elected and the Committee agreed to submit her name to the Steering Committee for nomination as Convenor.

MIN.NO.3/2003

ADJOURNMENT

There being no other business, the Rapporteur adjourned the meeting at thirty minutes past Twelve O'clock until a date to be decided upon later.

SIGNED

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

May 28, 2003

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents his compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Monday, May 28, 2003 in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

7. Prayers
8. Confirmation of Minutes
9. Matters Arising
10. Consideration of Business
11. Any Other Business
12. Date of the Next Sitting

Approved for circulation -Convenor

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE CRISIS MEETING (SECOND SITTING) OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY MAY 28, 2003 AT 11.30 A.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Phoebe Asiyo	- Rapporteur
2. Hon. Adelina Mwau	- Eastern
3. Hon. Miriam Muto Disability	- Person With
4. Hon. Raphael Ndeme	- Coast
5. Hon. Chelagat K. Naftali	- Rift Valley
6. Hon. Jane K. Kamwaga	- Central
7. Hon. Hannah N. Kimani	- Central
8. Hon. Richard N. Kibagendi	- Nyanza
9. Hon. (Prof.) Maria Nzomo	- Women Organization
10. Hon. James Ngusi	- Trade Unions
11. Hon. George Orwa Ochieng	- Nyanza
12. Hon. Caroline Ng'ang'a	- Political Parties
13. Hon. David Mpilei	- Rift Valley
14. Hon. Peter Nyanducha	- Nyanza
15. Hon. Kenneth Njiru	- Political Parties
16. Hon. Gacuru Wa Kareng'e	- Central
17. Hon. Sang K.M.	- Rift Valley
18. Hon. (Prof.) Ruth Oniang'o	- Western
19. Hon. Rhoda A. Loyer	- Rift Valley
20. Hon. Hellen Mung'athia	- Eastern
21. Hon. Godfrey Mbuba M'thigaa	- Eastern

ABSENT

1. Hon. Mohammed Juma Abuti	- Coast
2. Hon. Fatuma Boru Jaldesa	- Eastern
3. Hon. Fredrick R. Nderitu	- Central
4. Hon. Luseno Liyai	- Political Parties
5. Hon. Beatrice Kamamia	- Central
6. Hon. Justus M. Mutweti	- Eastern
7. Hon. Danny Irungu	- Civil Society
8. Hon. Saipstone Ngalatu Musau	- Eastern
9. Hon. Apollo Tsalwa	- Western

10. Hon. Jacob Ochino	-	Political Parties
11. Hon. Joel Onyancha	-	Nyanza
12. Hon. Fares Ogada Agua	-	Nyanza
13. Hon. Tabitha Seii	-	Women Organizations
14. Hon. Hezron Nyerere	-	Western
15. Hon. Zeruiya Otawari	-	Western
16. Hon. Raphael Livu	-	Coast
17. Hon. Kigen David	-	Rift Valley
18. Hon. George Muchai	-	Trade Unions
19. Hon. Francis Kagwima	-	Eastern
20. Hon. Isaiah K. Cheruiyot	-	Rift Valley
21. Hon. Sophie Lepuchirit	-	Rift Valley
22. Hon. Emmpy Kipsoi	-	Rift Valley
23. Hon. (Eng.) Joshua Toro	-	Central
24. Hon. Orwa Ojode	-	Nyanza
25. Hon. Rose Otieno	-	Nyanza
26. Hon. Njoki S. Ndungu	-	Nairobi
27. Hon. Asiya Mwanzi	-	Religious Organizations
28. Hon. Mohammed A. Khalif	-	North Eastern
29. Hon. Sophia Abdi	-	North Eastern
30. Hon. Isaac O. Kibwage	-	Professional Organizations
31. Hon. Manu Chandaria	-	Special Interest Group

IN ATTENDANCE

1. Mrs. Serah Kioko Ndeto	-	National Assembly
2. Mr. Maurice Kepoi	-	Constitutional of Kenya Review Commission

MIN.NO.4/2003

**REMARKS BY HON. PHOEBE ASIYO
RAPPORTEUR**

The Rapporteur called the meeting to order and welcomed members of the Committee to deliberate on the issue of election of Convenor.

MIN.NO.5/2003

**DELIBERATIONS ON THE ELECTION OF
CONVENOR**

Hon. Gacuru Wa Kareng'e proposed that the election of Prof. Maria Nzomo as Convenor be annulled because it did not concur with the memorandum of understanding arrived at by the Steering Committee to apportion seats between provinces.

All members from Central Province strongly defended this position (a model that had apparently been adopted by other Technical Working Groups.)

However, some members of the Committee differed with the decision citing that there was consensus to elect a person who is competent enough to preside over the deliberations of the Committee. Moreover, members had, during an earlier meeting, declined to go by an arrangement that they were not consulted over. Members hence resolved to hold free and fair elections during which Prof. Maria Nzomo won.

Some members of the Committee also pointed out that although they respected the wishes of the Steering Committee, they strongly felt that decisions by the Steering Committee should be communicated to them well in advance so that they do not feel ambushed.

Some members further felt that the decision by the Steering Committee to apportion seats of Committee Convenors by province was flawed because it barred able Kenyans who do not belong to particular provinces from chairing.

In conclusion, the Rapporteur thanked members for making sound contributions. Her final advice to the Committee was that chairmanship should be based on the model used by all other Technical Working Groups, which is appointing the chairpersons, by province.

The Committee concurred with her advice and endorsed the name of Hon. Caroline Ng'ang'a, who had been recommended by Central Province, as the Convenor of the Committee as per the recommendation of the Steering Committee.

MIN.NO.6/2003:

ADJOURNMENT

There being no other business, the Rapporteur adjourned the meeting at twenty minutes past Twelve O'clock until a date to be decided upon later.

SIGNED:.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

August 19 2003

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents his compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Tuesday, August 19, 2003 in Tent No.3, Bomas of Kenya at 3.00pm.

AGENDA

- 13. Prayers
- 14. Confirmation of Minutes
- 15. Matters Arising
- 16. Consideration of Business
- 17. Any Other Business
- 18. Date of the Next Sitting

Approved for circulation -Convenor

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRD SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY AUGUST 19, 2003 AT 3.40 P.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asiya Mwanzi	-	Religious
Organizations		
4. Hon. Carolyne Ruto	-	Rift Valley
5. Hon. David Mpilei	-	Rift Valley
6. Hon. Emmpy Kipsoi	-	Rift Valley
7. Hon. Fredrick R. Nderitu	-	Central
8. Hon. Fatuma Boru Jaldesa	-	Eastern
9. Hon. George Orwa Ochieng	-	Nyanza
10. Hon. Hellen Mung'athia	-	Religious
Organizations		
11. Hon. Isaac O. Kibwage	-	Professional
Organizations		
12. Hon. Isaiah K. Cheruiyot	-	Rift Valley
13. Hon. Jane K. Kamwaga	-	Central
14. Hon. Jacob Ochino	-	Political Parties
15. Hon. Justus M. Mutweti	-	Eastern
16. Hon. Kenneth Njiru	-	Political Parties
17. Hon. Luseno Liyai	-	Political Parties
18. Hon. Godfrey Mbuba M'thigaa	-	Eastern
19. Hon. Mary Kanyi	-	Civil Society
20. Hon. Miriam Muto	-	Person
Disability		With
21. Hon. Mohammed Juma Abuti	-	Coast
22. Hon. Chelagat K. Naftali	-	Rift Valley
23. Hon. Saipstone Ngalatu Musau	-	Eastern
24. Hon. Ngorongo Makanga	-	Political Parties
25. Hon. Joel Onyancha	-	Nyanza
26. Hon. Peter Nyanducha	-	Nyanza
27. Hon. Raphael Livu	-	Coast
28. Hon. Raphael Ndeme	-	Coast
29. Hon. Rhoda A. Loyor	-	Rift Valley
30. Hon. Richard N. Kibagendi	-	Nyanza

31. Hon. Rose Otieno	-	Nyanza
32. Hon. Winston O. Adhiambo	-	Political Parties
33. Hon. Zeruiya Otawai	-	Western
34. Hon. George Muchai	-	Trade Unions
35. Hon. James Ngusi	-	Trade Unions
36. Hon. Tabitha M. Muriuki	-	Religious
Organizations		
37. Hon. Phoebe Asiyo	-	Rapporteur
38. Hon.(Dr.) Mosonik Arap Korir	-	Rapporteur

ABSENT

1. Hon. Dalmas Otieno	-	Nyanza
2. Hon. Danny Irungu	-	Civil Society
3. Hon. (Eng.) Joshua Toro	-	Central
4. Hon. Fares Ogada Agua	-	Nyanza
5. Hon. Francis Kagwima	-	Eastern
6. Hon. Gacuru Wa Kareng'e	-	Central
7. Hon. Hannah N. Kimani	-	Central
8. Hon. Hezron Nyerere	-	Western
9. Hon. Mohammed A. Khalif	-	North Eastern
10. Hon. Mukhisa Kituyi	-	Western
11. Hon. Njoki S. Ndungu	-	Central
12. Hon. Orwa Ojode	-	Nyanza
13. Hon. Sophie Lepuchirit	-	Rift Valley
14. Hon. (Prof.) Maria Nzomo	-	Women
Organizations		
15. Hon. Sang Kipkori Marisin	-	Rift Valley
16. Hon. Manu Chandaria	-	Special Interest
Groups		

IN ATTENDANCE

1. Mrs. Serah Kioko Ndeto	-	National Assembly
2. Mr. Maurice Kepoi	-	Constitution of Kenya
Review Commission		

MIN.NO.7/2003

PRELIMINARY

The Chairperson/Convenor called the meeting to order at forty minutes past Three O'clock and welcomed Members of the Committee back after the two and half months break. She conducted a roll-call to identify *bona fide* members of the Committee and then invited Members to introduce themselves, which they did by stating their names, and the organization they represented.

The Committee sought to know why names of some Members appeared more than once in the list of Members of the Committee. The Convenor explained that this had been brought about by the fact that the said Members represented more than one area. She then invited the Members in question to choose the area, which they preferred to represent, upon which Members present chose the areas they preferred to represent. The Secretariat effected the changes in the Committee Members' list of attendance. Names of the following Members had appeared more than once:-

Hon. Maria Nzomo
Hon. Hellen Mungathia
Hon. Miriam Muto
Hon. Njoki Nd'ungu
Hon. Luseno Liyai

The Committee pointed out that names of some delegates who were Members of the Committee had been omitted from the list of Members of the Committee. The Convenor instructed the Secretariat to ensure that names which had been erroneously omitted from the list of Members were reinstated. The names of George M. Muchai and James Mbusi had been omitted from the list of Committee Members.

Delegate Kureya Esintele (No.264), attended the Committee Sitting though her name was not in the Committee Members' list. She explained that she had been assigned to the Committee as a District Delegate from Marsabit District to represent Eastern Province.

The Convenor undertook to consult the Steering Committee over the matter.

MIN.NO.8/2003: **DISTRIBUTION OF DOCUMENTS FOR USE BY THE COMMITTEE**

The following documents were distributed to all Members present:-

- List of Members of Technical Working Committee No. "C".
- Guidelines for Technical Working Committees.
- A copy of the National Constitutional Conference Regulations
- Specific issues arising from General Debate.
- Report of the Plenary Proceedings.
- Delegates Direct Submissions.
- Verbatim Report (Hansard Report)

Each Member signed upon receipt of the documents.

Committee Members requested that the documents, which were contained in one box file, be distinctly marked in order to separate them for ease of reference.

The Convenor instructed the Secretariat to ensure that all the documents in the box files distributed to Committee Members were clearly marked.

The Convenor undertook to liaise with the Steering Committee with a view to establishing who the observers accredited to the Committee were.

MIN.NO.9/2003:

ADJOURNMENT

The Convenor/Chairperson adjourned the Sitting at fifteen minutes past Four O'clock to a date to be decided upon later.

SIGNED:.....

(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

September 9, 2003

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents his compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Tuesday, September 09, 2003 in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

- 19. Prayers
- 20. Confirmation of Minutes
- 21. Matters Arising
- 22. Consideration of Business
- 23. Any Other Business
- 24. Date of the Next Sitting

Approved for circulation -Convenor

Date.....

Time.....

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FOURTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY SEPTEMBER 09, 2003 AT 10.00 A.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>	
1. Hon. Caroline Ng'ang'a	-	Convenor	
2. Hon. Apollo Tsalwa	-	Western	
3. Hon. Asiya Mwanzi	-	Religious	
Organizations			
4. Hon. Carolyne Ruto	-	Rift Valley	
5. Hon. David Mpilei	-	Rift Valley	
6. Hon. Fatuma Boru Jaldesa	-	Eastern	
7. Hon. George Orwa Ochieng	-	Nyanza	
8. Hon. Hellen Mung'athia	-	Religious	
Organizations			
9. Hon. Isaac O. Kibwage	-	Professional	
Organizations			
10. Hon. Jane K. Kamwaga	-	Central	
11. Hon. Jacob Ochino	-	Political Parties	
12. Hon. Justus M. Mutweti	-	Eastern	
13. Hon. Kenneth Njiru	-	Political Parties	
14. Hon. Luseno Liyai	-	Political Parties	
15. Hon. Godfrey Mbuba M'thigaa	-	Eastern	
16. Hon. Mary Kanyi	-	Civil Society	
17. Hon. Miriam Muto	-	Person	With
Disability			
18. Hon. Mohammed Juma Abuti	-	Coast	
19. Hon. Chelagat K. Naftali	-	Rift Valley	
20. Hon. Saipstone Ngalatu Musau	-	Eastern	
21. Hon. Ngorongo Makanga	-	Political Parties	
22. Hon. Joel Onyancha	-	Nyanza	
23. Hon. Peter Nyanducha	-	Nyanza	
24. Hon. Raphael Livu	-	Coast	
25. Hon. Raphael Ndeme	-	Coast	
26. Hon. Rhoda A. Loyor	-	Rift Valley	
27. Hon. Richard N. Kibagendi	-	Nyanza	
28. Hon. Rose Otieno	-	Nyanza	
29. Hon. Winston O. Adhiambo	-	Political Parties	
30. Hon. George Muchai	-	Trade Unions	

31. Hon. James Ngusi	-	Trade Unions
32. Hon. David Wakahu	-	Political Parties
33. Hon. Maria Nzomo	-	Women Organizations
34. Hon. Sophie Lupuchirit	-	Rift Valley
35. Hon. Sang Kipkorir Marisin	-	Rift Valley
36. Hon. Asenath Nyamu	-	Women Organizations
37. Hon. Nancy C. Ngeywa	-	Western
38. Hon. Rasmin P. Chitris	-	Religious Organizations
39. Hon. Francis Nganga	-	Trade Unions
40. Hon. Fares Ogada	-	Nyanza
41. Hon. Phoebe Asiyo	-	Rapporteur
42. Hon. (Dr.) Mosonik arap Korir	-	Rapporteur

ABSENT

1. Hon. Danny Irungu	-	Civil Society
2. Hon. (Eng.) Joshua Toro	-	Central
3. Hon. Francis Kagwima	-	Eastern
4. Hon. Mohammed A. Khalif	-	North Eastern
5. Hon. Mukhisa Kituyi	-	Western
6. Hon. Njoki S. Ndungu	-	Central
7. Hon. Orwa Ojode	-	Nyanza
8. Hon. Emmy Kipsoi	-	Rift Valley

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Maurice Kepoi	-	Constitution of Kenya Review Commission
Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula	-	Parliamentary counsel, National Assembly, Uganda
Ms. Vivian Muli	-	Hansard
Ms. Elizabeth Kamotho	-	Hansard

MIN.NO.10/2003

PRELIMINARY

The Convenor called the meeting to order at Ten O'clock and welcomed Members of the Committee back after the two weeks mourning period. (The Constitutional Conference adjourned for two weeks from 25th August to 8th September 2003 in order to mourn the demise of the Vice-President of the Republic of Kenya, the late Hon. Michael Wamalwa, M.P.).

She then briefed the Committee on the guidelines for Technical Working Committees and emphasized that: -

- Deliberations will be based on the Draft Bill and Main Report of the Constitution of Kenya Review Commission;
- The Committee will be guided by the National Constitutional Conference Regulations (2003) in its deliberations;
- The Convenor will call meetings and fix time and venue of the meeting;
- The quorum will be half of all the members of the Committee.
- Debate would originate in form of motions;
- Decisions will be arrived at by consensus but the Committee will vote on decisions where consensus is not reached. Minority decisions will be recorded;
- In deliberating, Committee Members will operate under cloak of privilege so that no delegate will be victimized for what they say;
- all delegates will be treated equally; and
- Committee Members will be free to visit other Committees and make submission during general debate but they would not vote in those Committee.

After briefing the Committee, the Convenor invited Committee Members to deliberate on issues related to procedure and seek clarifications where necessary.

After Lengthy deliberations the Committee resolved as follows: -

1. Sitting Arrangements

Seats for delegates and observers will be clearly marked and observers will be assigned a specific area.

The seats will be re-arranged so that delegates are not distracted by what is happening outside the designated sitting area.

2. Expert Input

The Committee will welcome views of experts but will not be bound by such views. The Committee may invite experts or they may on their own request to be allowed to present their views.

Representatives of the Electoral Commission will be allowed to present their views when the Committee deliberates on Articles directly related to the Electoral Commission.

3. Procedure for Carrying out Committee Business

The Committee will be guided by the laid down procedure as per the National Constitution Conference Regulations, 2003.

The Committee resolved that each Committee Member, on their own, should study submissions contained in the box file in preparation for consideration of the Main Report and Draft Bill. This decision was arrived at after two proposals on how to proceed were made. One proposal, by Hon. James Ngusi, was that the Committee first studies submissions made during plenary discussions while the other proposal, by Hon. Maria Nzomo, was that the Committee should go straight to consideration of Articles as contained in the Draft Bill.

The Committee voted on the two proposals during which the second proposal was adopted.

MIN.NO.11/2003: ADJOURNMENT

There being no other business the Convenor adjourned the Sitting at One O'clock until this afternoon at Two O'clock.

SIGNED:.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Wednesday September 10, 2003 in Tent No.3, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers
2. General Debate
3. Apologies
4. Confirmation of Minutes
5. Matters Arising
6. Consideration and Adoption of Daily Working Programme
7. Main Report
 - Presentation by Rapporteur
 - Consideration by the Committee
8. Consideration of the Draft Bill
9. Any Other Business
10. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIFTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY SEPTEMBER 10, 2003 AT 12.20 P.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asiya Mwanzi Organizations	-	Religious
4. Hon. Carolyne Ruto	-	Rift Valley
5. Hon. David Mpilei	-	Rift Valley
6. Hon. Fatuma Boru Jaldesa	-	Eastern
7. Hon. George Orwa Ochieng	-	Nyanza
8. Hon. Hellen Mung'athia Organizations	-	Religious
9. Hon. Isaac O. Kibwage Organizations	-	Professional
10. Hon. Jane K. Kamwaga	-	Central
11. Hon. Jacob Ochino Ogundo	-	Political Parties
12. Hon. Kenneth Njiru	-	Political Parties
13. Hon. Luseno Liyai	-	Political Parties
14. Hon. Godfrey Mbuba M'thigaa	-	Eastern
15. Hon. Mary Kanyi	-	Civil Society
16. Hon. Mohammed Juma Abuti	-	Coast
17. Hon. Chelagat K. Naftali	-	Rift Valley
18. Hon. Ngorongo Makanga	-	Political Parties
19. Hon. Joel Onyancha	-	Nyanza
20. Hon. Peter Nyanducha	-	Nyanza
21. Hon. Raphael Livu	-	Coast
22. Hon. Raphael Ndeme	-	Coast
23. Hon. Rhoda A. Loyor	-	Rift Valley
24. Hon. Richard N. Kibagendi	-	Nyanza
25. Hon. Rose Adhiambo Otieno	-	Nyanza
26. Hon. Winston Ogola Adhiambo	-	Political Parties
27. Hon. George Muchai	-	Trade Unions
28. Hon. James Ngusi	-	Trade Unions
29. Hon. David Wakahu	-	Political Parties

- | | | |
|---|---|------------|
| 30. Hon. Nancy C. Ngeywa | - | Western |
| 31. Hon. Rasmin P. Chitris
Organizations | - | Religious |
| 32. Hon. Fares Ogada | - | Nyanza |
| 33. Hon. Francis Kagwima | - | Eastern |
| 34. Hon. Phoebe Asiyo | - | Rapporteur |
| 35. Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|------------------------|---|-------------|
| 1. Hon. Mukhisa Kituyi | - | Western |
| 2. Hon. Emmy Kipsoi | - | Rift Valley |

ABSENT

- | | | | |
|---|---|---------------|------|
| 1. Hon. Danny Irungu | - | Civil Society | |
| 2. Hon. (Eng.) Joshua Toro | - | Central | |
| 3. Hon. Mohammed A. Khalif | - | North Eastern | |
| 4. Hon. Njoki S. Ndungu | - | Central | |
| 5. Hon. Orwa Ojode | - | Nyanza | |
| 6. Hon. Justus M. Mutweti | - | Eastern | |
| 7. Hon. Miriam Muto
Disability | - | Person | With |
| 8. Hon. Saipstone Ngalatu Musau | - | Eastern | |
| 9. Hon. Maria Nzomo
Organizations | - | Women | |
| 10. Hon. Sophie Lupuchirit | - | Rift Valley | |
| 11. Hon. Sang Kipkorir Marisin | - | Rift Valley | |
| 12. Hon. Asenath Nyamu
Organizations | - | Women | |
| 13. Hon. Francis Nganga | - | Trade Unions | |

IN ATTENDANCE

- | | | |
|--|---|-----------------------|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Maurice Kepoi
Review Commission | - | Constitution of Kenya |
| Mr. Daniel Konyango
Review Commission | - | Constitution of Kenya |
| Mrs. Margaret R. Ndawula
Counsel, National Assembly, Uganda | - | Parliamentary |
| Ms. Vivian Muli | - | Hansard |
| Ms. Elizabeth Kamotho | - | Hansard |

MIN.NO.12/2003

PRELIMINARY

The Convenor called the meeting to order at Twenty minutes past Twelve O'clock and welcomed members of the Committee to the meeting. She then conducted a roll call to establish members present.

MIN.NO.13/2003

CONFIRMATION OF MINUTES

Minutes of the first, third and fourth Sittings were approved by Members present and signed by the Chairperson as follows: -

- (i.) the first Sitting held on Monday May 26, 2003 were proposed by Hon. Apollo Tsalwa and seconded by Hon. George Orwa Ochieng;
- (ii.) the third Sitting held on Tuesday August 19, 2003 were proposed by Hon. Kenneth Njiru and seconded by Hon. Ngorongo Makanga; and
- (iii.) the fourth Sitting held on Tuesday September 09, 2003 were proposed by Hon. George Muchai and seconded by Hon. Jacob Ochino Ogundo.

Confirmation of minutes of the Second Sitting was postponed to a later date to allow the inclusion of substantive amendments to the minutes to reflect how the Convenor of the Committee was appointed.

The Committee resolved that the title of the second meeting be amended to reflect that it was a crisis meeting and to justify why the Committee had to transact business without a quorum.

MIN.NO.14/2003:

MATTERS ARISING

The following matters arose and were dealt with as here below:-

1. **List of Attendance**

All the names, which had been misspelt, will be corrected.

2. **Min.No.2/2003 of May 26, 2003**

It was observed that by rejecting the recommendation of the Steering Committee to endorse a delegate from Central Province, to be the Convenor of the Committee, the Committee contravened Regulation 44(2)(b) which stipulates "Each Committee shall have a Convenor elected by the Conference on the advice of the Steering Committee."

3. **Min.No.8 of 19th August, 2003**

One of the Rapporteurs, Commissioner Mosonik arap Korir, reminded the Committee that the Statutory documents were issued to members but it

had been agreed that members use their copies of the working documents. He requested the Members to ensure that the latter were available at all times in order to enable the Committee execute its mandate with ease.

4. **Min.No.10 of 9th September, 2003**

(i) **Expert Input**

The Committee resolved that since there was no provision for special delegates in the NCC Regulations, 2003, no one would be treated as a special delegate.

The Committee will recognize expert advisors who had already been identified.

Rapporteur Mosonik arap Korir advised that representatives of the Electoral Commission of Kenya should be treated as expert advisors and their names would be forwarded to the Steering Committee for inclusion in the list of expert advisors.

The Committee requested the Convenor to liaise with the Steering Committee with a view to establishing the observers accredited to the Committee. The Convenor undertook to avail the list of accredited observers the following day.

(ii) **Procedure for Carrying out Business**

The Committee resolved that in carrying out business, the Rapporteur will first take the Committee through the Main Report for the purposes of apprising the Committee on the reasons why the Commission arrived at the Articles in the Draft Bill.

Members of the Committee will then make their observations on the Report after which the Committee will move on to consider the Draft Bill.

MIN.NO.15/2003: ADJOURNMENT

There being no other business the Convenor adjourned the Sitting at Two O'clock until this afternoon at Three O'clock.

AFTERNOON SITTING

PRESENT The following Members of the Committee were present:-

<u>Name</u>		<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Carolyne Ruto	-	Rift Valley
4. Hon. David Mpilei	-	Rift Valley

5. Hon. Fatuma Boru Jaldesa	-	Eastern	
6. Hon. George Orwa Ochieng	-	Nyanza	
7. Hon. Hellen Mung'athia Organizations	-	Religious	
8. Hon. Jacob Ochino	-	Political Parties	
9. Hon. Justus M. Mutweti	-	Eastern	
10. Hon. Luseno Liyai	-	Political Parties	
11. Hon. Godfrey Mbuba M'thigaa-	Eastern		
12. Hon. Mary Kanyi	-	Civil Society	
13. Hon. Miriam Muto Disability	-	Person	With
14. Hon. Mohammed Juma Abuti	-	Coast	
15. Hon. Chelagat K. Naftali	-	Rift Valley	
16. Hon. Saipstone Ngalatu Musau-	Eastern		
17. Hon. Ngorongo Makanga	-	Political Parties	
18. Hon. Joel Onyancha	-	Nyanza	
19. Hon. Peter Nyanducha	-	Nyanza	
20. Hon. Raphael Livu	-	Coast	
21. Hon. Raphael Ndeme	-	Coast	
22. Hon. Rhoda A. Loyor	-	Rift Valley	
23. Hon. Richard N. Kibagendi	-	Nyanza	
24. Hon. Rose Otieno	-	Nyanza	
25. Hon. Winston O. Adhiambo	-	Political Parties	
26. Hon. George Muchai	-	Trade Unions	
27. Hon. James Ngusi	-	Trade Unions	
28. Hon. David Wakahu	-	Political Parties	
29. Hon. Sang Kipkorir Marisin	-	Rift Valley	
30. Hon. Nancy C. Ngeywa	-	Western	
31. Hon. Rasmin P. Chitris Organizations	-	Religious	
32. Hon. Asenath Nyamu Organizations	-	Women	
33. Hon. Emmy Kipsoi	-	Rift Valley	
34. Hon. Margaret Kamar Organizations	-	Women	
35. Hon. Jane K. Kamwaga	-	Central	
36. Hon. Phoebe Asiyo	-	Rapporteur	
37. Hon.(Dr.) Mosonik arap Korir	-	Rapporteur	

ABSENT WITH APOLOGY

Hon. Mukhisa Kituyi	-	Western	
Hon. Isaac O. Kibwage	-	Professional Organizations	

ABSENT

1. Hon. Danny Irungu	-	Civil Society	
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|---------------------------------------|---|-------------------|
| 2. Hon. (Eng.) Joshua Toro | - | Central |
| 3. Hon. Francis Kagwima | - | Eastern |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Njoki S. Ndungu | - | Central |
| 6. Hon. Orwa Ojode | - | Nyanza |
| 7. Hon. Asiya Mwanzi
Organizations | - | Religious |
| 8. Hon. Kenneth Njiru | - | Political Parties |
| 9. Hon. Maria Nzomo
Organizations | - | Women |
| 10. Hon. Sophie Lupuchirit | - | Rift Valley |
| 11. Hon. Fares Ogada | - | Nyanza |

IN ATTENDANCE

- | | | |
|--------------------------|---|--|
| Prof. Yash Pal Ghai | - | Chairperson, National
Constitutional
Conference |
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Maurice Kepoi | - | Constitution of Kenya
Review Commission |
| Mr. Daniel Konyango | - | Constitution of Kenya
Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary
Counsel, National
Assembly, Uganda |
| Ms. Vivian Muli | - | Hansard |
| Ms. Elizabeth Kamotho | - | Hansard |

**MIN.NO.16/2003: CONSIDERATION OF THE MAIN REPORT OF
THE CONSTITUTION OF KENYA REVIEW
COMMISSION**

Commissioner Phoebe Asiyo took the Committee through the relevant sections of the Main Report in order to apprise Members on the contents of the Report, which is the basis of the Draft Bill.

Members of the Committee then deliberated on the Report and pointed out that political parties should not have been given a lot of prominence as though they are the only channels through which aspirations of democracy can be channeled.

It was the opinion of the Committee that the security of the democratic rights of Kenyans would be at stake if subjected to political parties.

The Committee was also of the opinion that the Report should have reflected the interests of representative groups such as trade unions,

women organizations and other representative bodies instead giving a lot of attention to political parties.

The Chairperson of the Conference and the Rapporteurs explained that it was not possible to include all the proposals and submissions from Kenyans in the Report, as this would have made the documents too voluminous. They urged committee members to make their input on any area, which they felt needed extra input, during the consideration of the Draft Bill.

The Committee then approved the relevant Sections of the Report.

MIN.NO.17/2003: ADJOURNMENT

There Convenor adjourned the Sitting at Five O'clock until Thursday September 11, 2003 at 8.30 a.m.

CONFIRMED

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(CONVENOR)

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday September 11, 2003** in Tent No.3, Bomas of Kenya at 8.30 a.m.

AGENDA

1. Prayers
2. General Debate
3. Apologies
4. Confirmation of Minutes
5. Matters Arising
6. Consideration and Adoption of Daily Working Programme
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SIXTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY SEPTEMBER 11, 2003 AT 9.30 A.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT The following Members of the Committee were present: -

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
4. Hon. Carolyne Ruto	-	Rift Valley
5. Hon. David Oloisa Mpilei	-	Rift Valley
6. Hon. Fatuma Boru Jaldesa	-	Eastern
7. Hon. George Orwa Ochieng	-	Nyanza
8. Hon. Hellen Mung'athia	-	Religious Organizations
9. Hon. Isaac O. Kibwage	-	Professional Organizations
10. Hon. Jane Kirangari Kamwaga	-	Central
11. Hon. Jacob Ochino Ogunda	-	Political Parties
12. Hon. Justus Musyoki Mutweti	-	Eastern
13. Hon. Kenneth Njiru	-	Political Parties
14. Hon. Luseno Liyai Indembukhani-	-	Political Parties
15. Hon. Godfrey Mbuba M'thigaa	-	Eastern
16. Hon. Mary Wambui Kanyi	-	Civil Society
17. Hon. Miriam Muto	-	Person With Disability
18. Hon. Mohammed Juma Abuti	-	Coast
19. Hon. Chelagat Kemboi Naftali	-	Rift Valley
20. Hon. Saipstone Ngalatu Musau-	-	Eastern
21. Hon. Ngorongo Makanga	-	Political Parties
22. Hon. Joel Onyancha	-	Nyanza
23. Hon. Peter Nyanducha	-	Nyanza
24. Hon. Raphael Livu	-	Coast
25. Hon. Raphael Bombo Ndeme	-	Coast
26. Hon. Rhoda Arupe Loyor	-	Rift Valley
27. Hon. Richard N. Kibagendi	-	Nyanza
28. Hon. Rose Otieno Adiana	-	Nyanza
29. Hon. Winston Ogola Adhiambo-	-	Political Parties
30. Hon. George Muchai	-	Trade Unions
31. Hon. James Ngusi	-	Trade Unions
32. Hon. David Wakahu	-	Political Parties
33. Hon. Maria Nzomo	-	Women Organizations
34. Hon. Sophie Lepuchirit	-	Rift Valley

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|--------------------------------|---|-------------------------|
| 35. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 36. Hon. Asenath Nyamu | - | Women Organizations |
| 37. Hon. Nancy C. Ngeywa | - | Western |
| 38. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 39. Hon. Fares Ogada | - | Nyanza |
| 40. Hon. (Eng.) Joshua Toro | - | Central |
| 41. Hon. Emmy Kipsoi | - | Rift Valley |
| 42. Hon. Phoebe Asiyo | - | Rapporteur |

ABSENT

- | | | |
|----------------------------------|---|---------------|
| 1. Hon. Danny Irungu | - | Civil Society |
| 2. Hon. Francis Kagwima | - | Eastern |
| 3. Hon. Mohammed A. Khalif | - | North Eastern |
| 4. Hon. Mukhisa Kituyi | - | Western |
| 5. Hon. Njoki S. Ndungu | - | Central |
| 6. Hon. Orwa Ojode | - | Nyanza |
| 7. Hon. Francis Nganga | - | Trade Unions |
| 8. Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

1. Ms. Mary Okumu
2. Mr. Hassan Wako Wario
3. Mr. Joseph Mutua
4. Ms. Beatrice Atieno Ouma

IN ATTENDANCE

- | | | |
|-----------------------------|---|---|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Maurice Kepoi | - | Constitution of Kenya Review Commission |
| 3. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| 5. Ms. Vivian Muli | - | Hansard |
| 6. Ms. Elizabeth Kamotho | - | Hansard |

MIN.NO.18/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

Hon. Helen Mung'athia opened the meeting with a word of prayer.

MIN.NO.19/2003

CONFIRMATION OF MINUTES

Confirmation of the minutes of the fifth sitting was postponed to this afternoon at 2.30 p.m.

MIN.NO.20/2003 **CONSIDERATION AND ADOPTION OF THE DAILY WORKING PROGRAMME**

The Committee considered and adopted the daily working programme and resolved that sittings of the Committee would commence at 9.30 a.m. and end at 4.30 p.m.

MIN.NO.21/2003 **GENERAL DEBATE ON THE MAIN REPORT**

The Rapporteur took the Committee through the Chapters of the Report on Representation of the People and explained how the Commission came up with the Report, after which the Committee Members made general comments on the contents of Report.

MIN.NO.22/2003 **ANY OTHER BUSINESS**

1. Observers

The Convenor presented the following names of observers accredited to the Committee:-

Ms. Mary Okumu
Mr. Hassan Wako Wario
Mr. Joseph Mutua
Ms. Beatrice Atieno Ouma

2. Cross-cutting Issues

The Convenor informed the Committee that it was necessary for it to consider crosscutting issues on Representation, which appear in Chapters of the Report and Draft Bill to be considered by other Committees.

3. Daily Journal

The Convenor informed the Committee that a daily journal reflecting what each Technical Working Groups will be dealing with will be displayed at a convenient position in the meeting tent/committee venue for members to appraise themselves on what is happening in other Committees. Members will be free to attend Sittings of other committees and make oral or written presentations.

MIN.NO.23/2003: **ADJOURNMENT**

The Chairperson adjourned the sitting at One O'clock until this afternoon at 2.30 p.m.

AFTERNOON SITTING

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Carolyne Ruto	- Rift Valley
4. Hon. David Oloisa Mpile i	- Rift Valley
5. Hon. Fatuma Boru Jaldesa	- Eastern
6. Hon. George Orwa Ochieng	- Nyanza
7. Hon. Hellen Mung'athia	- Religious Organizations
8. Hon. Jacob Ochino Ogunda	- Political Parties
9. Hon. Justus Musyoki Mutweti	- Eastern
10. Hon. Luseno Liyai Indembukhani-	Political Parties
11. Hon. Godfrey Mbuba M'thigaa	- Eastern
12. Hon. Mary Kanyi	- Civil Society
13. Hon. Miriam Muto	- Person With Disability
14. Hon. Mohammed Juma Abuti	- Coast
15. Hon. Chelagat Kemboi Naftali	- Rift Valley
16. Hon. Saipstone Ngalatu Musau	- Eastern
17. Hon. Ngorongo Makanga	- Political Parties
18. Hon. Joel Onyancha	- Nyanza
19. Hon. Peter Nyanducha	- Nyanza
20. Hon. Raphael Livu	- Coast
21. Hon. Raphael Bombo Ndeme	- Coast
22. Hon. Rhoda Arupe Loyer	- Rift Valley
23. Hon. Winston Ogola Adhiambo	- Political Parties
24. Hon. George Muchai	- Trade Unions
25. Hon. James Ngusi	- Trade Unions
26. Hon. David Wakahu	- Political Parties
27. Hon. Sang Kipkorir Marisin	- Rift Valley
28. Hon. Nancy C. Ngeywa	- Western
29. Hon. Rashmin P. Chitnis	- Religious Organizations
30. Hon. Asenath Kamuiru Nyamu	- Women Organizations
31. Hon. Kenneth Njiru	- Political Parties
32. Hon. Jane Kirangari Kamwaga	- Central
33. Hon. Orwa Ojode	- Nyanza
34. Hon. Danny Irungu	- Civil Society
35. Hon. Isaac O. Kibwage	- Professional Organizations
36. Hon. Phoebe Asiyo	- Rapporteur

ABSENT WITH APOLOGY

Hon. Mukhisa Kituyi	- Western
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ABSENT

1. Hon. Emmy Kipsoi	- Rift Valley
2. Hon. (Eng.) Joshua Toro	- Central

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|-----------------------------------|---|-------------------------|
| 3. Hon. Francis Kagwima | - | Eastern |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Njoki S. Ndungu | - | Central |
| 6. Hon. Richard N. Kibagendi | - | Nyanza |
| 7. Hon. Asiya Mwanzi Mahmood | - | Religious Organizations |
| 8. Hon. Rose Otieno Adiana | - | Nyanza |
| 9. Hon. Maria Nzomo | - | Women Organizations |
| 10. Hon. Fares Ogada | - | Nyanza |
| 11. Hon. Sophie Lepuchirit | - | Rift Valley |
| 12. Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

1. Ms. Mary Okumu
2. Mr. Hassan Wako Wario
3. Mr. Joseph Mutua
4. Ms. Beatrice Atieno Ouma

IN ATTENDANCE

- | | | |
|------------------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Maurice Kepoi | - | Constitution of Kenya Review Commission |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula
Uganda | - | Parliamentary Counsel, National Assembly, |
| Ms. Vivian Muli | - | Hansard |
| Ms. Elizabeth Kamotho | - | Hansard |

MIN.NO.25/2003:

SITTINGS OF THE COMMITTEE

The Committee resolved that its afternoon Session would not be deemed to be a separate Sitting but a continuation of the day's Sitting on days when the Committee sits in the morning and afternoon. As such, it will not be necessary to have two separate lists of attendance, that is, one for the morning session and another for the afternoon session. However, Members of the Committee who attend afternoon sessions but were absent during the morning session will be required to ensure that their names are entered in the list of attendance for the purposes of maintaining and reflecting a true record of attendance of the sitting of each particular day.

MIN.NO.26/2003:

CONFIRMATION OF MINUTES

Minutes of the Second and Fifth Sittings were approved by Members present and signed by the Chairperson as follows:-

- (i.) The Second Sitting held on Wednesday May 28, 2003 were proposed by Hon. Jane Kamwaga and seconded by Hon. George Orwa Ochieng; and
- (ii.) The Fifth Sitting held on Tuesday August 19, 2003 were proposed by Hon. Hellen Mung'athia and seconded by Hon. Rhoda Loyor.

MIN.NO.27/2003: MATTERS ARISING

1. Min. No.14/2003 of September 10, 2003

The Committee observed that Min.No.10 of September 09, 2003 should reflect that the Conference had adjourned for 2 weeks to join other Kenyans in mourning the demise of the Vice President of the Republic of Kenya the Late Hon. Michael Wamalwa, M.P. and that Kenyans observed a two weeks national mourning period for the departed Vice-President.

Under the same minute the Convenor informed the Committee that she had, earlier in the day, presented names of observers accredited to the Committee.

MIN.NO.28/2003: ANY OTHER BUSINESS

1. Cross-Cutting Issues

The Convenor informed the Committee that the Committee had extracted crosscutting issues on Representation from other Chapters for consideration.

She then invited the Committee to deliberate on how to deal with such issues.

After lengthy deliberations, the Committee resolved to concentrate on Chapter Six of the Draft Bill and any other issue as may be referred to the Committee.

The Convenor was mandated to liaise with the Rapporteurs, the Rapporteur-General and the Chairperson with a view to offering guidance on how to handle crosscutting issues as per guideline No.4.5 (ii) on coordination of the work of Committees.

2 Expert Input

The Committee resolved to invite experts to advise on issues for which further information may be required.

MIN.NO.29/2003: ADJOURNMENT

The Convenor adjourned the Sitting at twenty minutes past Four O'clock until Friday September 12, 2003 at 9.30 a.m.

CONFIRMED

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(CONVENOR)

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday September 12, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. General Debate
3. Apologies
4. Confirmation of Minutes
5. Matters Arising
6. Consideration of the Draft Bill
7. Any Other Business
8. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SEVENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY SEPTEMBER 12, 2003 AT 9.30 A.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present: -

<u>Name</u>		<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Kemboi Naftali	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. George Orwa Ochieng	-	Nyanza
16. Hon. Godfrey Mbuba M'thigaa	-	Eastern
17. Hon. Hellen Mung'athia	-	Religious Organizations
18. Hon. Isaac O. Kibwage	-	Professional Organizations
19. Hon. Jacob Ochino Ogundo	-	Political Parties
20. Hon. James Ngusi	-	Trade Unions
21. Hon. Jane Kirangari Kamwaga	-	Central
22. Hon. Joel Onyancha	-	Nyanza
23. Hon. Justus Musyoki Mutweti	-	Eastern
24. Hon. Kenneth Njiru	-	Political Parties
25. Hon. Luseno Liyai Indembukhani	-	Political Parties
26. Hon. Maria Nzomo	-	Women Organizations
27. Hon. Mary Wambui Kanyi	-	Civil Society
28. Hon. Miriam Muto	-	Person With Disability
29. Hon. Mohammed Juma Abuti	-	Coast
30. Hon. Nancy C. Ngeywa	-	Western
31. Hon. Ngorongo Makanga	-	Political Parties
32. Hon. Raphael Bombo Ndeme	-	Coast

- | | | |
|----------------------------------|---|-------------------------|
| 33. Hon. Raphael Livu | - | Coast |
| 34. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 35. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 36. Hon. Richard N. Kibagendi | - | Nyanza |
| 37. Hon. Rose Otieno Adiana | - | Nyanza |
| 38. Hon. Saipstone Ngalatu Musau | - | Eastern |
| 39. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 40. Hon. Sophie Lepuchirit | - | Rift Valley |
| 41. Hon. Winston Ogola Adhiambo | - | Political Parties |

ABSENT WITH APOLOGY

- | | | |
|-------------------------|---|--------------|
| 1. Hon. George Muchai | - | Trade Unions |
| 2. Hon. Mukhisa Kituyi | - | Western |
| 3. Hon. Orwa Ojode | - | Nyanza |
| 4. Hon. Peter Nyanducha | - | Nyanza |

ABSENT

- | | | |
|---------------------------------|---|---------------|
| 1. Hon. Mohammed A. Khalif | - | North Eastern |
| 2. Hon. Njoki S. Ndungu | - | Central |
| 3. Hon. Phoebe Asiyo | - | Rapporteur |
| 4. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

1. Mr. Hassan Wako Wario
2. Mr. Joseph Mutua
3. Ms. Beatrice Atieno Ouma
4. Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|----|--------------------------|---|
| 1. | Mrs. Serah Kioko Ndeto | -National Assembly |
| 2. | Mr. Maurice Kepoi | -Constitution of Kenya
Review Commission |
| 3. | Mr. Daniel Konyango | -Constitution of Kenya
Review Commission |
| 4. | Mrs. Margaret R. Ndawula | -Parliamentar Counsel,
National Assembly, Uganda |
| 5. | Ms. Vivian Muli | -Hansard |
| 6. | Ms. Elizabeth Kamotho | -Hansard |

MIN.NO.30/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock. Hon. Miriam Muto opened the meeting with a word of prayer.

MIN.NO.31/2003

CONFIRMATION OF MINUTES

Minutes of the Sixth Sitting held on Thursday 11th September 2003 were confirmed by members present and signed by the Convenor.

They were proposed by Hon. George Orwa Ochieng and seconded by Hon. Richard Kibagendi.

MIN.NO.32/2003

MATTERS ARISING

1. Heading

Should reflect that the Sitting was held on Thursday, September 11, 2003 and not Tuesday, September 09, 2003.

Min.No.28/2003 of 11th September, 2003

The minute should reflect that the Committee resolved to invite experts as and when need arises.

Under paragraph 4 of the same minute, the Convenor reported that she had forwarded the crosscutting issues, extracted from other Chapters of the Draft Bill, to the Steering Committee.

MIN.NO.33/2003

CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 76 – General Principles

Sub-Article 76(1)

Amendment proposed;

That, Article 76(1) be amended by inserting the word “eligible” between the words “citizens” and “to” appearing in the second line.

(Hon. Richard Kibagendi)

Motion made and Question Proposed;

Debate arising;

Question of the amendment put and agreed to.

Thus the sub-Article as amended now reads:

The electoral system is based on the right of all citizens eligible to vote and to stand for election to legislative and executive bodies.

Further amendment proposed;

That, Article 76(1) as amended be amended by deleting the words “legislative and executive” and inserting the words “all elective” in place thereon. (*Hon. Jane Kamwaga*)

Motion made and Question proposed;

Debate arising;

MIN.NO.34/2003

ADJOURNMENT

The Convenor adjourned the Sitting at thirty minutes past Twelve O'clock until this Afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened and resumed deliberations at forty minutes past Two O'clock.

MIN.NO.35/2003:

CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL

REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

Sub-Article 76(1)

Amendment proposed;

That, Article 76(1) as amended be amended by deleting the words “legislative and executive” and inserting the words “all elective” in place thereon. (*Hon. Jane Kamwaga*)

Motion made and Question proposed;

Debate interrupted resumed;

Question of the amendment put and negatived.

Thus the sub-Article still reads;

The electoral system is based on the right of all citizens eligible to vote and to stand for election to legislative and executive bodies.

Sub-Article 76(2)

Amendment proposed;

That Article 76(2) be amended by deleting the word “is” and inserting the words “shall be” in place thereon.

(Hon. Isaac Kibwage)

Motion made and Question proposed;

Debate arising;

MIN.NO.36/2003: NON-ATTENDANCE OF COMMITTEE SITTINGS BY RAPORTEURS

The Committee observed with grave concern that the Rapporteurs assigned to it to play the role of resource persons and provide clarifications on the provisions of Draft Bill as per guideline No.3.2 (vi), were not regularly attending Committee Sittings. Owing to the absence of the Rapporteurs, the Committee could not get clarification on the use of the verb “is” as opposed to “shall be” in Sub-Article 76(2).

Consequently, the Committee resolved to adjourn until Monday, 15th September 2003.

MIN.NO.37/2003: ADJOURNMENT

The Convenor adjourned the Sitting at forty-five minutes past Three O'clock until Monday September 15, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday September 15, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

9. Prayers
10. General Debate
11. Apologies
12. Confirmation of Minutes
13. Matters Arising
14. Consideration of the Draft Bill
15. Any Other Business
16. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE EIGHTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY SEPTEMBER 15, 2003 AT 12.20 P.M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present: -

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. David Oloisa Mpilei	-	Rift Valley
7. Hon. David Wakahu	-	Political Parties
8. Hon. Eng. Joshua Toro	-	Central
9. Hon. Fatuma Boru Jaldesa	-	Eastern
10. Hon. George Muchai	-	Trade Unions
11. Hon. George Orwa Ochieng	-	Nyanza
12. Hon. Godfrey Mbuba M'thigaa	-	Eastern
13. Hon. Hellen Mung'athia	-	Religious Organizations
14. Hon. Isaac O. Kibwage	-	Professional Organizations
15. Hon. Jacob Ochino Ogundo	-	Political Parties
16. Hon. James Ngusi	-	Trade Unions
17. Hon. Jane Kirangari Kamwaga	-	Central
18. Hon. Joel Onyancha	-	Nyanza
19. Hon. Justus Musyoki Mutweti	-	Eastern
20. Hon. Kenneth Njiru	-	Political Parties
21. Hon. Luseno Liyai Indembukhani	-	Political Parties
22. Hon. Maria Nzomo	-	Women Organizations
23. Hon. Mary Wambui Kanyi	-	Civil Society
24. Hon. Miriam Muto	-	Person With Disability
25. Hon. Mohammed Juma Abuti	-	Coast
26. Hon. Nancy C. Ngeywa	-	Western
27. Hon. Ngorongo Makanga	-	Political Parties
28. Hon. Peter Nyanducha	-	Nyanza
29. Hon. Raphael Bombo Ndeme	-	Coast
30. Hon. Raphael Livu	-	Coast
31. Hon. Rashmin P. Chitnis	-	Religious Organizations
32. Hon. Rhoda Arupe Loyor	-	Rift Valley
33. Hon. Richard N. Kibagendi	-	Nyanza

- | | | |
|-----------------------------------|---|-------------------|
| 34. Hon. Rose Otieno Adiana | - | Nyanza |
| 35. Hon. Sophie Lepuchirit | - | Rift Valley |
| 36. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 37. Hon. Phoebe Asiyo | - | Rapporteur |
| 38. Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|-------------------------|---|---------|
| 39. Hon. Mukhisa Kituyi | - | Western |
|-------------------------|---|---------|

ABSENT

- | | | |
|----------------------------------|---|---------------|
| 40. Hon. Mohammed A. Khalif | - | North Eastern |
| 41. Hon. Njoki S. Ndungu | - | Central |
| 42. Hon. Chelagat Kemboi Naftali | - | Rift Valley |
| 43. Hon. Danny Irungu | - | Civil Society |
| 44. Hon. Emmy Kipsoi | - | Rift Valley |
| 45. Hon. Fares Ogada | - | Nyanza |
| 46. Hon. Francis Kagwima | - | Eastern |
| 47. Hon. Orwa Ojode | - | Nyanza |
| 48. Hon. Saipstone Ngalatu Musau | - | Eastern |
| 49. Hon. Sang Kipkorir Marisin | - | Rift Valley |

OBSERVERS

50. Mr. Hassan Wako Wario
 51. Mr. Joseph Mutua
 52. Ms. Beatrice Atieno Ouma
 53. Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|---|---|---|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Maurice Kepoi | - | Constitution of Kenya Review Commission |
| 3. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula
Counsel, | - | Parliamentary |
| | | National Assembly, Uganda |
| 5. Ms. Vivian Muli | - | Hansard |
| 6. Ms. Elizabeth Kamotho | - | Hansard |

MIN.NO.38/2003

PRELIMINARY

The Convenor called the meeting to order at twenty minutes past Twelve O'clock.

MIN.NO.39/2003

CONFIRMATION OF MINUTES

Minutes of the Seventh Sitting held on Friday 12th September, 2003 were confirmed by members present and signed by the Convenor.

They were proposed by Hon. Ngorongo Makanga and seconded by Hon. George Orwa Ochieng.

MIN.NO.40/2003 MATTERS ARISING

2. Min.No.36/2003 of 12th September, 2003

The Rapporteurs apologized over their absence during the Sitting of Friday September 12, 2003.

Hon. Phoebe Asiyo explained that she was unable to attend the sitting because she had been bereaved.

Hon. Mosonik arap Korir informed the Committee that he failed to attend the sitting because he was indisposed.

MIN.NO.41/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows: -

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 76 – General Principles

Sub-Article 76(2)

Amendment proposed;

That, Article 76(2) be amended by deleting the word “**is**” and inserting the words “**shall be**” in place thereon. (*Hon. Isaac Kibwage*)

Motion made and Question proposed;

Debate arising;

Question of the first part of the amendment that the word proposed to be deleted be deleted proposed put and agreed to

Question of the second part of the amendment that the words proposed to be inserted be inserted proposed put and agreed to

Question of the Sub-Article as amended put and agreed to

Thus, the sub-Article now reads as follows: -

Voting shall be by secret ballot.

MIN.NO.42/2003: ADJOURNMENT

The Convenor adjourned the Sitting at fifteen minutes past One O'clock until this afternoon 2.15 p.m.

AFTERNOON SESSION

The Committee reconvened at thirty minutes past Two O'clock.

**MIN.NO.43/2003: CONDOLENCES TO THE FAMILY OF THE LATE
HON. CRISPIN ODHIAMBO MBAI**

The Committee resolved to adjourn in order to go and condole with the family of the late Hon. Crispin Odhiambo Mbai.

MIN.NO.44/2003: ADJOURNMENT

The Convenor adjourned the Sitting at forty-five minutes past two. O'clock until Tuesday September 16, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday September 17, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. General Debate
3. Apologies
4. Confirmation of Minutes
5. Matters Arising
6. Consideration of the Draft Bill
7. Any Other Business
8. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE NINTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY SEPTEMBER 17, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
(1) Hon. Caroline Ng'ang'a	-	Convenor
(2) Hon. Apollo Tsalwa	-	Western
(3) Hon. Asenath Kaimuri Nyamu	-	Women Organizations
(4) Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
(5) Hon. Carolyne Ruto	-	Rift Valley
(6) Hon. David Oloisa Mpilei	-	Rift Valley
(7) Hon. David Wakahu	-	Political Parties
(8) Hon. Eng. Joshua Toro	-	Central
(9) Hon. Fatuma Boru Jaldesa	-	Eastern
(10) Hon. George Muchai	-	Trade Unions
(11) Hon. George Orwa Ochieng	-	Nyanza
(12) Hon. Godfrey Mbuba M'thigaa	-	Eastern
(13) Hon. Hellen Mung'athia	-	Religious Organizations
(14) Hon. Isaac Ongubo Kibwage	-	Professional Organizations
(15) Hon. Jacob Ochino Ogundo	-	Political Parties
(16) Hon. James Ngusi	-	Trade Unions
(17) Hon. Jane Kirangari Kamwaga	-	Central
(18) Hon. Joel Onyancha	-	Nyanza
(19) Hon. Justus Musyoki Mutweti	-	Eastern
(20) Hon. Kenneth Njiru	-	Political Parties
(21) Hon. Luseno Liyai Indembukhani	-	Political Parties
(22) Hon. Maria Nzomo	-	Women Organizations
(23) Hon. Mary Wambui Kanyi	-	Civil Society
(24) Hon. Miriam Muto	-	Person With Disability
(25) Hon. Mohammed Juma Abuti	-	Coast
(26) Hon. Nancy C. Ngeywa	-	Western
(27) Hon. Ngorongo Makanga	-	Political Parties
(28) Hon. Peter Nyanducha	-	Nyanza
(29) Hon. Raphael Bombo Ndeme	-	Coast
(30) Hon. Raphael Livu	-	Coast
(31) Hon. Rashmin P. Chitnis	-	Religious Organizations
(32) Hon. Richard N. Kibagendi	-	Nyanza

- | | | |
|-----------------------------------|---|-------------------|
| (33) Hon. Rose Otieno Adiana | - | Nyanza |
| (34) Hon. Sophie Lepuchirit | - | Rift Valley |
| (35) Hon. Winston Ogola Adhiambo | - | Political Parties |
| (36) Hon. Chelagat Naftali Kemboi | - | Rift Valley |
| (37) Hon. Emmy Kipsoi | - | Rift Valley |
| (38) Hon. Saipstone Ngalatu Musau | - | Eastern |
| (39) Hon. Sang Kipkorir Marisin | - | Rift Valley |
| (40) Hon. Danny Irungu | - | Civil Society |
| (41) Hon. Phoebe Asiyo | | Rapporteur |
| (42) Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |
- *Hon. Margaret Kamar - Member, Committee on Transition.

ABSENT

- | | | | |
|----|-------------------------|---|---------------|
| 1. | Hon. Fares Ogada | - | Nyanza |
| 2. | Hon. Francis Kagwima | - | Eastern |
| 3. | Hon. Mohammed A. Khalif | - | North Eastern |
| 4. | Hon. Mukhisa Kituyi | - | Western |
| 5. | Hon. Njoki S. Ndungu | - | Central |
| 6. | Hon. Orwa Ojode | - | Nyanza |

OBSERVERS

- | | | |
|----|--------------------------|--|
| 1. | Mr. Hassan Wako Wario | |
| 2. | Mr. Gabriel Mukele | - Vice Chairman, Electoral Commission of Kenya |
| 3. | Mr. Kihara Muttu | - Electoral Commission of Kenya |
| 4. | Mr. Joseph Mutuma | |
| 5. | Mr. Nathaniel Chebelyon | |
| 6. | Ms. Beatrice Atieno Ouma | |
| 7. | Ms. Koki Muli | |
| 8. | Ms. Mary Okumu | |
| 9. | Ms. Rachael Mzera | |

IN ATTENDANCE

- | | | |
|----|---------------------------|---|
| 1. | Mrs. Serah Kioko Ndeto- | National Assembly |
| 2. | Mr. Maurice Kepoi | - Constitution of Kenya Review Commission |
| 3. | Mr. Daniel Konyango | - Constitution of Kenya Review Commission |
| 4. | Mrs. Margaret R. Ndawula- | Parliamentary Counsel,
National Assembly, Uganda |
| 5. | Ms. Vivian Muli | - Hansard |
| 6. | Ms. Elizabeth Kamotho | - Hansard |

MIN.NO.45/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

Hon. Peter Nyanducha opened the Meeting with a word of prayer.
MIN.NO.46/2003 ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.47/2003 CONFIRMATION OF MINUTES

Minutes of the Eighth Sitting held on Monday 15 September 2003 were confirmed by members present and signed by the Convenor.

They were proposed by Hon. Fatuma Jaldesa and seconded by Hon. Apollo Tsalwa.

MIN.NO.48/2003 MATTERS ARISING

3. **Min.No.42/2003 of 15th September, 2003**

The Minutes should specify that the Committee adjourned for lunch.

4. **Min.No.43/2003 of 15th September, 2003**

The Minute should specify that the Committee adjourned to go and condole with the family of the late Hon. Crispin Odhiambo Mbai just like other Committees had done.

MIN.NO.49/2003
**EXPERT INPUT FROM THE ELECTORAL COMMISSION OF KENYA-
PRESENTATION BY MR. GABRIEL MUKELE, VICE-
CHAIR, ELECTORAL COMMISSION OF KENYA**

Mr. Gabriel Mukele gave a presentation on Chapter Six of the Draft Bill as follows:

1. **Consolidation of the Electoral Law:**

The electoral law should be consolidated into two documents, that is, the Constitution and the Electoral Act and the Electoral Act should be enacted as soon as the new Constitution comes into effect.

This is so as to ensure that electoral provisions are not scattered in numerous statutes.

2. **Consolidation of Chapter Six and Parts of Chapter 17**

Constitutional provisions on the Electoral Commission should be combined under Chapter Six. This will make it easy for people wishing to make reference to electoral law.

3. **Response to Articles:**

Article 76(7) should be combined with Article 279(2)(a) and should read as follows:

“In the exercise of its function under this Constitution the Commission shall not be subject to the direction of any other person or authority” as provided for under section 41(g) of the current Constitution.

Article 77(1) should be enlarged to have (1), (h), (i) and (j) to read as follows:

- (h) the filling and service of petitions and application resulting from election disputes;
- (i) the setting up of the Electoral Code of Conduct; and
- (j) the enforcement of the electoral law.

Articles 77(1)(g) should read as follows **“the registration of and voting by citizens who though within the country are unable to go to voting stations where they are registered or are outside Kenya.”**

This is to cater for hospital workers, patients, prisoners, policemen on duty, army officials stationed outside the country, and election officials among others.

Article 80(2)

The Electoral Commission should determine whether a citizen is qualified to be registered as a voter for public elections or referenda instead of the High Court.

Article 81

Should either be deleted or replaced with a clause stating that “collation of results should be transparent and accurate.” The Clause should be in the Electoral Act and not the Constitution.

Article 83(1)

Restriction of the number of Commissioners to between 8 and 12 should not be effected because there are no other provisions in the Draft Constitution for creation of Provincial Electoral Commissioners or Commissions and other necessary election administration structures. The number of Commissioners currently in office should be retained until structures are established at district and other levels.

Article 83(4)

Should state the qualification of the Vice-Chair because he plays the role of Chair when the Chair is absent.

Article 84(1)

The word “monitoring” should be deleted and the Commission should be empowered to research on electoral law.

Article 85

The Article infringes on the independence of the Electoral Commission as it proposes to take the Commission back to the Public Service control. The Commission should appoint and discipline its staff without outside interference. Article 85 should therefore state:-
“the Electoral Commission shall be responsible for the appointment and discipline of its permanent and ad-hoc staff”

There should also be a provision to ensure job security of Electoral Commission staff.

4. Chapter 17

The Chapter should be merged with Chapter Six, so that provisions on electoral law are consolidated.

Article 280(1)

Should provide for the Commission to acquire and dispose of property as is the case in the other Commonwealth jurisdictions.

There should therefore be a new provision 280 1(c) to read as follows:

“Subject to this Constitution be capable of acquiring and disposing of property and performing such other functions as a body corporate.”

Article 281(3)(b)

Age limit of Electoral Commissioners should not be specified because appointments should be based on merit.

Article 281 (3)(c)

Should not bar Electoral Commissioners from being directors of institutions whose interests do not conflict with the interests of the Commission.

Article 282

Should include a provision to enable the Commission to take evidence and punish those in breach of the Electoral Law and the Electoral Code of Conduct.

Article 283

Should clarify whether it refers to unfilled vacancies or absence of members during a sitting of the Commission.

Article 285(3)

Should provide that all expenses of the Commission should be a charge on the Consolidated Fund.

While responding to the presentation by the Vice-Chair of the Electoral Commission, Members pointed out that the presentation should have included comments on gender balance in the composition of the Commission, setting of electoral boundaries and whether the Commission was ready for elections as per the proposed electoral system.

Members also sought to know how the Commission would ensure all Kenyans including the disabled, the critically sick and the very old, among others, register as voters and vote during elections.

MIN.NO.50/2003: ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting at twenty minutes past One O'clock until 2.30 p.m. in the afternoon.

AFTERNOON SESSION

MIN.NO.51/2003 The Committee reconvened at forty-five minutes past Two O'clock.

MIN.NO.52/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 76 – General Principles

Sub-Article 76(3)

Amendment proposed;

That, Article 76(3) be amended by inserting the words “campaigns, nominations and” before the word “Elections”

(Hon. Godffey Mbuba M’thigaa)

Motion made and Question proposed;
Debate arising;

Question of the words proposed to be inserted be inserted proposed, put and negatived
Hence the sub-Article still reads

“Elections are free and fair”

Amendment proposed;

That, sub-Article 76(3) be amended by deleting the word “are” and inserting the words “shall be” in place thereon.

(Hon. Rashmin Chitnis)

Motion made and Question proposed;

Debate arising;

Question of the first part of the amendment that the word proposed to be deleted be deleted proposed, put and agreed to.

Question of the Second Part of the amendment that the words proposed to be inserted be inserted proposed, put and agreed to.

Question of the sub-Article as amended put and agreed to.

Thus the sub-Article reads as follows:

“Elections shall be free and fair”.

Sub-Article 76(5)

Amendment proposed;

That, Article 76(5) be amended by deleting the words “fair” and “the people” and inserting the words “equitable” and “men and women” respectively in place thereon.

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate arising;

Question of the first part of the amendment that the words proposed to be deleted be deleted proposed, put and negatived.

Thus the sub-Article remains as originally drafted and still reads;

“Elections shall ensure the fair representation of the people”

Sub-Article 76(6)

Amendment proposed;

That, Article 76(6) be amended by deleting the words “the disabled and minorities” and inserting the words “persons with disability, workers through the labour movement and marginalized communities and for that purpose the state shall take necessary Affirmative Action measures” in place thereon.

(Hon Ngorongo Makanga)

Motion made and Question proposed;

Debate arising;

MIN.NO.53/2003

ADJOURNMENT

The Convenor adjourned the sitting at fifty minutes past four O’clock until Thursday, September 18, 2003 at 9.30 a.m.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday September 18, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TENTH SITTING OF THE TECHNICAL WORKING GROUP 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY SEPTEMBER 18TH IN TENT NO.3, BOMAS OF Kenya

PRESENT:		Organization
1.	Hon. Caroline Ng'ang'a	-Convenor
2.	Hon. Apollo Tsalwa	-Western
3.	Hon. Asenath Kaimuri Nyamu	-Women Organizations
4.	Hon. Asiya Mwanzi Mahmood	-Religious Organizations
5.	Hon. Carolyne Ruto	-Rift Valley
6.	Hon. David Oloisa Mpilei	-Rift Valley
7.	Hon. David Wakahu	-Political Parties
8.	Hon. Eng. Joshua Toro	-Central
9.	Hon. Fatuma Boru Jaldesa	-Eastern
10.	Hon. Francis Kagwima	-Eastern
11.	Hon. George Muchai	-Trade Unions
12.	Hon. George Orwa Ochieng	-Nyanza
13.	Hon. Godfrey Mbuba M' thigaa	-Eastern
14.	Hon. Hellen Mung'athia	-Religious Organizations
15.	Hon. Isaac Ongubo Kibwage	-Professional Organizations
16.	Hon. Jacob Ochino Ogundo	-Political Parties
17.	Hon. James Ngusi	-Trade Unions
18.	Hon. Jane Kirangari Kamwaga	-Central
19.	Hon. Joel Onyancha	-Nyanza
20.	Hon. Justus Musyoki Mutweti	-Eastern
21.	Hon. Kenneth Njiru	-Political Parties
22.	Hon. Luseno Liyai Indembukhani	-Political Parties
23.	Hon. Maria Nzomo	-Women Organizations
24.	Hon. Mary Wambui Kanyi	-Civil Society
25.	Hon. Miriam Muto	-Person With Disability
26.	Hon. Mohammed Juma Abuti	-Coast
27.	Hon. Nancy C. Ngeywa	-Western
28.	Hon. Ngorongo Makanga	-Political Parties
29.	Hon. Peter Nyanducha	-Nyanza
30.	Hon. Raphael Bombo Ndeme	-Coast
31.	Hon. Raphael Livu	-Coast
32.	Hon. Rashmin P. Chitnis	-Religious Organizations
33.	Hon. Rhoda Arupe Loyor	-Rift Valley
34.	Hon. Richard N. Kibagendi	-Nyanza

- | | | |
|-----|------------------------------|--------------------|
| 35. | Hon. Rose Otieno Adiana | -Nyanza |
| 36. | Hon. Sophie Lepuchirit | -Rift Valley |
| 37. | Hon. Winston Ogola Adhiambo | -Political Parties |
| 38. | Hon. Chelagat Naftali Kemboi | -Rift Valley |
| 39. | Hon. Emmy Kipsoi | -Rift Valley |
| 40. | Hon. Sang Kipkorir Marisin | -Rift Valley |
| 41. | Hon. Danny Irungu | -Civil Society |
| 42. | Hon. Orwa Ojode | -Nyanza |
| 43. | Hon. Phoebe Asiyo | -Rapporteur |
| 44. | Hon.(Dr.) Mosonik arap Korir | -Rapporteur |

*Hon. Margaret Kamar -Member, Committee on Transition.

ABSENT WITH APOLOGY

Hon. Saipstone Ngalatu Musau -Eastern

ABSENT

- | | | |
|-----|-------------------------|----------------|
| (1) | Hon. Mohammed A. Khalif | -North Eastern |
| (2) | Hon. Mukhisa Kituyi | -Western |
| (3) | Hon. Njoki S. Ndungu | -Central |

OBSERVERS

1. Mr. Hassan Wako Wario
2. Mr. Joseph Mutuma
3. Mr. Nathaniel Chebelyon
4. Ms. Beatrice Atieno Ouma
5. Ms. Koki Muli
6. Ms. Mary Okumu
7. Ms. Rachael Mzera

IN ATTENDANCE

- | | | |
|----|--------------------------|--|
| 1. | Mrs. Serah Kioko Ndeto | -National Assembly |
| 2. | Mr. Maurice Kepoi | -Constitution of Kenya
Review Commission |
| 3. | Mr. Daniel Konyango | -Constitution of Kenya
Review Commission |
| 4. | Mrs. Margaret R. Ndawula | -Parliamentary counsel,
National Assembly, Uganda |
| 5. | Ms. Regina Mwachi | -Hansard |

MIN.NO.54/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

Hon. Miriam Muto opened the Meeting with a word of prayer.

The Convenor briefed the Committee on the following issues:-

1. Observers and Delegates from other Committees

The Convenor reminded the Committee that observers accredited to the Committee should not contribute during deliberations but they were free to ventilate their views through members of the Committee. She informed the Committee that delegates from other Committees should make their contributions during general debate between 9.30 a.m. and 10.30 a.m.

2. Contributions towards the late Dr. Crispin Odhiambo Mbai's Funeral Expenses

The Convenor informed the Committee that a schedule had been circulated to all Committees to contribute towards the late Dr. Mbai's funeral expenses.

The Committee resolved that the schedule be circulated to Members to make voluntary contributions.

3. Expert Input

The Convenor reminded the Committee that it had already been agreed that the Committee would invite experts from the Electoral Commission of Kenya, experts on Mixed Member Proportional Representation and Bicameralism. The Committee was nevertheless at liberty to suggest other proposals for experts to be invited.

The Committee reiterated its earlier resolution that experts should be invited as and when need arises.

MIN.NO.55/2003

ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.56/2003

GENERAL DEBATE

The Committee held general discussions on Article 78 of Draft Bill, during which delegates from other Committees gave their views. Hon. (Father) Joachim Gitonga suggested that the requirement for Kenyans to register as voters should be abolished. He argued that the requirement was deliberately introduced by colonialists to bar Kenyans from voting. It

was his opinion that the National Identity Card or a Passport should be the only document a Kenyan require to vote and that

Kenyans should be given the liberty to vote at any polling station in the country but they should vote only once. Members of the Committee made general comments on the proposal.

MIN.NO.57/2003

CONFIRMATION OF MINUTES

Minutes of the Ninth Sitting held on Wednesday 17th September 2003 were confirmed by members present and signed by the Convenor.

They were proposed by Hon. Rashmin P. Chitnis and seconded by Hon. Mary Kanyi.

MIN.NO.58/2003

MATTERS ARISING

5. List of Attendance

The Convenor should clarify whether Members who appear in the list of attendance but have not attended even a single sitting are still Members of the Committee.

6. Min.No.49/2003 of 17th September, 2003

Should reflect responses from Members of Committee on the presentation by the Electoral Commission of Kenya.

7. Min.No.52/2003 of 17th September, 2003

The Minute should reflect that the Committee resolved that Sub-Articles 76 (5), (6), (7) be renumbered 76 (4), (5), (6) respectively.

MIN.NO.59/2003

CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 76 – General Principles

Sub-Article 76(5)

Amendment proposed;

That, Article 76(5) be amended by deleting the words “the disabled and minorities” and inserting the words “persons with disability, workers through the labour movement and marginalized communities and for that purpose the state shall take necessary Affirmative Action measures” in place thereon.

(Hon Ngorongo Makanga)

Motion made and Question proposed;

Debate interrupted resumed;

Motion to Postpone Debate On Article 76(5)

Motion moved;

“That, deliberations on Article 76(5) be deferred to a later date so as to allow expert input from the Trade Union Movement.”

(Hon. James Ngusi)

Motion made and Question proposed;

Debate Arising;

Question put and agreed to.

The Committee resolved accordingly;

“That deliberations on Article 76(5) be deferred to a later date to allow expert input from the Trade Union Movement.”

Sub-Article 76(6)

Amendment proposed;

That the word “are” be deleted and the words “shall be” be inserted in place thereon.

(Hon. Godfrey M’thigaa)

Motion made and Question proposed;

Debate Arising;

Question of the first part of the amendment that the word proposed to be deleted, be deleted proposed, put and agreed to.

Question of the second part of the amendment that the words proposed to be inserted, be inserted proposed, put and agreed to.

Thus the sub-Article now reads:-

“Elections shall be conducted by an independent body free from political interference.”

Amendment proposed.

That, Sub-Article 76(6) as amended be further amended by inserting the words “or any other form of” between the words “political” and “interference.”

(Hon. Maria Nzomo)

Motion made and Question proposed;

Debate Arising;

Question of the amendment that the words proposed to be inserted be inserted, proposed, put and agreed to.

Question of the sub-Article as amended put and agreed to.

Thus the sub-Article as further amended reads:

“Elections shall be conducted by an independent body free from political or any other form of interference.”

New Sub-Article 76(7)

Amendment proposed;

That a new sub-Article 76(7) be inserted immediately after sub-Article 76(6) to read as follows:

“Elections shall ensure inter-generational equity.”

(Hon. Kenneth Njiru)

Motion made and Question proposed;

Debate Arising;

MIN.NO.60/2003: ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting at twenty minutes past One O'clock until 2.30 p.m. in the afternoon.

AFTERNOON SESSION

The Committee reconvened at thirty five minutes past Two O'clock.

MIN.NO.61/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL: REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 76 – General Principles

New Sub-Article 76(7)

Amendment proposed;

That Article 76 be further amended by inserting a new sub-Article 76(7) immediately after sub-Article 76(6) to read as follows:

“Elections shall ensure inter-generational equity”

(Hon. Kenneth Njiru)

Motion made and Question proposed;

Debate interrupted resumed;

Question of the amendment put and agreed to after a division during which the AYES got 22 votes while the NOES got 8 votes.

Thus a new sub-Article 76(7) should be inserted immediately after sub-Article 76(6) to read as follows:

“Elections shall ensure inter-generational equity.”

View of Delegates opposed the Amendment

Delegates opposed to the amendment were of the view that all generations are covered under sub-Article 76(4) which states that:-

“Elections shall ensure the fair representation of the people.”

They were of the view that the word “people” applies to all generations hence the proposed sub-Article 76(7) is rendered redundant since it is accommodated under sub-Article 76(4).

New Sub-Article: 76(8)

Amendment proposed;

That, Article 76 be further amended by inserting a new sub-Article 76(8) immediately after 76(7) to read as follows:

“All those in elective offices shall serve for 2 terms and may seek re-election after a five year break”

(Hon. Luseno Liyai)

Motion made and Question proposed;
Debate Arising;

Question of the amendment put and agreed to after a division during which the AYES had 16 votes while the NOES had 8 votes. There was one abstention.

Thus the a new sub-Article 76(8) should be inserted immediately after sub-Article 76(7) to read as follows;

All those in elective offices shall serve for 2 terms and may seek re-election after a five years break.

The Committee agreed that its resolution on the new sub-Article 76(8) should be forwarded to the Steering Committee to decide whether it lies under Chapter 6 on Representation of the People or Chapter 7 on the Legislature.

View of Delegates who opposed the Amendment

Delegates who opposed the amendment were of the view that the proposed sub-Article 76(8) is inappropriate because holders of elective offices are determined by the electorate. As such the electorate should be left to determine who represents them. They, further, argued that the two term

period is inadequate for anyone elected to achieve much for the people he/she represents.

MIN.NO.62/2003

ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past four O'clock until Friday, September 19, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday September 19, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE ELEVENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY SEPTEMBER 19, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Carolyne Ruto	- Rift Valley
6. Hon. Chelagat Naftali Kemboi	- Rift Valley
7. Hon. Danny Irungu	- Civil Society
8. Hon. David Oloisa Mpilei	- Rift Valley
9. Hon. David Wakahu	- Political Parties
10. Hon. Emmy Kipsoi	- Rift Valley
11. Hon. Eng. Joshua Toro	- Central
12. Hon. Fatuma Boru Jaldesa	- Eastern
13. Hon. Francis Kagwima	- Eastern
14. Hon. George Muchai	- Trade Unions
15. Hon. George Orwa Ochieng	- Nyanza
16. Hon. Godfrey Mbuba M'thigaa	- Eastern
17. Hon. Hellen Mung'athia	- Religious Organizations
18. Hon. Isaac Ongubo Kibwage	- Professional Organizations
19. Hon. Jacob Ochino Ogundo	- Political Parties
20. Hon. James Ngusi	- Trade Unions
21. Hon. Justus Musyoki Mutweti	- Eastern
22. Hon. Kenneth Njiru	- Political Parties
23. Hon. Luseno Liyai Indembukhani	- Political Parties
24. Hon. Maria Nzomo	- Women Organizations
25. Hon. Mary Wambui Kanyi	- Civil Society
26. Hon. Miriam Muto	- Person With Disability
27. Hon. Mohammed Juma Abuti	- Coast
28. Hon. Nancy C. Ngeywa	- Western
29. Hon. Ngorongo Makanga	- Political Parties
30. Hon. Orwa Ojode	- Nyanza
31. Hon. Peter Nyanducha	- Nyanza
32. Hon. Raphael Bombo Ndeme	- Coast
33. Hon. Rashmin P. Chitnis	- Religious Organizations

34.	Hon. Rhoda Arupe Loyor	-	Rift Valley
35.	Hon. Richard N. Kibagendi	-	Nyanza
36.	Hon. Rose Otieno Adiana	-	Nyanza
37.	Hon. Saipstone Ngalatu Musau	-	Eastern
38.	Hon. Sang Kipkorir Marisin	-	Rift Valley
39.	Hon. Sophie Lepuchirit	-	Rift Valley
40.	Hon. Winston Ogola Adhiambo	-	Political Parties
41.	Hon. Phoebe Asiyo	-	Rapporteur
42.	Hon.(Dr.) Mosonik arap Korir	-	Rapporteur
	*Hon. Margaret Kamar	-	Member, Committee on Transition.

ABSENT WITH APOLOGY

1.	Hon. Fares Ogada	-	Nyanza
2.	Hon. Jane Kirangari Kamwaga	-	Central
3.	Hon. Joel Onyancha	-	Nyanza

ABSENT

1.	Hon. Mohammed A. Khalif	-	North Eastern
2.	Hon. Mukhisa Kituyi	-	Western
3.	Hon. Njoki S. Ndungu	-	Central

OBSERVERS

1.	Ms. Rachael Mzera
2.	Ms. Mary Okumu
3.	Ms. Koki Muli
4.	Ms. Beatrice Atieno Ouma
5.	Mr. Nathaniel Chebelyon
6.	Mr. Joseph Mutuma
7.	Mr. Hassan Wako Wario

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Maurice Kepoi	-	Constitution of Kenya Review Commission
Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula	-	Parliamentary Counsel, National Assembly, Uganda
Ms. Regina Mwachi	-	Hansard

MIN.NO.63/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

Hon. Peter Nyanducha opened the Meeting with a word of prayer.

The Convenor briefed the Committee on the following issues: -

2. Recording of Minority Positions

The Convenor informed the Committee that minority position should be recorded only when a member moves that it be recorded and this should be done during consideration of the specific Article for which such a position is required. She urged the Committee to try and arrive at decisions by consensus.

4. Inclusion of new sub-Article 76(8)

The Convenor informed the Committee that she had consulted over whether the sub-Article should fall under Chapter 6 on Representation of the people or Chapter 7 on the Legislature and that it had been agreed that the sub-Article should fall under Chapter 6.

5. Delegates from other Committees

The Convenor informed the Committee that she had consulted over whether to allow delegates from other Committees to make contributions during consideration of the Draft Bill (Clause by Clause). She was advised to use her own discretion on how to go about the issue.

The committee resolved that delegates from other Committees should only make their contributions during general debate between 9.30 a.m. and 10.30 a.m.

MIN.NO.64/2003

ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.65/2003

CONFIRMATION OF MINUTES

Minutes of the Tenth Sitting held on Thursday 18th September, 2003 were confirmed by members present and signed by the Convenor.

They were proposed by Hon. Peter Nyanducha and seconded by Hon. George Orwa Ochieng

MIN.NO.66/2003

MATTERS ARISING

8. List of Attendance

The Convenor was still consulting over whether Members who appear in the list of attendance but have not attended even a single sitting are still Members of the Committee.

9. Min.No.59/2003 of 18th September, 2003

Hon.(Eng.) Joshua Toro, requested that a minority position over the inclusion of new sub-Articles 77(7) and (8) be reflected and to state as follows:-

(a) Minority Position on the new Sub-Article 77(7)

The minority view was that all generations are covered under sub-Article 76(4) which states that:-

“Elections shall ensure the fair representation of the people.”

They were of the view that the word “people” applies to all generations hence the proposed sub-Article 77(7) is rendered redundant since it is accommodated under sub-Article 76(4).

(b) Minority Position on the new Sub-Article 77(8)

The minority view was that the proposed sub-Article 77(8) is inappropriate because the electorate determines holders of elective offices. As such the electorate should be left to determine who represents them. They, further, argued that the two-term period is inadequate for anyone elected to achieve much for the people he/she represents.

MIN.NO.67/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 77 – Elections

Sub-Article 77(1)

Amendment proposed;

That, Article 77(1) be amended by deleting the words “subject to any provisions in the Constitution,” appearing on the first line.

(Hon. Maria Nzomo)

Motion made and Question proposed;
Debate Arising;

Question of the amendment that the words proposed to be deleted be deleted, proposed, put and negatived.

Thus Article 76(1) still reads:

Subject to any provisions in the Constitution, Parliament shall enact a law to provide for-

Sub-Article 77(1)(a)

The Committee resolved that the sub-Article be deferred in order to allow consultation with the Committee on Devolution of Powers since the sub-Article is cross-cutting.

MIN.NO.68/2003: ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting at thirty five minutes past Twelve O'clock until 2.30 p.m. in the afternoon.

AFTERNOON SESSION

The Committee reconvened at forty minutes past Two O'clock.

MIN.NO.69/2003 POSTPONEMENT OF PRESENTATION ON MIXED MEMBER PROPORTIONAL REPRESENTATION (MMP) BY COMMISSIONER MUTAKHA KANGU

The Committee resolved that in the light of the importance of the issue of MMP, the presentation by Hon. (Commissioner) Mutakha Kangu, be deferred to Monday September, 2003 at 2.00 p.m. when all Members of the Committee will be present.

MIN.NO.70/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL-REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 77 – Elections

Sub-Article 77(1)(b)

Amendment proposed;

“That, Article 77(1)(b) be deleted.”

(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of amendment put and negatived

The sub-Article 77(1)(b) is retained as in the Draft Bill and still reads,

‘nomination of candidates;’

Sub-Article 77(1)(c) - Agreed to

Sub-Article 77(1)(d)

Amendment proposed;

“That, Article 77(1) (d) be deleted”

(Hon. Rashmin Chitnis)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus sub-Article 77(1)(d) stands part of the Draft Bill and still reads as follows:-

“the continuous registration of citizens as voters;”

Sub-Article 77(10)(e) - agreed to

Sub-Article 77(1)(f)

Was deferred until after the presentation on Mixed Member Proportional Representation.

Sub-Article 77(1)(g) – agreed to.

Sub-Article 77(2)

Was deferred until after the presentation on Mixed Member Proportional Representation.

MIN.NO.71/2003

ANY OTHER BUSINESS

a. Group Photograph

The Committee resolved to take a group photograph before Friday 26th September, 2003.

b. Contact Addresses/Telephone

The Convenor informed the Committee that a schedule would be made and circulated to Members of the Committee to write down their contact addresses and telephone numbers for ease of communication.

MIN.NO.72/2003

ADJOURNMENT

The Convenor adjourned the sitting at forty minutes past Four O'clock until Monday, September 22, 2003 at 9.30 a.m.

CONFIRMED

.....

(CONVENOR)

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Monday September 22, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWELFTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY SEPTEMBER 22, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Carolyne Ruto	- Rift Valley
6. Hon. Danny Irungu	- Civil Society
7. Hon. David Oloisa Mpilei	- Rift Valley
8. Hon. David Wakahu	- Political Parties
9. Hon. Emmy Kipsoi	- Rift Valley
10. Hon. Eng. Joshua Toro	- Central
11. Hon. Fares Ogada	- Nyanza
12. Hon. Fatuma Boru Jaldesa	- Eastern
13. Hon. Francis Kagwima	- Eastern
14. Hon. George Orwa Ochieng	- Nyanza
15. Hon. Godfrey Mbuba M'thigaa	- Eastern
16. Hon. Hellen Mung'athia	- Religious Organizations
17. Hon. Isaac Ongubo Kibwage	- Professional Organizations
18. Hon. Jacob Ochino Ogundo	- Political Parties
19. Hon. Joel Onyancha	- Nyanza
20. Hon. James Ngusi	- Trade Unions
21. Hon. Jane Kirangari Kamwaga	- Central
22. Hon. Justus Musyoki Mutweti	- Eastern
23. Hon. Kenneth Njiru	- Political Parties
24. Hon. Luseno Liyai Indembukhani	- Political Parties
25. Hon. Maria Nzomo	- Women Organizations
26. Hon. Mary Wambui Kanyi	- Civil Society
27. Hon. Miriam Muto	- Person With Disability
28. Hon. Mohammed Juma Abuti	- Coast
29. Hon. George Muchai	- Trade Unions
30. Hon. Nancy C. Ngeywa	- Western
31. Hon. Ngorongo Makanga	- Political Parties
32. Hon. Orwa Ojode	- Nyanza
33. Hon. Peter Nyanducha	- Nyanza

- | | | | |
|-----|-------------------------------|---|-------------------------|
| 34. | Hon. Raphael Bombo Ndeme | - | Coast |
| 35. | Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 36. | Hon. Rhoda Arupe Loyer | - | Rift Valley |
| 37. | Hon. Richard N. Kibagendi | - | Nyanza |
| 38. | Hon. Rose Otieno Aduana | - | Nyanza |
| 39. | Hon. Saipstone Ngalatu Musau | - | Eastern |
| 40. | Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 41. | Hon. Sophie Lepuchirit | - | Rift Valley |
| 42. | Hon. Winston Ogola Adhiambo | - | Political Parties |
| 43. | Hon. Phoebe Asiyo | - | Rapporteur |
| 44. | Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |
- *Hon. Margaret Kamar - Member, Committee on Transition.

ABSENT WITH APOLOGY

Hon. Chelagat Naftali Kemboi - Rift Valley

ABSENT

- | | | | |
|----|-------------------------|---|---------------|
| 1. | Hon. Mohammed A. Khalif | - | North Eastern |
| 2. | Hon. Mukhisa Kituyi | - | Western |
| 3. | Hon. Njoki S. Ndungu | - | Central |

OBSERVERS

1. Ms. Rachael Mzera
2. Ms. Mary Okumu
3. Ms. Koki Muli
4. Ms. Beatrice Atieno Ouma
5. Mr. Nathaniel Chebelyon
6. Mr. Joseph Mutuma
7. Mr. Hassan Wako Wario

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Maurice Kepoi	-	Constitution of Kenya Review Commission
Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula	-	Parliamentary Counsel, National Assembly, Uganda
Mrs. Elizabeth Kimotho	-	Hansard

MIN.NO.73/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock and opened it with a word of prayer.

She urged Committee Members to study all the statutory and working documents carefully in order for them to make informed contributions.

She particularly appealed to Members to familiarize themselves with the Draft Bill and Main Report in order for them to prepare adequately for deliberations on Draft Bill.

MIN.NO.74/2003

GENERAL DEBATE

The Committee held general debate on Article 78. During the debate Hon. Apollo Njonjo (583) emphasized that the right to vote must be respected and that Affirmative Action and Mixed Member Proportional Representation should not be used to muzzle democracy by advocating for the rights of particular groups. He was of the opinion that delimitation of constituencies should take into account equal representation.

In responding to his views, Committee Members said that representation should take into account sizes of Constituencies and number of people per Constituency. Some Members pointed out that representation should accommodate all communities in Kenya equitably.

Hon. Viscount Kimathi (061) advanced the view that representation should cut across all groups in Kenya including Women, LSK, COTU and persons with disability among others.

MIN.NO.75/2003

ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.76/2003

CONFIRMATION OF MINUTES

Minutes of the Eleventh Sitting held on Friday 19th September, 2003 were confirmed and signed by the Convenor.

They were proposed by Hon. Rhoda Loyor and seconded by Hon. Raphael Ndeme.

MIN.NO.77/2003

MATTERS ARISING

10. List of Attendance

The Convenor was still consulting over whether Members who appear in the list of attendance but have not attended even a single sitting are still Members of the Committee.

11. Min.No.67/2003 of 19th September, 2003

The Convenor informed the Committee that she had consulted the Convenor of the Committee on Devolution of Powers over Sub-Article 77(1)(a) but she was yet to get a response form him.

**MIN.NO.78/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT
BILL- REPRESENTATION OF THE PEOPLE**

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 78 – The Right to Vote

Sub-Article 78(1)

Amendment proposed;

That, Article 78(1) be amended by deleting the word “eighteen” and inserting the word “twenty-one,” in place thereon,
(Hon. David Wakahu)

Motion made and Question proposed;

Debate Arising;

Question of the amendment that the words proposed to be deleted be deleted, proposed, put and negatived.

Amendment proposed;

“That, Article 78(1) be amended to read as follow:-

“All citizens who have attained the age of eighteen years have a right to vote.”

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of amendment put and negatived.

Amendment proposed;

That, sub-Article 78(1) be amended by inserting “and who is of sound mind” between the words “above” and “has”

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of amendment put and negatived.

Thus sub-Article 78(1) as printed stands part of the Draft Bill and still reads as follow:-

“A citizen who is eighteen years of age and above has the right to vote.”

Sub-Article 78(2)

Amendment proposed;

That, Article 78(2) be amended to read as follows:-

“Administration arrangements for the registration of voters and the conduct of elections shall not:-

- (4) Deny a citizen’s right to vote.
- (5) Deny a citizen’s right to stand for elections and shall include a system of continuous registration; and
- (6) Deny citizens the right to have continuous registration.

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Amendment proposed;

That, Article 78(2) be amended by inserting the words “and civic education” after the word “registration” appearing in the third line.

(Hon. Raphael Ndeme)

Motion made and Question proposed;

Debate arising;

Question of the amendment that the words proposed to be inserted, be inserted, proposed, put and agreed to.

Question of the sub-Article as amended put and agreed to.

Thus sub-Article 78(2) stands as amended and reads:-

“Administration arrangements for the registration of voters and the conduct of elections shall not deny a citizens right to vote and stand for election and shall include a system of continuous registration and civic education.”

MIN.NO.79/2003

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at twenty minutes past One O’clock until at 2.00 p.m. in the afternoon

AFTERNOON SESSION

The Committee reconvened at Two O’clock.

MIN.NO.80/2003

PRESENTATION BY COMM. MUTAKHA KANGU –

ELECTORAL SYSTEM

Commissioner Mutakha Kangu gave a presentation on the following Electoral Systems and briefed the Committee on the advantages and disadvantages of each:-

- (i) First Past the post
- (ii) Proportional Representation
- (iii) Mixed Member Proportional Representation.

MIN.NO.81/2003

CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL-REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 78 – THE RIGHT TO VOTE

New Sub-Article 78(3)

Amendment proposed;

That, Article 78 be amended by inserting a new sub-Article 78(3) immediately after sub Article 78(2) to read as follows:-

“Voting shall be compulsory for all registered voters.”

(Hon. Jacob Ochino)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Amendment proposed;

That, Article 78 be amended by inserting a new sub-Article 78(3) immediately after sub-Article 78(2) to read as follows:-

“Voting shall be compulsory for all registered voters including prisoners, members of the armed forces and staff of Diplomatic Missions.”

(Hon. Joel Onyancha)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Amendment proposed;

That, Article 78 be amended by inserting a new sub-Article 78(3) immediately after sub-Article 78(2) to read as follows:-

“Voting shall ensure that the provision of Article 44(2) of the Draft Bill with regard to observing a day of worship shall not be violated.”

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new sub-Article 78(3) is inserted immediately after sub-Article 78(2) to read as follows:-

“Voting shall ensure that the provision of Article 44(2) of the Draft Bill with regard to observing a day of worship shall not be violated.”

MIN.NO.82/2003

ADJOURNMENT

The Convenor adjourned the sitting at Five O'clock until Tuesday, September 23, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday September 23, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY SEPTEMBER 23, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Wakahu	-	Political Parties
9. Hon. Emmy Kipsoi	-	Rift Valley
10. Hon. Eng. Joshua Toro	-	Central
11. Hon. Fares Ogada	-	Nyanza
12. Hon. Fatuma Boru Jaldesa	-	Eastern
13. Hon. George Orwa Ochieng	-	Nyanza
14. Hon. Godfrey Mbuba M' thigaa	-	Eastern
15. Hon. Hellen Mung'athia	-	Religious Organizations
16. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
17. Hon. Jacob Ochino Ogundo	-	Political Parties
18. Hon. James Ngusi	-	Trade Unions
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Justus Musyoki Mutweti	-	Eastern
21. Hon. Kenneth Njiru	-	Political Parties
22. Hon. Luseno Liyai Indembukhani	-	Political Parties
23. Hon. Maria Nzomo	-	Women Organizations
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Person With Disability
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. George Muchai	-	Trade Unions
28. Hon. Nancy C. Ngeywa	-	Western
29. Hon. Ngorongo Makanga	-	Political Parties
30. Hon. Orwa Ojode	-	Nyanza
31. Hon. Peter Nyanducha	-	Nyanza
32. Hon. Raphael Bombo Ndeme	-	Coast
33. Hon. Rashmin P. Chitnis	-	Religious Organizations

34.	Hon. Rhoda Arupe Loyor	-	Rift Valley
35.	Hon. Richard N. Kibagendi	-	Nyanza
36.	Hon. Rose Otieno Adiana	-	Nyanza
37.	Hon. Mohammed A. Khalif	-	North Eastern
38.	Hon. Sophie Lepuchirit	-	Rift Valley
39.	Hon. Winston Ogola Adhiambo	-	Political Parties
40.	Hon. Phoebe Asiyo	-	Rapporteur
41.	Hon.(Dr.) Mosonik arap Korir	-	Rapporteur

ABSENT WITH APOLOGY

Hon. David Oloisa Mpilei	-	Rift Valley
Hon. Saipstone Ngalatu Musau	-	Eastern

ABSENT

1.	Hon. Francis Kagwima	-	Eastern
2.	Hon. Joel Onyancha	-	Nyanza
3.	Hon. Mukhisa Kituyi	-	Western
4.	Hon. Njoki S. Ndungu	-	Central
5.	Hon. Sang Kipkorir Marisin	-	Rift Valley

OBSERVERS

1.	Ms. Mary Okumu
2.	Ms. Koki Muli
3.	Ms. Susan Wangui Ngugi
4.	Beatrice Elachi

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Maurice Kepoi	-	Constitution of Kenya
Review Commission		
Mr. Daniel Konyango	-	Constitution of Kenya
Review Commission		
Mrs. Margaret R. Ndawula	-	Parliamentary Counsel,
National Assembly, Uganda		
Mrs. Elizabeth Kimotho	-	Hansard
Mr. Francis Atwoli	-	Secretary General, COTU

MIN.NO.83/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Miriam Muto.

MIN.NO.84/2003

ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.85/2003

**EXPERT INPUT FROM THE LABOUR MOVEMENT
PRESENTATION BY MR. FRANCIS ATWOLI,
SECRETARY GENERAL, COTU**

The Secretary General informed the Committee that the trade union movement advocates for the rights of all workers. This includes politicians, professionals, casual labourers, et cetera. The labour movement is therefore an alternative centre of representation.

He was of the view that since workers are such an important force in society, they should have representation in Parliament without having to go through political parties. The danger of representation through political parties is that it restricts the representative and, more often than not, confines him/her to party wishes, even when they impinge on the rights of the represented.

He continued to explain that workers can only be ably represented by one who goes to Parliament solely to represent them. It was his opinion that a provision be included in the Draft Bill to give the labour movement its own constituency for representation in Parliament. He emphasized that persons who play the role of advocacy must be given a chance to represent those they advocate for in the August House.

The Secretary General responded to issues raised by the Committee on what was obtaining in countries such as Uganda, Japan and China. He informed the Committee that in Uganda workers elect one of their own to represent them in Parliament.

He admitted that the trade union movement was very successful in Japan but cautioned members against comparing Kenya and Japan since the success of the latter is attributable to the transparent manner in which issues are conducted there.

Members also sought to know what role the labour movement was playing in ensuring job creation for Kenyans to which the Secretary General replied that job creation should be viewed in the light of the political good will of the government of the day.

Some Members warned against the Committee being unduly influenced to support representation of workers in Parliament by COTU without convincing reasons for advocating for the representation.

MIN.NO.86/2003

CONFIRMATION OF MINUTES

Minutes of the Twelfth Sitting held on Monday 22nd September, 2003 were confirmed and signed by the Convenor.

They were proposed by Hon. Richard Kibagendi and seconded by Hon. George Orwa Ochieng.

MIN.NO.87/2003 **CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE**

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 79 – Qualifications for Registration

Sub-Article 79(a) – agreed to.

Thus, the sub-Article still stands as in the Draft Bill and reads as follows:-

“is eighteen years of age and above.”

The Committee considered Chapter Six of the Draft Bill as follows:-

Sub-Article 79(1)(b)

Was deferred to 2.00 p.m. in the afternoon.

Sub-Article 79(2) – agreed to.

Thus, the sub-Article still stands as in the Draft Bill and reads as follows:-

“ A citizen who qualifies for registration as a voter shall only be registered at one place.”

Article 80 – Disqualification From Registration

Sub-Article 80(1)(a)

Amendment proposed;

That, Article 80(1)(a) be deleted.
(*Hon. Eng. Joshua Toro*)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, the sub-Article still stands as it is in the Draft Bill and reads as follows:-

“under a law of Kenya is declared to be of unsound mind; or

Sub-Article 80(1)(b)

Amendment proposed;

“That, Article 80(1)(b) be deleted.”
(*Hon. George Muchai*)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, sub-Article 80(1)(b) stands as it in the Draft Bill and reads as follows:-

“is disqualified by an Act of Parliament for conviction of an election offence.”

Sub-Article 80(2)

Amendment proposed;

That, Article 80(2) be amended by deleting the words “High Court” and inserting the words, “Electoral Commission of Kenya” in place thereon.
(*Hon. Jacob Ochino*)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, Article 80(2) stands as it is in the Draft Bill and reads as follows:-

“The question whether a citizen is disqualified to be registered as a voter for public elections or referenda shall be determined by the High Court.”

MIN.NO.88/2003

ADJOURNMENT

The Convenor adjourned the sitting at ten minutes past One O’clock until 2.30 p.m. in the afternoon.

AFTERNOON SESSION

The Committee reconvened at forty five minutes past Two O'clock.

MIN.NO.89/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 79 – Qualifications for Registration.

Sub-Article 79(1)(b)

Clarification by the Rapporteur-General

The Rapporteur-General, made clarifications on the sub-Article after which the Committee proceeded to deliberate on the sub-Article.

Amendment proposed;

That Article 79(1)(b) be deleted.

(Hon. Eng. Joshua Toro)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, sub-Article 79(1)(b) is deleted and should not therefore be part of the Draft Bill.

The Committee nevertheless resolved that the 79(1)(b) be referred to the Committee on Legislature.

Minority Position

Hon. Isaac Kibwage requested to have a minority position recorded and to state that Article 79(1)(b) should be retained as in the Draft Bill.

Sub-Article 79(1)(c)

Amendment proposed;

That Article 79(1)(c) be renumbered 79(1)(b).

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Hence 79(1)(c) is now renumbered 79(1)(b).

Sub-Article 79(1)(c) as renumbered.

Amendment proposed;

That Article 79(1)(c) as renumbered be deleted.
(*Hon. Eng. Joshua Toro*)

Motion withdrawn by the mover.

Sub-Article 79(1)(c) as renumbered – agreed to.

Thus, the sub-Article should remain as in the Draft Bill and read as follows:-

“has for a period of, or periods amounting in the aggregate to, not less than five months in the twelve months immediately preceding that date-

- (7) been ordinarily resident in the constituency in which the application for the registration is made, or
- (8) has been employed there, has carried on business or has lawfully possessed land or residential building in the constituency.”

Article 81 - Voting

Sub-Article 81(a) - agreed to.

Thus, Article 81(a) stands as it is in the Draft Bill and reads as follows:-

“voting procedure is simple and precise;”

Sub-Article 81(b)

Amendment proposed;

That Article 81(b) be amended to read as follows:-

“where the ballot box is used, it shall be transparent.”
(*Hon. Rhoda Loyor*)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, sub-Article 81(b) now reads as follows:-

“where the ballot box is used it shall be transparent.”

Sub-Article 81(c)

Amendment proposed;

That Article 81(c) be amended to read as follows:-

“the votes cast shall be counted, tabulated and results announced immediately by the presiding officer at the polling stations.”

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Question of the sub-Article as it appears in the Draft Bill put and agreed to.

Thus, sub-Article 81(c) stands as it is in the Draft Bill and reads as follows:-

“the votes cast are counted, tabulated and results announced by the presiding officer at the polling station.”

MIN.NO.90/2003

ADJOURNMENT

The Convenor adjourned the sitting at fifty minutes past Four O’clock until Wednesday, September 24, 2003 at 9.30 a.m.

CONFIRMED

(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday September 24, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FOURTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY SEPTEMBER 24, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
7. Hon. Apollo Tsalwa	-	Western
8. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
9. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
10. Hon. Chelagat Naftali Kemboi	-	Rift Valley
11. Hon. David Oloisa Mpilei	-	Rift Valley
12. Hon. David Wakahu	-	Political Parties
13. Emmy Kipsoi	-	Rift Valley
14. Hon. Godfrey Mbuba M' thigaa	-	Eastern
15. Hon. Hellen Mung'athia	-	Religious Organizations
16. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
17. Hon. Jacob Ochino Ogundo	-	Political Parties
18. Hon. James Ngusi	-	Trade Unions
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Justus Musyoki Mutweti	-	Eastern
21. Hon. Kenneth Njiru	-	Political Parties
22. Hon. Luseno Liyai Indembukhani-	-	Political Parties
23. Hon. Mary Wambui Kanyi	-	Civil Society
24. Hon. Miriam Muto	-	Person With Disability
25. Hon. Mohammed Juma Abuti	-	Coast
26. Hon. George Muchai	-	Trade Unions
27. Hon. Nancy C. Ngeywa	-	Western
28. Hon. Ngorongo Makanga	-	Political Parties
29. Hon. Orwa Ojode	-	Nyanza
30. Hon. Peter Nyanducha	-	Nyanza
31. Hon. Raphael Bombo Ndeme	-	Coast
32. Hon. Rashmin P. Chitnis	-	Religious Organizations
33. Hon. Rhoda Arupe Loyer	-	Rift Valley
34. Hon. Richard N. Kibagendi	-	Nyanza
35. Hon. Rose Otieno Adiana	-	Nyanza

- | | | |
|---------------------------------|---|--------------------------|
| 36. Hon. Sophie Lepuchirit | - | Rift Valley |
| 37. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 38. Hon. Maria Nzomo | - | Women Organizations |
| 39. Hon. Sang Kipkorir Marisin | - | Rift Valley |
|
 | | |
| *Hon. Margaret Kamar | - | Committee on Transition. |

ABSENT

- | | | |
|---------------------------------|---|---------------|
| 1. Hon. Carolyne Ruto | - | Rift Valley |
| 2. Hon. Danny Irungu | - | Civil Society |
| 3. Hon. Francis Kagwima | - | Eastern |
| 4. Hon. Joel Onyancha | - | Nyanza |
| 5. Hon. Mohammed A. Khalif | - | North Eastern |
| 6. Hon. Mukhisa Kituyi | - | Western |
| 7. Hon. Njoki S. Ndungu | - | Central |
| 8. Hon. Saipstone Ngalutu Musau | - | Eastern |
| 9. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |
| 10. Hon. Phoebe Asiyo | - | Rapporteur |

OBSERVERS

1. Ms. Mary Okumu
2. Ms. Koki Muli
3. Ms. Susan Wangui Ngugi
4. Beatrice Elachi

IN ATTENDANCE

- | | | |
|-----------------------------|---|---|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Maurice Kepoi | - | Constitution of Kenya
Review Commission |
| 3. Mr. Daniel Konyango | - | Constitution of Kenya
Review Commission |
| 4. Mrs. Jerusha Makumi | - | Constitution of Kenya
Review Commission |
| 5. Mrs. Margaret R. Ndawula | - | Parliamentary Counsel,
National Assembly, Uganda |

MIN.NO.91/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Ruth Kibiti (visiting Delegate).

The Convenor informed the Committee that the following Members had been moved from the Committee as per the latest list of Members of the Committee: -

- (1) Hon. George Orwa Ochieng
- (2) Hon. Ngorongo Makanga
- (3) Hon. Rhoda Loyor
- (4) Hon. Sang Kipkorir Marisin

The Members, all of whom were present, pointed out that they had neither been consulted over the issue nor were they aware they had been moved. They said that they wanted to remain Members of the Committee (No.'C') and did not want to be moved to other Committees.

The Committee took exception with issue of moving its Members to other Committees against their wishes.

The Convenor was requested to raise the issue with the Rapporteur-General and the Steering Committee.

MIN.NO.92/2003 ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.94/2003 EXPERT INPUT ON MIXED MEMBER PROPORTIONAL REPRESENTATIONAL – PRESENTATION BY KOKI MULI, OFFICIAL OBSERVER

The Presenter informed the Committee that the Draft Bill proposes two systems of elections viz:

- (i) Elections where one person represents one constituency.
- (ii) Proportional Representation.

She explained that in such a case, the electorate will be required to have one or two ballot papers, that is, for the constituency and proportional representation containing a party list for the purposes of enabling voters to choose their preferred party.

She, further, explained that the proposed district representation under the Chapter on Devolution is not an electoral system but a system of government similar to what is obtaining in Canada. This is a form of governance, which transfers power and resources to the people at the provincial and district levels instead of having it concentrated at the National level.

She informed the Committee that MMPR is aimed at correcting the imbalance created by the system whereby political parties represented in Parliament endorsed Nominated Members of Parliament. The new system will allow Kenyans to determine who will represent special interests in Parliament.

In responding to the presentation, Members inquired about the place of MMPR in the context of the two Chamber House proposed in the Draft Bill. The presenter explained that the system can be applied in both Houses.

Some Members emphasized that there is need to create special seats for marginalized groups arguing that political parties cannot be trusted to advocate for the views of special groups.

Some members were of the view that Kenya should have its own homegrown system of representation since the country is unique and should therefore not be made to follow systems of other countries.

The presenter informed the Committee that it was upon them to propose a system of representation that is most suitable for the country.

She also informed the Committee that it was necessary to ensure that proportional representation is clearly defined and further that rules and regulations on how to operationalise the system are put in place.

Members inquired about how to prevent rigging during nominations and elections and ensure party lists are not controlled and influenced by party leaders. In responding, the presenter said that the Committee was free to include provisions to guard such malpractices.

MIN.NO.95/2003

CONFIRMATION OF MINUTES

Minutes of the Thirteenth Sitting held on Tuesday 23rd September, 2003 were confirmed and signed by the Convenor.

They were proposed by Hon. Peter Nyanducha and seconded by Hon. M'Thigaa Godffrey Mbuba.

MIN.NO.96/2003

CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL- REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 81 – Voting.

New Sub-Article 81(d)

Amendment proposed;

That, a new sub-Article 81(d) be inserted immediately after sub-Article 81(c) to read as follows:-

“the results from the polling stations are transparently and accurately collated and announced by the Returning Officer.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new sub-Article 81(d) is inserted in the Draft Bill and reads as follows:-

“the results from the polling stations are transparently and accurately collated and announced by the Returning Officer.”

New Sub-Article 81(e)

Amendment proposed;

That a new sub-Article 81(e) be inserted immediately after 81(d) to read as follows:-

“where an electronic system is used, it shall be simple and validated.”

(Hon. Isaac Kibwage)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Hence the proposed sub-Article 81(e) will not form part of the Draft Bill.

Amendment proposed;

That a new sub-Article 81(e) be inserted immediately after sub-Article 81(d) to read as follows: -

“if the total votes cast are less than 33% of the registered voters, then the Returning Officer shall declare the particular constituency unrepresented for that electoral period.”

(Hon. Kenneth Njiru)

Motion withdrawn by the mover.

Amendment proposed;

That a new sub-Article 81(e) be inserted immediately after the new sub-Article 81(d) to read as follows:-

“Special arrangements are made to accord members of the Armed Forces, Police, Staff of Diplomatic Missions, those living or working abroad, prisoners, election officials, and those admitted in hospitals opportunity to vote”

(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Question of the new sub-Article 81(e) amended put and agreed to.

Thus a new sub-Article 81(e) now inserted immediately after the new sub-Article 81(d) to read as follows: -

“Special arrangements are made to accord members of the Armed Forces, Police, Staff of Diplomatic Missions, those living or working abroad, prisoners, election officials, and those admitted in hospitals opportunity to vote”

New Sub-Article 81(g)

Amendment proposed;

That a new sub-Article 81(g) be inserted immediately after 81(f) to read as follows: -

“The election date shall fall within the months of dry season preferably the month of August on any Treasury.”

(Hon. Jacob Ochino)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Hence the proposed sub-Article 81(g) will not form part of the Draft Bill.

Amendment proposed;

That a new sub-Article 81(g) be inserted immediately after sub-Article 81(f)

MIN.NO.97/2003

ADJOURNMENT

The Convenor adjourned the sitting at forty minutes past One O'clock until Thursday, September 25, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday September 25, 2003** in Tent No.3, Bomas of Kenya at 9.30 a.m.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE FIFTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY SEPTEMBER 25, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	omen Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	ift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. Godfrey Mbuba M'thigaa	-	astern
16. Hon. Hellen Mung'athia	-	eligious Organizations
17. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
18. Hon. Jacob Ochino Ogundo	-	Political Parties
19. Hon. James Ngusi	-	Trade Unions
20. Hon. Jane Kirangari Kamwaga	-	Central
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kenneth Njiru	-	Political Parties
23. Hon. Luseno Liyai Indembukhani	-	Political Parties
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Person With Disability
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. George Muchai	-	Trade Unions
28. Hon. Nancy C. Ngeywa	-	Western
29. Hon. Ngorongo Makanga	-	Political Parties
30. Hon. Orwa Ojode	-	Nyanza
31. Hon. Peter Nyanducha	-	Nyanza
32. Hon. Raphael Bombo Ndeme	-	Coast

- | | | |
|-----------------------------------|---|-------------------------|
| 33. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 34. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 35. Hon. Richard N. Kibagendi | - | Nyanza |
| 36. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 37. Hon. Sophie Lepuchirit | - | Rift Valley |
| 38. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 39. Hon. Maria Nzomo | - | Women Organizations |
| 40. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 41. Hon. Phoebe Asiyo | - | Rapporteur |
| 42. Hon. (Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|-----------------------------|---|--------|
| 1. Hon. George Orwa Ochieng | - | Nyanza |
| 2. Hon. Rose Otieno Adiana | - | Nyanza |

ABSENT

- | | | |
|----------------------------|---|---------------|
| 1. Hon. Joel Onyancha | - | Nyanza |
| 2. Hon. Mohammed A. Khalif | - | North Eastern |
| 3. Hon. Mukhisa Kituyi | - | Western |
| 4. Hon. Njoki S. Ndungu | - | Central |

OBSERVERS

1. Ms. Mary Okumu
2. Ms. Koki Muli
3. Ms. Susan Wangui Ngugi
4. Beatrice Elachi

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Maurice Kepoi | - | Constitution of Kenya Review Commission |
| 3. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 4. Mrs. Jerusha Makumi | - | Constitution of Kenya Review Commission |
| 5. Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly, Uganda |
| 6. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.98/2003

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

Hon. Helen Mung'athia opened the meeting with a word of prayer.

The Convenor reminded the Committee of need to maintain the necessary quorum for the Committee to transact business as per regulation 4.1 (d). She informed the Committee that the Steering Committee had resolved that Members who do not stick to their Committees but keep on moving from one Committee to another should be recorded as being absent, in which case they would not be entitled to their daily allowance.

She, further, informed the Committee that the Steering Committee had resolved that all Committees should conclude their business by 12.00 noon on Friday 26th September, 2003.

MIN.NO.99/2003

**CONSIDERATION OF CHAPTER SIX OF THE
DRAFT BILL- REPRESENTATION OF THE
PEOPLE**

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 81 – Voting.

New Sub-Article 81(f)

Amendment proposed;

That, a new sub-Article 81(f) be inserted immediately after sub-Article 81(e) to read as follows:-

(f) i. there is provision for a “none of the above” vote:

- (5) in the event that half of the votes cast are the “none of the above,” the Returning Officer shall declare the particular elections void;
- (6) following such declaration, the Electoral Commission shall organize within four of the “none of the above” vote, a new election; and
- (7) all candidates against whom such vote was cast shall be ineligible for the subsequent election.

(Hon. Kenneth Njiru)

Motion made and Question proposed;

Debate Arising;

Mover replied;

Question of the amendment put and negatived.

Thus, the proposed amendment will not form part of the Draft Bill.

Amendment proposed;

That a new sub-Article 81(f) be inserted immediately after 81(e) to read as follows:-

“where no candidate garners more than 50% of the votes cast a second election is held between the 2 lead candidates within 2 months.”

(Hon. Isaac Kibwage)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Hence the proposed sub-Article 81(e) will not form part of the Draft Bill.

Amendment proposed;

That a new sub-Article 81(f) be inserted immediately after sub-Article 81(e) to read as follows:-

“appropriate structures and mechanisms to eliminate all forms of electoral malpractices are put in place, including the safe-keeping of all election materials.”

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Question of the new sub-Article 81(f) amended put and agreed to.

Thus a new sub-Article 81(f) is now inserted immediately after the new sub-Article 81(e) to read as follows:-

“appropriate structures and mechanisms to eliminate all forms of electoral malpractices are put in place, including the safe-keeping of all election materials.”

MIN.NO.100/2003

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at ten minutes past One O'clock until 2.30 p.m. in the afternoon.

AFTERNOON SESSION

The Committee convened at forty five minutes past Two O'clock.

MIN.NO.101/2003 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL – REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROGRESS

DEFERRED ISSUES.

Article 76 – General Issues

Sub-Article 76(5) (renumbered)

Amendment Proposed;

That, sub-Article 76(5) be amended to read as follows: -

“Elections shall ensure fair representation of women, persons with disability, workers, through the labour movement and marginalized communities and for that purpose the state shall take the necessary Affirmative Action measures.”

(Hon. Ngorongo Makanga)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to after division in which the AYES got 17 votes, the NOES got 11 votes and 4 abstained.

Thus, sub-Article 76(5) as renumbered is amended and reads as follows:-

“Elections shall ensure fair representation of women, persons with disability, workers, through the labour movement and marginalized communities and for that purpose the state shall take the necessary Affirmative Action measures.”

Amendment proposed;

That, sub-Article 76(5) as amended be further amended to read as follows:

-

Elections shall ensure the upholding of the principle of equity and equality of representation of both women and men, exercise Affirmative Action for people with disability, workers through their trade unions and other marginalized groups and communities.”

(Hon. Maria Nzomo)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived after division in which the AYES had 9 votes while the NOES had 16 votes.

Hence, the amendment will not form part of the Draft Bill and sub-Article 76(5) still reads as follows: -

“Elections shall ensure fair representation of women, persons with disability, workers, through the labour movement and marginalized communities and for that purpose the state shall take the necessary Affirmative Action measures.”

Minority Position

Hon. Joshua Toro requested for a minority position to state that workers do not need to have a representative in Parliament from the labour movement since remaining in the labour movement is not permanent feature as is the case of disability or gender.

MIN.NO.102/2003

ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past Four O’clock until Friday, September 26, 2003 at 9.30 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday September 26, 2003** in Tent No.3, **Bomas of Kenya** at **9.30 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SIXTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY SEPTEMBER 26, 2003 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Carolyne Ruto	- Rift Valley
6. Hon. Chelagat Naftali Kemboi	- Rift Valley
7. Hon. David Oloisa Mpilei	- Rift Valley
8. Hon. David Wakahu	- Political Parties
9. Hon. Emmy Kipsoi	- Rift Valley
10. Hon. Eng. Joshua Toro	- Central
11. Hon. Fares Ogada	- Nyanza
12. Hon. Fatuma Boru Jaldesa	- Eastern
13. Hon. George Orwa Ochieng	- Nyanza
14. Hon. Godfrey Mbuba M'thigaa	- Eastern
15. Hon. Hellen Mung'athia	- Religious Organizations
16. Hon. Isaac Ongubo Kibwage	- Professional Organizations
17. Hon. Jacob Ochino Ogundo	- Political Parties
18. Hon. James Ngusi	- Trade Unions
19. Hon. Jane Kirangari Kamwaga	- Central
20. Hon. Joel Onyancha	- Nyanza
21. Hon. Justus Musyoki Mutweti	- Eastern
22. Hon. Kenneth Njiru	- Political Parties
23. Hon. Luseno Liyai Indembukhani	- Political Parties
24. Hon. Mary Wambui Kanyi	- Civil Society
25. Hon. Mohammed Juma Abuti	- Coast
26. Hon. George Muchai	- Trade Unions
27. Hon. Nancy C. Ngeywa	- Western
28. Hon. Ngorongo Makanga	- Political Parties
29. Hon. Peter Nyanducha	- Nyanza
30. Hon. Raphael Bombo Ndeme	- Coast
31. Hon. Rashmin P. Chitnis	- Religious Organizations
32. Hon. Rose Otieno Adiana	- Nyanza
33. Hon. Rhoda Arupe Loyor	- Rift Valley

- | | | |
|-----------------------------------|---|---------------------|
| 34. Hon. Richard N. Kibagendi | - | Nyanza |
| 35. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 36. Hon. Sophie Lepuchirit | - | Rift Valley |
| 37. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 38. Hon. Maria Nzomo | - | Women Organizations |
| 39. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 40. Hon. Phoebe Asiyo | - | Rapporteur |
| 41. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|----------------------------|---|------------------------|
| 1. Hon. Danny Irungu | - | Civil Society |
| 2. Hon. Francis Kagwima | - | Eastern |
| 3. Hon. Miriam Muto | - | Person With Disability |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Mukhisa Kituyi | - | Western |
| 6. Hon. Njoki S. Ndungu | - | Central |
| 7. Hon. Orwa Ojode | - | Nyanza |

OBSERVERS

1. Ms. Mary Okumu
2. Ms. Koki Muli
3. Ms. Susan Wangui Ngugi

IN ATTENDANCE

- | | | |
|-----------------------------|---|---|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Maurice Kepoi | - | Constitution of Kenya
Review Commission |
| 3. Mr. Daniel Konyango | - | Constitution of Kenya
Review Commission |
| 4. Mrs. Jerusha Makumi | - | Constitution of Kenya
Review Commission |
| 5. Mrs. Margaret R. Ndawula | - | Parliamentary Counsel,
National Assembly, Uganda |
| 6. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.103/2003

PRELIMINARY

The Convenor called the meeting to order at fifty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Peter Nyanducha.

MIN.NO.104/2003

ADOPTION OF THE AGENDA

The Committee adopted the Agenda as approved by the Convenor.

MIN.NO.105/2003

CONFIRMATION OF MINUTES

Minutes of the Fourteenth and Fifteenth Sittings held on Wednesday 24th September, and Thursday 25th September, 2003, respectively.

The Minutes of Fourteenth sitting were proposed by Hon. Asiya Mwanzi and seconded by Hon. Chelagat Naftali Kemboi while those of the Fifteenth Sitting were proposed by Hon. Asenath Nyamu and seconded by Hon. Kenneth Njiru.

MIN.NO.106/2003

ADJOURNMENT

The Convenor adjourned the sitting at forty-five minutes past Ten O'clock to enable the Committee to attend the plenary for the National Constitutional Conference closing Session.

The Committee will convene at a date to be decided upon later.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday January 13, 2004** in Tent No.3, **Bomas of Kenya** at **11.30 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE SEVENTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY JANUARY 13, 2004 AT 11.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
42. Hon. Caroline W. Ng'ang'a	-	Convenor
43. Hon. Apollo Tsalwa	-	Western
44. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
45. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
46. Hon. Carolyne Ruto	-	Rift Valley
47. Hon. Chelagat Naftali Kemboi	-	Rift Valley
48. Hon. David Oloisa Mpilei	-	Rift Valley
49. Hon. David Wakahu	-	Political Parties
50. Hon. Fares Ogada	-	Nyanza
51. Hon. Fatuma Boru Jaldesa	-	Eastern
52. Hon. George Orwa Ochieng	-	Nyanza
53. Hon. Godfrey Mbuba M'thigaa	-	Eastern
54. Hon. Hellen Mung'athia	-	Religious Organizations
55. Hon. Jacob Ochino Ogundo	-	Political Parties
56. Hon. Jane Kirangari Kamwaga	-	Central
57. Hon. Joel Onyancha	-	Nyanza
58. Hon. Justus Musyoki Mutweti	-	Eastern
59. Hon. Kenneth Njiru	-	Political Parties
60. Hon. Luseno Liyai Indembukhani-	-	Political Parties
61. Hon. Mary Wambui Kanyi	-	Civil Society
62. Hon. Mohammed Juma Abuti	-	Coast
63. Hon. George Muchai	-	Trade Unions
64. Hon. Nancy C. Ngeywa	-	Western
65. Hon. Ngorongo Makanga	-	Political Parties
66. Hon. Peter Nyanducha	-	Nyanza
67. Hon. Raphael Bombo Ndeme	-	Coast
68. Hon. Rose Otieno Adiana	-	Nyanza
69. Hon. Rhoda Arupe Loyor	-	Rift Valley
70. Hon. Richard N. Kibagendi	-	Nyanza
71. Hon. Saipstone Ngalaatu Musau	-	Eastern

72. Hon. Sophie Lepuchirit	-	Rift Valley
73. Hon. Winston Ogola Adhiambo	-	Political Parties
74. Hon. Sang Kipkorir Marisin	-	Rift Valley
75. Hon. Danny Irungu	-	Civil Society
76. Hon. Francis Kagwima	-	Eastern
77. Hon. Miriam Muto	-	Persons With Disabilities
78. Hon. Phoebe Asiyo	-	Rapporteur
79. Hon.(Dr.) Mosonik arap Korir	-	Rapporteur
80. Hon. Orwa Ojode	-	Nyanza

ABSENT

(1) Hon. Mohammed A. Khalif	-	North Eastern
(2) Hon. Mukhisa Kituyi	-	Western
(3) Hon. Njoki S. Ndungu	-	Central
(4) Hon. Eng. Joshua Toro	-	Central
(5) Hon. Rashmin P. Chitnis	-	Religious Organizations
(6) Hon. Isaac Ongubo Kibwage	-	Professional Organizations

OBSERVERS

1. Mr. Joseph Mutuma
2. Mr. Nathaniel Chebelyon

IN ATTENDANCE

1. Mrs. Serah Kioko Ndeto	-	National Assembly
2. Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
3. Mr. George Mukundi	-	Constitution of Kenya Review Commission
4. Mrs. Margaret R. Ndawula	-	Parliamentary Counsel, National Assembly, Uganda
5. Mrs. Elizabeth Kimotho	-	Hansard

MIN.NO.108/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Eleven O'clock and welcomed Members back to the Committee after the long recess.

She appealed to them to devote themselves wholly to the work of the Committee and implored them to put aside their political, tribal, religious or other affiliations while executing their mandate. Cautioning that history would judge them harshly if they erred, the Convenor urged Committee Members to adopt a national, objective and non-partisan approach to the work of reviewing the Constitution.

The Convenor, on behalf of the Committee, conveyed a message of condolence to the family of the late Hon. James Ngusi who passed away during the recess.

The Committee acknowledged the appointment of one of its Members Professor, Maria Nzomo to the position of High Commissioner and that of Rapporteur (Dr.) Mosonik arap Korir to the position of Chairman to the Public Archives Advisory Council.

Rapporteur (Dr) Phoebe Asiyi informed the Committee that replacement of Members who had since ceased to be Members of the Committee was being handled by the Credentials Committee and would be finalised as soon as possible.

A Sub-Committee of six was set up to establish whether Honourable Delegate Joshua Toro, M.P. had requested for a minority position with regard to sub-article 76(5) which sought to have representation of workers in Parliament.

The Sub-Committee is consisted as follows:-

Hon. George Muchai -	Trade Unions (Chairman)
Hon. Fares Ogada -	District Delegate
Hon. Luseno Liyai -	Political Parties
Hon. Miriam Muto -	Persons with Disability
Hon. Asenath Nyamu-	Women Organizations
Mr. Daniel Konyango-	Secretary

The Sub-Committee should submit its findings to the Committee soonest possible.

MIN.NO.109/2004

CONFIRMATION OF MINUTES

Minutes of the Sixteenth Sitting held on Friday 26th September, 2003 were confirmed and signed by the Convenor.

They were proposed by Hon. Richard Kibagendi and seconded by Hon. Jane Kirangari Kamwaga.

MIN.NO.110/2004
TECHNICAL

CONSIDERATION OF INTERIM REPORT OF
WORKING GROUP NO.'C'

The Committee considered the Interim Report and made the following observations:

- (7) Issues arising from debate on the Draft Bill should reflect the proposal for provision for “none-of-the-above vote.”
- (8) The view that workers need not be represented in Parliament should not be stated as having been the view of many Members.
- (9) Renumbering of sub-articles under Articles 76 and 79 should be indicated in the Report.

MIN.NO.111/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at thirty minutes past One O'clock until 2.30 p.m. in the afternoon.

AFTERNOON SITTING

Two O'clock. The Committee resumed deliberations at thirty minutes past

MIN.NO.112/2004
TECHNICAL

CONSIDERATION OF INTERIM REPORT OF
WORKING GROUP NO.'C'

The Committee continued deliberations on the Interim Report and made the following observations:

- (10) The word 'box' should be inserted immediately after the word 'ballot' in Article 81(b).
- (11) Amendments to Articles 79(1) 80(1) and 81 preamble should be reflected in the Report.
- (12) The title of final text on Chapter Six should read as follows:-

TECHNICAL WORKING COMMITTEE "C"

AMENDED DRAFT CHAPTER SIX: REPRESENTATION OF THE PEOPLE

- 2. The Committee observed that staff who had contributed to work of the Committee should have been acknowledged in the Interim Report.

The Committee resolved that typographical, grammatical and other errors noted in the Interim Report should be corrected and the corrections inserted in the Report. The Report was approved with amendments.

MN.NO.113/2004

ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past Four O'clock until Wednesday January 14, 2004 at 9.00 a.m.

CONFIRMED

(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday January 14, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda and Programme
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE EIGHTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY JANUARY 14, 2004 AT 9.20 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Apollo Tsalwa	- Western
2. Hon. Asenath Kaimuri Nyamu	- Women Organizations
3. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
4. Hon. Caroline W. Ng'ang'a	- Convenor
5. Hon. Chelagat Naftali Kemboi	- Rift Valley
6. Hon. Danny Irungu	- Civil Society
7. Hon. David Oloisa Mpilei	- Rift Valley
8. Hon. David Wakahu	- Political Parties
9. Hon. Emmy Kipsoi	- Rift Valley
10. Hon. Eng. Joshua Toro	- Central
11. Hon. Fares Ogada	- Nyanza
12. Hon. Fatuma Boru Jaldesa	- Eastern
13. Hon. Francis Kagwima	- Eastern
14. Hon. George Muchai	- Trade Unions
15. Hon. George Orwa Ochieng	- Nyanza
16. Hon. Godfrey Mbuba M'thigaa	- Eastern
17. Hon. Hellen Mung'athia	- Religious Organizations
18. Hon. Isaac Ongubo Kibwage	- Professional Organizations
19. Hon. Jacob Ochino Ogundo	- Political Parties
20. Hon. Jane Kirangari Kamwaga	- Central
21. Hon. Justus Musyoki Mutweti	- Eastern
22. Hon. Kathini Maloba Caines	- Women Organizations
23. Hon. Kenneth Njiru	- Political Parties
24. Hon. Luseno Liyai Indembukhani	- Political Parties
25. Hon. Mary Wambui Kanyi	- Civil Society
26. Hon. Miriam Muto	- Persons With Disabilities
27. Hon. Mohammed Juma Abuti	- Coast
28. Hon. Nancy C. Ngeywa	- Western
29. Hon. Ngorongo Makanga	- Political Parties
30. Hon. Orwa Ojode	- Nyanza

- | | | |
|------------------------------------|---------|-------------------|
| 31. Hon. Peter Nyanducha | - | Nyanza |
| 32. Hon. Raphael Bombo Ndeme | - | Coast |
| 33. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 34. Hon. Richard N. Kibagendi | - | Nyanza |
| 35. Hon. Rose Otieno Adiana | - | Nyanza |
| 36. Hon. Saipstone Ngalaatu Musau- | Eastern | |
| 37. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 38. Hon. Sophie Lepuchirit | - | Rift Valley |
| 39. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 40. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |
| 41. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|----------------------------|---|-------------------------|
| 1. Hon. Carolyne Ruto | - | Rift Valley |
| 2. Hon. Joel Onyancha | - | Nyanza |
| 3. Hon. Mohammed A. Khalif | - | North Eastern |
| 4. Hon. Mukhisa Kituyi | - | Western |
| 5. Hon. Njoki S. Ndungu | - | Central |
| 6. Hon. Rashmin P. Chitnis | - | Religious Organizations |

OBSERVERS

1. Mr. Joseph Mutuma
2. Mr. Nathaniel Chebelyon
3. Ms. Mary Okumu
4. Mr. Hassan Wario
5. Ms Susan Ngugi

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula- | | Parliamentary Counsel, National Assembly, Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.114/2004

PRELIMINARY

The Convenor called the meeting to order at twenty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Miriam Muto.

The Committee observed a one minute of silence in honour of the late Hon. Joab Omino, M.P. who until his demise was a delegate to the National Constitution Conference.

MIN.NO.115/2004 ADOPTION OF THE AGENDA AND PROGRAMME

The Committee adopted the agenda and the programme as approved by the Convenor. Adoption of the Agenda was proposed by Hon. George Orwa Ochieng and seconded by Hon. David Mpilei while the programme was proposed by Hon. Richard Kibagendi and seconded by Hon. Mary Wambui Kanyi.

MIN.NO.116/2004 CONFIRMATION OF MINUTES

Minutes of the Seventeenth Sitting held on Tuesday January 14, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Helen Mung'athia and seconded by Hon. Peter Nyanducha.

MIN.NO.117/2004 MATTERS ARISING

1. MIN.NO.108/2004 OF JANUARY 13, 2004

(i). Sub-Committee on Minority Position with Regard to Article 76(5)

The Secretary to the Sub-Committee to establish whether Hon. Joshua Toro, M.P. requested for a minority position with regard to Sub-Article 76(5) informed the Committee that he was pursuing release of the relevant tape to enable the Sub-Committee listen and establish whether indeed the Hon. Delegate sought to have a minority position recorded on the Sub-Article.

The Sub-Committee promised to listen to the tape during lunch break.

Hon. Joshua Toro, M.P. was added as a member of the Sub-Committee by virtue of his having been the one who requested for the minority position.

(ii). Condolence Card to the Family of the late Hon. James Ngusi

The Committee resolved to send a condolence card to the family of the late Hon. James Ngusi.

MIN.NO.118/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL – REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART ONE-THE ELECTORAL SYSTEM AND PROCESS

Article 82 – Unopposed Candidates

Was deferred to a later date.

PART TWO - ELECTORAL COMMISSION

Article 83 – Establishment of the Electoral Commission

Sub-Article 83(1) was adopted as in the Draft Bill and still reads as follows:

“There is established the Electoral Commission consisting of –“

Sub-Article 83(1)(a) was adopted as in the Draft Bill and still reads as follow:

(a) the Chairperson; and”

Sub-Article 83(1)(b)

Amendment proposed;

That sub-article 83(1)(b) be amended by inserting the following words immediately after the word “members” appearing in the third line “of whom one third shall be from the marginalized gender and twenty per cent from persons with disability.”

(Hon. Miriam Muto)

Motion made and Question proposed;

Debate arising;

Question of the amendment put and agreed to.

Further amendment proposed;

That, sub-article 83(1)(b) be further amended to read as follows:-

“Not less than eight and not more than twenty-one members of whom one third shall be from the marginalized gender and ten per cent from persons with disability.”

(Hon. Joshua Toro)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put **and agreed to.**

Thus, sub-article 83(1)(b) is amended to read as follows:-

“not less than eight and not more than twenty-one other members of whom one third shall be from the marginalized gender and ten per cent from persons with disability”

Further amendment proposed;

That, Sub-Article 83(1)(b) as amended be further amended to read as follows;

“not less than eight and not more than twenty-one other members consisting of proportionality of men and women, one third from women organizations, people with disability, from non-governmental organizations, religious organizations, political parties, the labour movement, professional organizations, special interest groups and marginalized communities and one third of whom shall be women.”

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and **negatived.**

New Paragraph 83(1)(c)

Amendment proposed;

That a new paragraph 83(1)(c) be inserted immediately after 83(1)(b) to read as follows:

“(c) Membership whose outlook shall reflect the principle of inter-generational equity.”

(Hon. Danny Irungu)

Debate Arising;

Question of the amendment put and **agreed to.**

Thus, a new Paragraph 83(1)(c) is inserted to read as follows;

“membership whose outlook shall reflect the principle of intergenerational equity.”

Sub-Article 83(2)

Amendment proposed;

That, Sub-Article 83(2) be amended to read as follows:

“The Chairperson and other Members of the Commission shall be nominated by the National Assembly and appointed by the President.”

(Hon. Sophie Lepuchirit)

Motion made and Question proposed.

Debate Arising;

Question of the amendment put and **negatived** after a division in which the ayes had fifteen (15) votes while the noes had seventeen (17) votes.

MIN.NO.119/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting for lunch at thirty minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at Three O'clock.

MIN.NO.120/2004
BILL

CONSIDERATION OF CHAPTER SIX OF THE DRAFT
– REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

Sub-Article 83(2)

Amendment proposed;

That, Sub-Article 83(2) be amended to read as follows;

“political parties shall nominate members of the Commission from which the President shall appoint the Chairperson and members of the Commission with approval of the National Assembly.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Further amendment proposed;

That, article 83(2) be further amended to read as follows;

“political parties, civil society, women organizations, religious organizations, persons with disabilities and minority groups will nominate members of the Commission from which the president shall appoint the Chairperson and members of the Commission with the approval of the National Assembly.”

(Hon. Danny Irungu)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus the Article still remains as originally amended and still reads as follows.

“political parties shall nominate members of the Commission from which the President shall appoint the Chairperson and members of the Commission with approval of the National Assembly.”

Minority Position

Hon. Danny Irungu requested for a minority position objecting to the idea of leaving the responsibility of nominating Members of the Commission to political parties. The minority view was that political parties would not be representative enough and were most likely to nominate their cronies and ignore representatives of other interest groups.

Sub-Article 83(3)

Amendment Proposed;

That Sub-Article 83(3) be amended by inserting the words “who will be of the opposite gender from the Chairperson” between the words “Vice-Chairperson” and “from”

(Hon. Jane Kamwaga)

Motion made and Question proposed;

Debate arising

Question of the amendment put and agreed to.

Thus the sub-article 83 (3) as amended reads as follows:

“the Commission shall elect a vice-chairperson who will be of the opposite gender from the chairperson, from among its members”

Sub-article 83(4) - **agreed to**

Sub-article 83(5) - **agreed to**

Sub-article 83(7) - **agreed to**

Thus, Sub-Articles 83 (4), (5),(6) and (7) were adopted as they are in the Draft Bill.

MIN.NO.121/2004 ADJOURNMENT

The Convenor adjourned the sitting at ten minutes past Five O'clock until Thursday January 15, 2004 at 9.00 a.m.

CONFIRMED.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday January 15, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda and Programme
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE NINTEENTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY JANUARY 15, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. George Muchai	-	Trade Unions
16. Hon. George Orwa Ochieng	-	Nyanza
17. Hon. Godfrey Mbuba M'thigaa	-	Eastern
18. Hon. Hellen Mung'athia	-	Religious Organizations
19. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
20. Hon. Jacob Ochino Ogundo	-	Political Parties
21. Hon. Jane Kirangari Kamwaga	-	Central
22. Hon. Joel Onyancha	-	Nyanza
23. Hon. Justus Musyoki Mutweti	-	Eastern
24. Hon. Kathini Maloba Caines	-	Women Organizations
25. Hon. Kenneth Njiru	-	Political Parties
26. Hon. Luseno Liyai Indembukhani	-	Political Parties
27. Hon. Mary Wambui Kanyi	-	Civil Society
28. Hon. Miriam Muto	-	Persons With Disabilities
29. Hon. Mohammed Juma Abuti	-	Coast
30. Hon. Nancy C. Ngeywa	-	Western
31. Hon. Ngorongo Makanga	-	Political Parties
32. Hon. Orwa Ojode	-	Nyanza

- | | | |
|-----------------------------------|---|-------------------------|
| 33. Hon. Peter Nyanducha | - | Nyanza |
| 34. Hon. Raphael Bombo Ndeme | - | Coast |
| 35. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 36. Hon. Rhoda Arupe Loyer | - | Rift Valley |
| 37. Hon. Richard N. Kibagendi | - | Nyanza |
| 38. Hon. Rose Otieno Adiana | - | Nyanza |
| 39. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 40. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 41. Hon. Sophie Lepuchirit | - | Rift Valley |
| 42. Hon. Winston Ogola Adhiambo | - | Political Parties |

ABSENT

- | | | |
|---------------------------------|---|---------------|
| 1. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |
| 2. Hon. Mohammed A. Khalif | - | North Eastern |
| 3. Hon. Mukhisa Kituyi | - | Western |
| 4. Hon. Njoki S. Ndungu | - | Central |
| 5. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

1. Mr. Hassan Wario
2. Mr. Joseph Mutuma
3. Ms Susan Ngugi
4. Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula- | | Parliamentary Counsel, National Assembly, Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.122/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Helen Mung'athia.

MIN.NO.123/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

MIN.NO.124/2004

PROCEDURAL ISSUES

Conduct of Committee Business in the Absence of Rapporteurs

The Committee sought to know from the Rapporteur-General and the Commission Secretary whether it was procedural to transact business in the absence of Rapporteurs.

The Rapporteur-General and the Commission Secretary clarified that the Committee could legally transact business even in the absence of Rapporteurs. The Committee was advised to seek guidance from the Rapporteur-General as and when need arises. The Committee, however, noted that the role of the Rapporteurs was crucial as they were the key resource persons whom the Committee relied on for guidance and necessary clarifications.

The Committee was informed that Rapporteur (Dr.) Phoebe Asiyo was indisposed and, therefore, unable to attend the Committee Sitting.

MIN.NO.125/2004

CONFIRMATION OF MINUTES

Minutes of the Eighteenth Sitting held on Wednesday January 14, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Mary Kanyi and seconded by Hon. Fatuma Boru Jaldesa.

MIN.NO.126/2004

MATTERS ARISING

2. ABSENTEE MEMBERS.

The Committee noted with concern that some of its members had not attended even a single sitting of the Committee and asked the Convenor to consult the Rapporteur-General with a view to having the members' names deleted from the list of members of the Committee.

3. MIN.NO.117/2004 OF JANUARY 14, 2004

(iii). Report of the Sub-Committee to Establish Whether a Minority Position was Sought with Regard to Article 76(5)

The Sub-Committee reported that after listening to the relevant tapes, it had been established that Hon. Joshua Toro, M.P. did not request for a minority position to be recorded with regard to Article 76(5), on 25th September, 2003.

(iv). Verbatim Recording

Members were urged to ensure that they air their views through the microphone so as to ensure the views are captured and recorded.

(v). Condolence Card to the Family of the late Hon. James Ngusi

The Committee resolved to sign the condolence card to the family of the late Hon. James Ngusi during the afternoon Session.

MIN.NO.127/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL – REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART TWO-THE ELECTORAL COMMISSION

Article 84 – Functions of the Electoral Commission

Sub-Article 84(1) - agreed to.

Sub-Article 84(1)(a) - agreed to.

Sub-Article 84(1)(b) - agreed to.

Thus Sub-Articles 84(1), 84(1)(a) and 84(1)(b) remain as in the Draft Bill.

Sub-Article 84(1)(c)

Amendment proposed;

That sub-article 84(1)(b) be amended by inserting the word “efficient between the words “the” and “conduct.”

(Hon. George Muchai)

Motion made and Question proposed;

Debate arising;

Question of the amendment put and agreed to.

Thus, 84(1)(c) is amended and reads as follows:-

“the efficient conduct and supervision of elections and referenda.”

Sub-Article 84(1)(d) – **agreed to.**

Thus 84(1)(d) is retained as in the Draft Bill.

Sub-Article 84(1)(e)

Amendment proposed;

That Sub-Article 84(1)(e) be deleted.

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, sub-article 84(1)(e) is retained as it is in the Draft Bill.

Sub-Article 84(1)(f) - **agreed to.**

Thus, 84(1)(f) remain as in the Draft Bill.

Sub-Article 84(1)(g)

Amendment proposed;

That Sub-Article 84(1)(g) be deleted;

(Hon. Raphael Ndeme)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, Sub-Article 84(1)(g) is retained as in the Draft Bill.

Sub-Article 84(1)(h) - **agreed to.**

Sub-Article 84(1)(i) - **agreed to.**

Thus, 84(1)(h) and 84(1)(i) are retained as in the Draft Bill.

New Sub-Article 84(1)(j)

Amendment proposed;

That a new Sub-Article 84(1)(j) be inserted immediately after Sub-Article 84(1)(i) to read as follows:

“clearing of all Presidential, Parliamentary and devolved governments candidates in consultation with the Ethics and Integrity Commission.”

(Hon. Luseno Liyai)

Motion made and Question proposed.

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new Sub-Article 84(1)(j) is inserted to read as follows;

“Clearing of all Presidential, Parliamentary and devolved governments candidates in consultation with the Ethics and Integrity Commission.”

MIN.NO.128/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting for lunch at twenty minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at thirty minutes past Two O'clock.

MIN.NO.129/2004

CONSIDERATION OF CHAPTER SIX OF THE DRAFT
BILL- REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

Article 85 - Staff of the Electoral Commission

Amendment proposed;

That, Article 85 be amended to read as follows;

“The Electoral Commission shall appoint the officers and other employees of the Commission except for the Administrative Secretary who shall be appointed by the President with the approval of the National Assembly.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.
Further amendment proposed;

That, Article 85 as amended be further amended to read as follows;

“The Electoral Commission shall appoint the officers and other employees of the Commission.”

(Hon. Orwa Ojode)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 85 is amended to read as follows:

“The Electoral Commission shall appoint the officers and other employees of the Commission.”

Article 86 - Delimitation of Constituencies

Sub-Article 86(1) - agreed to.

Thus, Sub-Article 86(1) is retained as in the Draft Bill.

Sub-Article 86(2)

Amendment proposed;

That, Sub-Article 86(2) be amended by inserting the words “and naming” between words “boundaries” and “of.”

(Hon. Orwa Ojode)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 86(2) is amended to read as follows:

“In demarcating the boundaries and naming of constituencies, the

Electoral Commission shall -”

Sub-Article 86(2)(a) - **agreed to.**

Thus 86(2)(a) is retained as in the Draft Bill.

Sub-Article 86(2)(b)

Amendment proposed;

That, Sub-Article 86(2)(b) be amended to read as follows;

“take account of population density and the need to ensure adequate representation for urban and sparsely populated rural areas and”

(Hon. Sophie Lepuchirit)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 86(2) is accordingly amended and reads as follows;

“take account of population density and the need to ensure adequate representation for urban and sparsely populated rural areas and”

Sub-Article 86(2)(b)(i), (ii), (iii), (iv), (v) and (vi) - agreed to.

Thus the Sub-Articles are retained as in the Draft Bill.

New Sub-Article 86(2) (b) (vii)

Amendment proposed;

That, a new Sub-Article 86(2)(b)(vii) be inserted immediately after Sub-Article 86(2)(b)(vi) to read as follows:

“the voters’ register and the proportional representation to the nearest five thousand registered voters.”

(Hon. Ngorongo Makanga)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new Sub-Article 86(2)(b)(vii) is inserted and reads as follows;

“the voters’ register and the proportional representation to the nearest five thousand registered voters.”

New Sub-Article 86(2)(c)

Amendment proposed;

That, a new Sub-Article 86(2)(c) be inserted immediately after Sub-Article 86(2) (vii) to read as follows;

“That the Electoral Commission shall ensure that all existing districts and future ones shall have a minimum of two (2) Parliamentary Constituencies.”

(Hon. Godfrey Mbuba M’thigaa)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Sub-Article 86(3)

Amendment proposed;

That, Sub-Article 86(3) be amended to read as follows;

“the Commission shall every ten years or sooner carry out a review and make necessary alterations of the names and boundaries of constituencies.”

(Hon. Orwa Ojode)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, sub-article 86(3) is amended to read as follows;

“the Commission shall every ten years or sooner carry out a review and make necessary alterations of the names and boundaries of constituencies.”

Sub-Article 86(4) - **agreed to.**

Thus 86(4) is adopted as in the draft Bill.

New Article 86A

Amendment proposed;

That a new Article 86A be inserted immediately after Article 86 to read as follows;

“86A Appeal on Decision or Order of Electoral Commission.

Any person aggrieved by a decision or order of Electoral Commission in the discharge of its functions may appeal to a court of law and Parliament shall enact a law providing for the procedure and the shortest period within which a court may dispose of the appeal.”

(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus a New Article 86A is inserted to read as follows;

“Any person aggrieved by a decision or order of Electoral Commission in the discharge of its functions may appeal to a court of law and Parliament shall enact a law providing for the procedure and the shortest period within which a court may dispose of the appeal.”

MIN.NO.130/2004

ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past Four O’clock until Friday January 16, 2004 at 9.00 a.m.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday January 16, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

M
NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY JANUARY
16, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
4. Hon. Carolyne Ruto	-	Rift Valley
5. Hon. David Oloisa Mpilei	-	Rift Valley
6. Hon. David Wakahu	-	Political Parties
7. Hon. Emmy Kipsoi	-	Rift Valley
8. Hon. Eng. Joshua Toro	-	Central
9. Hon. Fares Ogada	-	Nyanza
10. Hon. Fatuma Boru Jaldesa	-	Eastern
11. Hon. George Muchai	-	Trade Unions
12. Hon. George Orwa Ochieng	-	Nyanza
13. Hon. Godfrey Mbuba M'thigaa	-	Eastern
14. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
15. Hon. Jane Kirangari Kamwaga	-	Central
16. Hon. Joel Onyancha	-	Nyanza
17. Hon. Justus Musyoki Mutweti	-	Eastern
18. Hon. Kathini Maloba Caines	-	Women Organizations
19. Hon. Kenneth Njiru	-	Political Parties
20. Hon. Luseno Liyai Indembukhani-	-	Political Parties
21. Hon. Mary Wambui Kanyi	-	Civil Society
22. Hon. Miriam Muto	-	Persons With Disabilities
23. Hon. Mohammed Juma Abuti	-	Coast
24. Hon. Nancy C. Ngeywa	-	Western
25. Hon. Ngorongo Makanga	-	Political Parties
26. Hon. Raphael Bombo Ndeme	-	Coast
27. Hon. Rhoda Arupe Loyor	-	Rift Valley
28. Hon. Richard N. Kibagendi	-	Nyanza
29. Hon. Rose Otieno Adiana	-	Nyanza
30. Hon. Saipstone Ngalaatu Musau	-	Eastern
31. Hon. Sophie Lepuchirit	-	Rift Valley
32. Hon. Winston Ogola Adhiambo	-	Political Parties
33. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
34. Hon. Francis Kagwima	-	Eastern

- | | | |
|----------------------------------|---|------------|
| 35. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |
| 36. Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------|---|-------------------------|
| 1. Hon. Chelagat Naftali Kemboi | - | Rift Valley |
| 2. Hon. Hellen Mung'athia | - | Religious Organizations |
| 3. Hon. Jacob Ochino Ogundo | - | Political Parties |
| 4. Hon. Peter Nyanducha | - | Nyanza |

ABSENT

- | | | |
|-------------------------------|---|-------------------------|
| 1. Hon. Danny Irungu | - | Civil Society |
| 2. Hon. Mohammed A. Khalif | - | North Eastern |
| 3. Hon. Mukhisa Kituyi | - | Western |
| 4. Hon. Njoki S. Ndungu | - | Central |
| 5. Hon. Orwa Ojode | - | Nyanza |
| 6. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 7. Hon. Sang Kipkorir Marisin | - | Rift Valley |

OBSERVERS

1. Mr. Hassan Wario
2. Mr. Joseph Mutuma
3. Ms Susan Ngugi

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula- | | Parliamentary Counsel, National Assembly, Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.131/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock and opened it with a word of prayer.

MIN.NO.132/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Saipstone Ngalaatu Musau and seconded by Hon. Miriam Muto.

MIN.NO.133/2004

CONFIRMATION OF MINUTES

Minutes of the Nineteenth Sitting held on Thursday January 15, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Justus Musyoki Mutweti and seconded by Hon. Rose Otieno Adiana.

MIN.NO.134/2004

MATTERS ARISING

1. ABSENTEE MEMBERS.

The Convenor informed the Committee that a circular had been issued by the Rapporteur General urging the respective Convenors to contact the absentee members to find out why they were not attending Committee Sitings.

2. MIN.NO.126/2004 OF JANUARY 15, 2004

(vi). Condolence Card to the Family of the late Hon. James Ngusi

Mr. Daniel Konyango, programme officer, was asked to ensure the condolence card was availed for signing by Members.

(vii). Conduct of Committee Business in the Absence of Rapporteurs

Rapporteur (Dr.) Phoebe Asiyu informed the Committee that she had been indisposed the previous day and had gone to Nairobi Hospital for treatment.

Rapporteur (Dr.) Mosonik arap Korir informed the Committee that he had also been indisposed hence the reason for his inability to attend the Committee Sitting the previous day.

MIN.NO.135/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL – REPRESENTATION OF THE PEOPLE

**The Committee considered Chapter Six of the Draft Bill as follows:-
PART TWO-THE ELECTORAL COMMISSION**

New Article 86B

Amendment proposed;

That a new article 86B be inserted immediately after the Article 86A to read as follows;

86B - Electoral Offences

“The Electoral Commission shall prosecute all electoral offences in a court of law.”

(Hon. Kenneth Njiru)

Motion made and Question proposed;

Debate arising;

Question of the amendment put and agreed to.

Thus, a new Article 86B is inserted immediately after 86A to read as follows;

“The Electoral Commission shall prosecute all electoral offences in a court of law.”

The Committee resolved that the Legal Drafts Person should refine the motion appropriately to ensure it is legally sound.

PART THREE - POLITICAL PARTIES

Article 87 - The Right to Form a Political Party

Sub-Article 87(1) - **agreed to.**

Thus, Sub-Article 87(1) is adopted as in the Draft Bill.

Sub-Article 87(2) - **agreed to.**

Thus, Sub-Article 87(2) is adopted as in the Draft Bill.

Sub-Article 87 (3)

Amendment proposed;

That Sub-Article 87(3) be amended by deleting the word “may” and inserting the word “shall” in place thereof.

(Hon. David Mpilei)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 87(3) is amended to read as follows;

“No person shall use state resources to support any political party”

Article 88 - **agreed to.**

Thus, Article 88(a) to (g) are adopted as in the Draft Bill.

Article 89 - Registration of Political Parties

Sub-Article 89(1)

Amendment proposed;

That, Sub-Article 89(1) be amended to read as follows;

“There shall be an independent office of Registrar of Political Parties which shall register, keep and maintain a register of political parties.”

(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 89(1) is amended to read as follows:

“There shall be an independent office of the Registrar of Political Parties which shall register, keep and maintain a register of political parties.”

Sub-Article 89(2)

Amendment proposed;

That, Sub-Article 89(2) be amended to read as follows;

“Parliament shall enact a law to provide for matters which the register shall contain and for officers who shall work under the Registrar of political parties.”

(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 89(2) is amended to read as follows:

“Parliament shall enact a law to provide for matters which the register shall contain and for the officers who shall work under the Registrar of Political Parties”

MIN.NO.136/2004 ANY OTHER BUSINESS

Letter of Commendation

The Convenor read to the Committee a letter of Commendation from various High Commissions and Embassies in Kenya. The letter contained a congratulatory message to the delegates for the work done so far in reviewing the Constitution and urged them to carry on the work to its conclusion.

MIN.NO.137/2004 ADJOURNMENT

The Convenor adjourned the sitting at twenty minutes past Twelve O'clock until Monday January 19, 2004 at 9.00 a.m.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Monday January 19, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY FIRST SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY JANUARY 19, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Wakahu	-	Political Parties
9. Hon. Emmy Kipsoi	-	Rift Valley
10. Hon. Eng. Joshua Toro	-	Central
11. Hon. Fares Ogada	-	Nyanza
12. Hon. Fatuma Boru Jaldesa	-	Eastern
13. Hon. Francis Kagwima	-	Eastern
14. Hon. George Muchai	-	Trade Unions
15. Hon. George Orwa Ochieng	-	Nyanza
16. Hon. Godfrey Mbuba M'thigaa	-	Eastern
17. Hon. Hellen Mung'athia	-	Religious Organizations
18. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
19. Hon. Jacob Ochino Ogundo	-	Political Parties
20. Hon. Joel Onyancha	-	Nyanza
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kathini Maloba Caines	-	Women Organizations
23. Hon. Kenneth Njiru	-	Political Parties
24. Hon. Luseno Liyai Indembukhani-	-	Political Parties
25. Hon. Mary Wambui Kanyi	-	Civil Society
26. Hon. Miriam Muto	-	Persons With Disabilities
27. Hon. Mohammed Juma Abuti	-	Coast
28. Hon. Nancy C. Ngeywa	-	Western
29. Hon. Ngorongo Makanga	-	Political Parties
30. Hon. Peter Nyanducha	-	Nyanza
31. Hon. Raphael Bombo Ndeme	-	Coast
32. Hon. Rhoda Arupe Loyor	-	Rift Valley

- | | | |
|-----------------------------------|---|-------------------|
| 33. Hon. Rose Otieno Adiana | - | Nyanza |
| 34. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 35. Hon. Sophie Lepuchirit | - | Rift Valley |
| 36. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 37. Hon. (Dr.) Phoebe Asiyó | - | Rapporteur |
| 38. Hon. Ibrahim Lethome | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------|---|------------|
| 1. Hon. Jane Kirangari Kamwaga | - | Central |
| 2. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|-------------------------------|---|-------------------------|
| 1. Hon. Mohammed A. Khalif | - | North Eastern |
| 2. Hon. Mukhisa Kituyi | - | Western |
| 3. Hon. Njoki S. Ndungu | - | Central |
| 4. Hon. Orwa Ojode | - | Nyanza |
| 5. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 6. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 7. Hon. David Oloisa Mpilei- | | Rift Valley |
| 8. Hon. Richard N. Kibagendi | - | Nyanza |

OBSERVERS

1. Mr. Hassan Wario
2. Mr. Joseph Mutuma
3. Ms Susan Ngugi

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyangol | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula- | | Parliamentary Counsel, National Assembly, Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.138/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Winston Ogola Adhiambo.

Rapporteur (Dr.) Phoebe Asiyo introduced Rapporteur Ibrahim Lethome to the Committee and informed the Committee that Rapporteur Lethome would be sitting in for Rapporteur (Dr.) Mosonik arap Korir who is indisposed.

MIN.NO.139/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Helen Mung'athia and seconded by Hon. Ngorongo Makanga.

MIN.NO.140/2004 CONFIRMATION OF MINUTES

Minutes of the Twentieth Sitting held on Friday January 16, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. David Wakahu and seconded by Hon. Peter Nyanducha.

MIN.NO.141/2004 MATTERS ARISING

3. ABSENTEE MEMBERS.

The Committee resolved that since it had no quorum problem, it was not necessary to bother with perennially members.

4. MIN.NO.126/2004 OF JANUARY 15, 2004

(viii). Condolence Card to the Family of the late Hon. James Ngusi

The Convenor informed the Committee that the condolence card was available for signing by members.

MIN.NO.142/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL – REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART THREE - POLITICAL PARTIES

Article 90 - Qualifications for Registration

Amendment proposed;

That, Sub-Article 90(1) be amended by deleting the words “Electoral Commission” and inserting the word “Registration of political parties” in place thereof.

(Hon Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 90(1) is amended to read as follows;

“The Registrar of Political Parties shall register a political if that party by its constitution or articles of association has a national character with governing body which seeks-”

Sub-Article 90(1)(a)

Amendment proposed;

That, Sub-Article 90(1)(a) be amended by inserting the following words immediately after the word “unity.”

“and conduct its business in a transparent manner”

(Hon. David Wakahu)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, Sub-Article 90(1)(a) is adopted as in the Draft Bill.

Sub-Article 90(1)(b)

Amendment proposed;

That, Sub-Article 90(1)(b) be amended by inserting the word “good” between the words “of” and “governance.”

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 90(1)(b) is amended to read as follows:

“to abide by democratic principles of good governance and promote and practice democracy within the party through regular, fair and free elections within the party.”

Sub-Article 90(1)(c) - **agreed to.**

Thus, Sub-Article 90(1)(c) is adopted as in the Draft Bill.

Sub-Article 90(1)(d) - **agreed to.**

Thus, Sub-Article 90(1)(d) is adopted as in the Draft Bill.

Sub-Article 90(2)

Amendment proposed;

That Sub-Article 90(2) be amended by deleting the word “Electoral Commission” and inserting the word “Registrar of political parties” in place thereof.

(Hon. Winston Ogolla Adhiambo)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 90(2) is amended to read as follows;

“Registrar of political parties shall not register a political party if that party-”

Sub-Article 90(2)(a)

Amendment proposed;

That, Sub-Article 90(2)(a) be amended by deleting the words “or regional” appearing in the second line.

(Hon. Winston Ogolla Adhiambo)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus, Sub-Article 90(2)(a) is adopted as in the Draft Bill.

Sub-Article 90(2)(b) – **agreed to**.

Thus, the Sub-Article is adopted as in the Draft Bill.

New Sub-Article 90(2)(c)

Amendment proposed;

That, a New Sub-Article 90(2)(c) be inserted immediately after sub-article 90(2)(b) to read as follows;

“does not adhere to the provisions of Article 90(1).”
(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Sub-Article 90(3) – **agreed to**.

Thus, Sub-Article 90(3)(a) and (b) are adopted as in the Draft Bill.

Sub-Article 90(4) - **agreed to**.

Sub-Article 90(5) - **agreed to**.

Sub-Article 90(6) - **agreed to**.

Sub-Article 90(7) - **agreed to**.

Thus, Sub-Articles 90(4) to (7) are adopted as in the Draft Bill.

New Sub-Article 90(8)

Amendment proposed;

That a new Sub-Article 90(8) be inserted immediately after Sub-Article 90(7) to read as follows;

“The political party shall be prohibited from administering oaths on its members.”

(Hon. Ochino Ogundo)

Motion withdrawn;

Article 91 - Corporate Status - **agreed to.**

Thus, Article 91 is adopted as in the Draft Bill.

MIN.NO.143/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting for lunch at ten minutes past One O’clock until Two O’clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at thirty minutes past Two O’clock.

MIN.NO.144/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT
BILL

– REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

Sub-Article 92- Cancellations of Registration

Sub-Article 92(1)

The words “Electoral Commission” are deleted and substituted with the words “Registrar of Political Parties-”

Amendment proposed;

Sub-Article 92(1)(a) and (b)

The Sub-Articles were deferred to a later date.

Sub-Article 92(1)(c) and (d) - **agreed to.**

Thus, Sub-Article 92(1)(c) and (d) are adopted as in the Draft Bill.

Sub-Article 92(1)(e)

Amendment Proposed;

That Sub-Article 92(1)(e) be deleted.

(Hon. Winston Ogola Adhiambo)

Motion made and Question proposed;

Debate arising

Amendment to the amendment proposed;

That, Sub-Article 92(1)(e) be amended to read as follows;

“has not in any of the two previous general elections secured at least one member of either National Assembly or devolved government levels.”

(Hon. Francis Kagwima)

Motion made and Question proposed.

Debate Arising;

Further amendment to the amendment proposed;

That, the amendment be further amended to read as follows;

“has not for both of the two previous general elections secured at least one percent of the national vote; or;

(Hon. Joel Onyancha)

Motions made and Question proposed;

Debate Arising;

Question put and negatived;

Question of the first amendment to the amendment put and agreed to.

Thus, Sub-Article 92(1) (e) has been amended to read;

“has not in any of the previous elections secured at least one member of either National Assembly or devolved government levels”

Sub-Article 92(1)(f) – deferred.

Sub-Article 92(2) and (3) – agreed to.

The words “Electoral Commission” are deleted and substituted with the words “Registrar of Political Parties” where they appear in the above Sub-Articles.

Article 93 -Political Parties Fund

Sub-Article 93(1) and (2) – agreed to.

Thus, Sub-Articles 93(1) and (2) are adopted as in the Draft Bill.

Article 94 - Sources Of The Fund

Sub-Article 94(1) - agreed to.

Thus, Sub-Article 94(1) is adopted as in the Draft Bill.

Sub-Article 94(1)(a) - agreed to

Thus the Sub-Article is adopted as in the Draft Bill.

Sub-Article 94(1)(b)

Amendment proposed;

That, Sub-Article 94(1)(b) be amended by inserting the following words immediately after the word “source” appearing in the second line “except non-citizens”

(Hon. Mohammed Juma Abuti)

Motion made and Question proposed;

Debate arising;

Question of the amendment put and negatived.

Thus, Sub-Article 94(1) (b) is retained as in the Draft Bill.

Sub-Article 94(2) - **agreed to.**

Thus, Sub-Article 94(2) is adopted as in the Draft Bill.

Sub-Article 95- Purposes of the Fund.

Sub-Article 95(1) – agreed to.

Thus, Sub-Article 95(1)(a)(b) and (c) are adopted as in the Draft Bill.

Sub-Article 95(2) - agreed to.

Thus, Sub-Article 95(2) (a) and (b) are adopted as in the Draft Bill.

Sub-Article 95(3) - **Deferred.**

MIN.NO.145/2004 ADJOURNMENT

The Convenor adjourned the sitting at twenty minutes past four O'clock until Tuesday January 20, 2004 at 9.00 a.m.

CONFIRMED

.....
(CONVENOR)

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday January 20, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. Adoption of the Agenda
3. General Debate
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY SECOND SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY JANUARY 20, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyn Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kembo	i-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. George Muchai	-	Trade Unions
16. Hon. George Orwa Ochieng	-	Nyanza
17. Hon. Godfrey Mbuba M'thigaa	-	Eastern
18. Hon. Hellen Mung'athia	-	Religious Organizations
19. Hon. Jacob Ochino Ogundo	-	Political Parties
20. Hon. Jane Kirangari Kamwaga	-	Central
21. Hon. Joel Onyancha	-	Nyanza
22. Hon. Justus Musyoki Mutweti	-	Eastern
23. Hon. Kathini Maloba Caines	-	Women Organizations
24. Hon. Kenneth Njiru	-	Political Parties
25. Hon. Luseno Liyai Indembukhani	-	Political Parties
26. Hon. Mary Wambui Kanyi	-	Civil Society
27. Hon. Miriam Muto	-	Persons With Disabilities
28. Hon. Mohammed Juma Abuti	-	Coast
29. Hon. Nancy C. Ngeywa	-	Western
30. Hon. Ngorongo Makanga	-	Political Parties
31. Hon. Orwa Ojode	-	Nyanza

- | | | |
|-----------------------------------|---|-------------------|
| 32. Hon. Peter Nyanducha | - | Nyanza |
| 33. Hon. Raphael Bombo Ndeme | - | Coast |
| 34. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 35. Hon. Richard N. Kibagendi | - | Nyanza |
| 36. Hon. Rose Otieno Adiana | - | Nyanza |
| 37. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 38. Hon. Sophie Lepuchirit | - | Rift Valley |
| 39. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 40. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |
| 41. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|------------------------------|---|----------------------------|
| 1. Hon. Isaac Ongubo Kibwage | - | Professional Organizations |
|------------------------------|---|----------------------------|

ABSENT

- | | | |
|-------------------------------|---|-------------------------|
| 1. Hon. Mohammed A. Khalif | - | North Eastern |
| 2. Hon. Mukhisa Kituyi | - | Western |
| 3. Hon. Njoki S. Ndungu | - | Central |
| 4. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 5. Hon. Sang Kipkorir Marisin | - | Rift Valley |

OBSERVERS

1. Mr. Hassan Wario
2. Mr. Joseph Mutuma
3. Mr. Nathaniel Chebelyon
4. Ms Susan Ngugi
5. Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula- | - | Parliamentary Counsel, National Assembly, Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.146/2004

PRELIMINARY

**The Convenor called the meeting to order at thirty minutes past Nine O'clock.
The meeting was opened with a word of prayer by Hon. Rose Adiana Otieno.**

Two delegates from other Committees, namely Hon. Hezron Nyerere and Hon. Ruth Kibiti, gave their views during general debate. Hon. Hezron Nyerere was of the view that all political parties should be considered for funding with special attention being given to small parties.

Hon. Ruth Kibiti emphasized the need for affirmative action with regard to women participation in the process of governance. She was of the view that to promote participatory democracy, women should be encouraged and assisted to participate in competitive politics. She urged delegates to support proportional representation saying that since it had worked elsewhere within the Continent, it would work for Kenya.

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Naftali K. Chelagat and seconded by Hon. Peter Nyanducha.

Minutes of the Twenty First Sitting held on Monday January 19, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Rhoda Arupe Loyor and seconded by Hon. George Orwa Ochieng.

The Committee considered Chapter Six of the Draft Bill as follows:-

PART THREE - POLITICAL PARTIES

Article 96 - Other Sources of Funds for Political Parties

Sub-Article 96(1)(a) - **agreed to.**

Sub-Article 96(1)(b) - **agreed to.**

Thus, Sub-Article 96(1)(a) and (b) are adopted as in the Draft Bill.

Sub-Article 96(2)

Amendment proposed;

That, Sub-Article 96(2) be amended by deleting the word “shall” and inserting the word “may” in place thereof.

(Hon. Rhoda A. Loyor)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Question of the Sub-Article as in the Draft Bill put and agreed to.

Thus, Sub-Article 96(2) is adopted as in the Draft Bill.

Sub-Article 96(3)

Amendment proposed;

That, Sub-Article 96(3) be amended by deleting the word “its” appearing before the word “financial” and inserting the words “the Government’s”

(Hon. Orwa Ojode)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 96(3) is amended to read as follows;

“A political party shall within three months after the end of the Government’s Financial year publish the sources of its funds stating-”

Sub-Article 96(3)(a), (b) and (c)

Amendment Proposed;

That, Sub-Article 96(3) be amended by combining (a) and (b) and moving (c) to (b).

(Hon. Orwa Ojode)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Question of the Sub-Article 96(3)(a) as in the Draft Bill put and agreed to.

Hence Sub-Article 96(3)(a) is adopted as in the Draft Bill.

Sub-Article 96(3) (b)

Amendment proposed;

That Sub-Article 96(3)(b) be amended to read as follows;

“the amount of moneys received as subscription and contributions from its members and supporters; and”

(Hon. Kenneth Njiru)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 96(3)(b) is amended to read as follows;

“the amount of moneys received as subscription and contributions from its members and supporters; and”

Sub-Article 96(3) (c) - agreed to.

Thus, Sub-Article 96(3)(c) is adopted as in the Draft Bill.

Sub-Article 96(4) - agreed to.

Thus, Sub-Article 96(4) is adopted as in the Draft Bill.

Sub-Article 96(5)

Amendment proposed;

That, Sub-Article 96(5) be deleted

(Hon. Joshua Toro)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 96(5) is deleted

MIN.NO.151/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the Sitting for lunch at One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at forty minutes past Two O'clock.

MIN.NO.152/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT
BILL- REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

Sub-Article 97- Supervision of Political Parties

Sub-Article 97(1) - **agreed to**.

Thus, Sub-Article 97(1) is adopted as in the Draft Bill.

Sub-Article 97(2)

Amendment Proposed;

That Sub-Article 97(2) be amended by deleting all the words appearing after the word "activities".

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate arising

Question of the amendment put and agreed to.

Thus, Sub-Article 97(2) is amended to read as follows;

"A political party shall, within seven months after the end of the Government's financial year, submit to the Electoral Commission an annual report on its activities".

Sub-Article 97(3)

Amendment proposed;

That, Sub-Article 97(3) be amended by inserting the word “interested” between the words “any” and “person.”

(Hon. Winston Ogola Adhiambo)

Motion made and Question proposed.

Debate Arising;

Question of the amendment put and negatived;

Question of the Sub-Article as in the Draft Bill put and agreed to.

Thus, Sub-Article 97(3) has been adopted as in the Draft Bill.

Sub-Article 97(4) - **agreed to**.

Thus, Sub-Article 97(4) is adopted as in the Draft Bill.

Article 98 - Party Discipline.

Sub-Article 98(1) - **agreed to**.

Thus, Sub-Article 98(1) is adopted as in the Draft Bill.

Sub-Article 98(2) - **agreed to**.

Thus, Sub-Article 98(2) is adopted as in the Draft Bill.

Sub-Article 98(3) – **agreed to**.

Thus, Sub-Article 98(3) is adopted as in the Draft Bill.

Sub-Article 98(4) – **agreed to**.

Thus, Sub-Article 98(4) is adopted as in the Draft Bill.

New Sub-Article 98(5)

Amendment proposed;

That, a new Sub-Article 98(5) be inserted immediately after the Sub-Article 98(4) to read as follows;

“Any person sponsored by a political party shall be bound by the policies, ideology, philosophy and the manifesto of the party”

(Hn. Kenneth Njiru)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new Sub-Article 98(5) is inserted to read as follows;

“Any person sponsored by a political party shall be bound by the policies, ideology, philosophy and the manifesto of the party.”

Article 99 - **agreed to.**

Thus, the Article is adopted as in the Draft Bill.

Article 100 - Restrictions on Holding of Office in Political Parties.

Amendment proposed;

That, Article 100 be amended to read as follows;

“The President, Vice-President, Prime Minister, Deputy Prime Minister, a Minister or Deputy Minister shall not hold office in a political party.

(Hon. Mbuba M’thigaa)

Motion made and Question proposed;

Debate arising;

The Committee resolved that the motion be withdrawn and granted the mover leave to move an improved version the following day.

MIN.NO.153/2004

ADJOURNMENT

The Convenor adjourned the sitting at thirty five minutes past Four O’clock until Wednesday January 21, 2004 at 9.00 a.m.

CONFIRMED

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NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday January 21, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY THIRD SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY JANUARY 21, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a-	Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Carolyn Ruto	- Rift Valley
6. Hon. Chelagat Naftali Kemboi	- Rift Valley
7. Hon. Danny Irungu	- Civil Society
8. Hon. David Oloisa Mpilei	- Rift Valley
9. Hon. David Wakahu	- Political Parties
10. Hon. Emmy Kipsoi	- Rift Valley
11. Hon. Eng. Joshua Toro	- Central
12. Hon. Fares Ogada	- Nyanza
13. Hon. Fatuma Boru Jaldesa	- Eastern
14. Hon. George Muchai	- Trade Unions
15. Hon. George Orwa Ochieng	- Nyanza
16. Hon. Godfrey Mbuba M'thigaa	- Eastern
17. Hon. Hellen Mung'athia	- Religious Organizations
18. Hon. Jacob Ochino Ogundo	- Political Parties
19. Hon. Jane Kirangari Kamwaga	- Central
20. Hon. Joel Onyancha	- Nyanza
21. Hon. Justus Musyoki Mutweti	- Eastern
22. Hon. Kathini Maloba Caines	- Women Organizations
23. Hon. Kenneth Njiru	- Political Parties
24. Hon. Luseno Liyai Indembukhani-	Political Parties
25. Hon. Mary Wambui Kanyi	- Civil Society
26. Hon. Miriam Muto	- Persons With Disabilities
27. Hon. Mohammed Juma Abuti	- Coast
28. Hon. Nancy C. Ngeywa	- Western
29. Hon. Ngorongo Makanga	- Political Parties
30. Hon. Orwa Ojode	- Nyanza
31. Hon. Peter Nyanducha	- Nyanza

- | | | |
|-----------------------------------|---|-------------------|
| 32. Hon. Raphael Bombo Ndeme | - | Coast |
| 33. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 34. Hon. Richard N. Kibagendi | - | Nyanza |
| 35. Hon. Rose Otieno Adiana | - | Nyanza |
| 36. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 37. Hon. Sophie Lepuchirit | - | Rift Valley |
| 38. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 39. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 40. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |
| 41. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|---------------------------|---|----------------------------|
| Hon. Mohammed A. Khalif | - | North Eastern |
| Hon. Mukhisa Kituyi | - | Western |
| Hon. Njoki S. Ndung'u | - | Central |
| Hon. Rashmin P. Chitnis | - | Religious Organizations |
| Hon. Isaac Ongubo Kibwage | - | Professional Organizations |
| Hon. Francis Kagwima | - | Eastern |

OBSERVERS

- Mr. Hassan Wario
 Mr. Joseph Mutuma
 Mr. Nathaniel Chebelyon
 Ms Susan Ngugi
 Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|--------------------------|---|--|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly, Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.154/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Miriam Muto.

Draft Constitution Bill by the Chairperson of CKRC

Delegate No.198, Hon. Joshua Toro, M.P. inquired about a Draft Constitution Bill, which was reported to have been prepared and circulated by the Chairperson of CKRC, Prof. Yash Pal Ghai.

The Convenor explained that she had been given a copy of the document by the Chairperson on Friday, January 16, 2004 and had treated it as any other lobby document. She further explained that she had received several other documents including the 'Ufungamano Draft' but as far as she was concerned all of them were merely lobby documents and neither she nor the Committee was bound to study the documents.

She however, said that delegates were at liberty to borrow ideas from the documents if they wished.

MIN.NO.155/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. David Wakahu and seconded by Hon. Rhoda Arupe Loyor.

MIN.NO.156/2004 CONFIRMATION OF MINUTES

Minutes of the Twenty Second Sitting held on Tuesday January 20, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Asenath K. Nyamu and seconded by Hon. Fares Ogada.

MIN.NO.157/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL –
REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

PART THREE - POLITICAL PARTIES

Article 100 - Restrictions on Holding Office in Political
Parties

Amendment proposed;

That, Article 100 be amended to read as follows;

“The President, Vice-President, the Prime Minister, Deputy Prime Minister, a Minister, a Deputy Minister or any Public Officer shall not hold any elective office in a political party.”

(Hon. Mbuba M'thigaa)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 100 is amended to read as follows;

“The President, Vice-President, the Prime Minister, Deputy Prime Minister, a Minister, a Deputy Minister or any Public Officer shall not hold any elective office in a political party.”

DEFERRED ARTICLES

Sub-Article 95(3)

That, Sub-Article 95(3) be amended by splitting it into (a) and (b) to read as follows;

- c. “All moneys allocated yearly by Parliament to the Political Parties Fund shall be distributed equally to all political parties whose organizational structure shall comprise one third of the marginalized gender and one tenth of persons with disability.**
- d. After General Elections, fifty per cent of the Political Parties Fund shall be paid proportionately by reference to the political parties and the number of women candidates elected in each political party”.**

(Hon. David Wakahu)

Motion made and Question proposed;

Debate Arising;

Deliberations on the Motion of amendment deferred to a later date.

Sub-Article 92(1)(a) - agreed to.

Thus, Sub-Article 92(1)(a) is adopted as in the Draft Bill.

Sub-Article 92(1)(b) - agreed to.

Thus, Sub-Article 92(1)(b) is adopted as in the Draft Bill.

Sub-Article 92(1)(f) - agreed to.

Thus, Sub-Article 92(1)(f) is adopted as in the Draft Bill.

MIN.NO.158/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting for Lunch at ten minutes past One O'clock until 2.00 p.m. in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at Three O'clock.

MIN.NO.159/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL
– REPRESENTATION OF THE PEOPLE

The Committee continued deliberations on Chapter Six of the Draft Bill as follows:-

DEFERRED ARTICLES

Sub-Article 77(1)(a)

Amendment Proposed;

That Sub-Article 77(1)(a) be amended to read as follows;

“the number of Constituencies for the election of Members of Parliament, Regional Councils, District Councils and Locational Councils;“

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate arising

Question of the amendment put and agreed to.

Thus, Sub-Article 77(1)(a) is amended to read as follows;

“the number of Constituencies for the election of Members of Parliament, Regional Councils, District Councils and Locational Councils;“

MIN.NO.160/2004 ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past Four O'clock until Thursday January 22, 2004 at 9.00 a.m.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday January 22, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY FOURTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY JANUARY 22, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present: -

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Carolyn Ruto	- Rift Valley
6. Hon. Chelagat Naftali Kemboi	- Rift Valley
7. Hon. Danny Irungu	- Civil Society
8. Hon. David Oloisa Mpilei	- Rift Valley
9. Hon. David Wakahu	- Political Parties
10. Hon. Emmy Kipsoi	- Rift Valley
11. Hon. Eng. Joshua Toro	- Central
12. Hon. Fares Ogada	- Nyanza
13. Hon. Fatuma Boru Jaldesa	- Eastern
14. Hon. George Muchai	- Trade Unions
15. Hon. George Orwa Ochieng	- Nyanza
16. Hon. Godfrey Mbuba M'thigaa	- Eastern
17. Hon. Hellen Mung'athia	- Religious Organizations
18. Hon. Isaac Ongubo Kibwage	- Professional Organizations
19. Hon. Jacob Ochino Ogundo	- Political Parties
20. Hon. Jane Kirangari Kamwaga	- Central
21. Hon. Joel Onyancha	- Nyanza
22. Hon. Justus Musyoki Mutweti	- Eastern
23. Hon. Kathini Maloba Caines	- Women Organizations
24. Hon. Kenneth Njiru	- Political Parties
25. Hon. Luseno Liyai Indembukhani	- Political Parties
26. Hon. Mary Wambui Kanyi	- Civil Society
27. Hon. Miriam Muto	- Persons With Disabilities
28. Hon. Mohammed Juma Abuti	- Coast
29. Hon. Nancy C. Ngeywa	- Western
30. Hon. Ngorongo Makanga	- Political Parties
31. Hon. Peter Nyanducha	- Nyanza

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|-----|--------------------------------|---|-------------------|
| 32. | Hon. Raphael Bombo Ndeme | - | Coast |
| 33. | Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 34. | Hon. Richard N. Kibagendi | - | Nyanza |
| 35. | Hon. Rose Otieno Aadiana | - | Nyanza |
| 36. | Hon. Saipstone Ngalaatu Musau- | | Eastern |
| 37. | Hon. Sophie Lepuchirit | - | Rift Valley |
| 38. | Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 39. | Hon. Winston Ogola Adhiambo- | | Political Parties |
| 40. | Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |
| 41. | Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|-------------------------|---|-------------------------|
| Hon. Francis Kagwima | - | Eastern |
| Hon. Mohammed A. Khalif | - | North Eastern |
| Hon. Mukhisa Kituyi | - | Western |
| Hon. Njoki S. Ndung'u | - | Central |
| Hon. Orwa Ojode | - | Nyanza |
| Hon. Rashmin P. Chitnis | - | Religious Organizations |

OBSERVERS

- Mr. Hassan Wario
 Mr. Joseph Mutuma
 Ms Beatrice Ouma
 Ms Susan Ngugi
 Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|--------------------------|---|--|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly, Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.161/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Helen Mung'athia.

Appointment of Representatives to the Media Liaison Committee

The Committee appointed the following members representatives to the Media Liaison Committee;

1. Hon. Kenneth Njiru (Del.609 - Political Parties.
2. Hon. Caroline Ruto (Del.366) - District Delegate.
3. Hon. Richard Kibagendi Del.428) - District Delegate.
4. Hon. Miriam Muto (Del.472) - Person with Disability.
5. Hon. Ngalaatu Musau (Del.295) - District Delegate.
6. Hon. Mary Kanyi (Del.467) - Civil Society
7. Hon. Fatuma Boru Jaldesa (Del.267)- District Delegate.

MIN.NO.162/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon Jane K. Kamwaga and seconded by Hon. David Wakahu.

MIN.NO.163/2004 CONFIRMATION OF MINUTES

Minutes of the Twenty Third Sitting held on Wednesday January 20, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Asenath K. Nyamu and seconded by Hon. Fares Ogada.

MIN.NO.164/2004 CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL –
REPRESENTATION OF THE PEOPLE

The Committee considered Chapter Six of the Draft Bill as follows:-

DEFERRED ARTICLES

Sub-Article 77(1)(f) - **agreed to.**

Thus, the Sub-Article is adopted as is in the Draft Bill.

New Sub-Article 77(1)(h)

Amendment proposed;

That, a new Sub-Article 77(1)(h) be inserted immediately after 77(1)(g) to read as follows;

“the application of proportional representation of the people to the nearest five thousand votes cast in an election in order to reduce representation imbalances-“

(Hon. Ngorongo Makanga)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Sub-Article 77(2)(a)

Amendment proposed;

That, Sub-Article 77(2)(a) be amended to read as follows;

“A Political Party shall adhere to the affirmative action principles in its nominations for direct elections.”

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 77(2)(a) is amended to read as follows;

“A Political Party shall adhere to the affirmative action principles in its nominations for direct elections.”

MIN.NO.165/2004

ADJOURNMENT

The Convenor adjourned the sitting at fifteen minutes past One O’clock until Friday, January 23, 2003 in order to enable delegates attend the requiem mass of the late Hon. Joab Omino, M.P.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday January 23, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of the Draft Bill
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY FIFTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY JANUARY 23, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyn Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Fares Ogada	-	Nyanza
12. Hon. George Muchai	-	Trade Unions
13. Hon. George Orwa Ochieng	-	Nyanza
14. Hon. Godfrey Mbuba M'thigaa	-	Eastern
15. Hon. Hellen Mung'athia	-	Religious Organizations
16. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
17. Hon. Jacob Ochino Ogundo	-	Political Parties
18. Hon. Jane Kirangari Kamwaga	-	Central
19. Hon. Justus Musyoki Mutweti	-	Eastern
20. Hon. Kenneth Njiru	-	Political Parties
21. Hon. Luseno Liyai Indembukhani	-	Political Parties
22. Hon. Mary Wambui Kanyi	-	Civil Society
23. Hon. Miriam Muto	-	Persons With Disabilities
24. Hon. Mohammed Juma Abuti	-	Coast
25. Hon. Nancy C. Ngeywa	-	Western
26. Hon. Ngorongo Makanga	-	Political Parties
27. Hon. Peter Nyanducha	-	Nyanza
28. Hon. Raphael Bombo Ndeme	-	Coast
29. Hon. Rhoda Arupe Loyor	-	Rift Valley
30. Hon. Richard N. Kibagendi	-	Nyanza
31. Hon. Rose Otieno Adiana	-	Nyanza
32. Hon. Sang Kipkorir Marisin	-	Rift Valley

- | | | |
|----------------------------------|---|-------------------|
| 33. Hon. Sophie Lepuchirit | - | Rift Valley |
| 34. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 35. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|-------------------------------|---|---------------------|
| 1. Hon. Fatuma Boru Jaldesa | - | Eastern |
| 2. Hon. Kathini Maloba Caines | - | Women Organizations |
| 3. Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |

ABSENT

- | | | |
|----------------------------------|---|-------------------------|
| 1. Hon. Eng. Joshua Toro | - | Central |
| 2. Hon. Francis Kagwima | - | Eastern |
| 3. Hon. Joel Onyancha | - | Nyanza |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Mukhisa Kituyi | - | Western |
| 6. Hon. Njoki S. Ndung'u | - | Central |
| 7. Hon. Orwa Ojode | - | Nyanza |
| 8. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 9. Hon. Saipstone Ngalaatu Musau | - | Eastern |

OBSERVERS

1. Mr. Hassan Wario
2. Mr. Joseph Mutuma
3. Ms Beatrice Ouma
4. Ms Susan Ngugi
5. Ms. Mary Okumu

IN ATTENDANCE

- | | | |
|-----------------------------|---|---|
| 1. Mrs. Serah Kioko Ndeto | - | National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 4. Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| 5. Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.166/2004

PRELIMINARY

The Convenor called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Miriam Muto.

MIN.NO.167/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon Helen Mung'athia and seconded by Hon. David Mpilei.

MIN.NO.168/2004

CONFIRMATION OF MINUTES

Minutes of the Twenty Fourth Sitting held on Thursday January 22, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. David Wakahu and seconded by Hon. Mary Wambui Kanyi.

MIN.NO.169/2004

MATTERS ARISING

MIN.NO.161/2004 OF 22ND JANUARY, 2004

Media Liaison Committee

The Convenor, Hon. Caroline Ng'ang'a and Hon. K.M. Sang, M.P. will also be members of the Liaison Media Committee.

MIN.NO.170/2004

**CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL –
REPRESENTATION OF THE PEOPLE**

The Committee considered Chapter Six of the Draft Bill as follows:-

DEFERRED ARTICLES

Sub-Article 77(2)(b) and (c)

Amendment proposed;

That, Sub-Article 77(2)(b) and (c) be deleted.

(Hon. Kenneth Njiru)

Question of amendment put and agreed to;

Thus, Sub-Articles 77(2)(b) and (c) have been deleted and no longer form part of the Draft Bill.

New Sub-Article 77(3)

Amendment proposed;

That, a new Sub-Article 77(3) be inserted immediately after Sub-Article 77(2) to read as follows;

“In order to ensure that at least the one third principle of Affirmative Action for women representations in the Lower House, every District or Borough shall be considered an electoral unit for that purpose.”

(Hon. Rhoda Loyor)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new Sub-Article 77(3) has been inserted to read as follows:

“In order to ensure that at least the one third principle of Affirmative Action for women representations in the Lower House, every District or Borough shall be considered an electoral unit for that purpose.”

New Sub-Article 77(4)

Amendment proposed;

That, a new Sub-Article 77(4) be inserted immediately after Sub-Article 77(3) to read as follows;

“Five per cent of the seats in the Lower House shall be reserved for special interest groups, that is, persons with disability, the youth, workers through Trade Union Movement and other minorities; and at least one third of the members in these categories shall be women.”

(Hon. Miriam Muto)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, a new Sub-Article 77(4) is inserted to read as follows;

“Five per cent of the seats in the Lower House shall be reserved for special interest groups, that is, persons with disability, the youth, workers through Trade Union

Movement and other minorities; and at least one third of the members in these categories shall be women.”

Sub-Article 95(3)

That, Sub-Article 95(3) be amended by splitting it into (a) and (b) to read as follows;

“All moneys allocated yearly by Parliament to the Political Parties Fund shall be distributed equally to all political parties whose organizational structure shall comprise one third of the marginalized gender and one tenth of persons with disability.

After General Elections, fifty per cent of the Political Parties Fund shall be paid proportionately by reference to the political parties and the number of women candidates elected in each political party”.

(Hon. David Wakahu, 21.01.2004)

Debate interrupted resumed;

Amendment to the amendment proposed;

That, the amendment be amended to read as follows;

“Thirty per cent of the monies allocated by Parliament to the Political Parties Fund shall be distributed equally among the registered political parties annually and the remaining seventy per cent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women and special interest groups elected or nominated at the previous General Elections.”

(Hon. David Wakahu)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 95(3) is amended to read as follows;

“Thirty per cent of the monies allocated by Parliament to the Political Parties Fund shall be distributed equally among the registered political parties annually and the remaining seventy per cent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women and special interest groups elected or nominated at the previous General Elections.”

Article 82 – Unopposed Candidates

Sub-Article 82(1) – agreed to.

Thus Sub-Article 82(1) is adopted as in the Draft Bill.

Sub-Article 82(2)

Amendment proposed;

That, Sub-Article 82(2) be amended to read as follows;

“After the votes have been counted under clause (I) the candidate shall be declared elected.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Sub-Article 82(2) is amended to read as follows;

“After the votes have been counted under clause (I) the candidate shall be declared elected.”

New-Article 82(3)

Amendment proposed;

That a new Sub-Article 82(3) be inserted immediately after 82(2) to read as follows;

“Parliament shall enact legislation to provide for the implementation of the provisions of clause (1).”

(Hon. Kenneth Njiru)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to;

Thus, a new Sub-Article 82(3) is inserted to read a follows;

“Parliament shall enact legislation to provide for the implementation of the provisions of clause (1).”

MIN.NO.171/2004 COMPLETION OF CONSIDERATION OF CHAPTER SIX OF THE DRAFT BILL (ARTICLE BY ARTICLE)

The Committee concluded consideration of Chapter Six of the Draft Bill, article by article and the Convenor commended them for a job well done. She also thanked Members for their dedication the work of the committee but reminded them that the Committee would continue meeting in order to consider all outstanding issues.

Hon. Jane Kamwaga and Hon. Richard Kibagendi, on behalf of other Committee Members, commended the Convenor for her able and impartial leadership role.

MIN.NO.172/2004 ADJOURNMENT

The Convenor adjourned the sitting at forty minutes past Twelve O’clock until Monday, January 26, 2004 at 9.00 a.m. This adjournment was so as to allow Muslim faithfuls time to go for prayers

CONFIRMED

.....
(CONVENOR)

DATE:.....
.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Monday January 26, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY SIXTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY JANUARY 26, 2004 AT 9.30 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
3. Hon. Carolyn Ruto	-	Rift Valley
4. Hon. Chelagat Naftali Kemboi	-	Rift Valley
5. Hon. Danny Irungu	-	Civil Society
6. Hon. David Oloisa Mpilei	-	Rift Valley
7. Hon. David Wakahu	-	Political Parties
8. Hon. Emmy Kipsoi	-	Rift Valley
9. Hon. Eng. Joshua Toro	-	Central
10. Hon. Fares Ogada	-	Nyanza
11. Hon. Fatuma Boru Jaldesa	-	Eastern
12. Hon. Francis Kagwima	-	Eastern
13. Hon. George Muchai	-	Trade Unions
14. Hon. George Orwa Ochieng	-	Nyanza
15. Hon. Godfrey Mbuba M'thagaa	-	Eastern
16. Hon. Hellen Mung'athia	-	Religious Organizations
17. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
18. Hon. Jacob Ochino Ogundo	-	Political Parties
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Joel Onyancha	-	Nyanza
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kathini Maloba Caines	-	Women Organizations
23. Hon. Kenneth Njiru	-	Political Parties
24. Hon. Luseno Liyai Indembukhani	-	Political Parties
25. Hon. Mary Wambui Kanyi	-	Civil Society
26. Hon. Miriam Muto	-	Persons With Disabilities
27. Hon. Mohammed Juma Abuti	-	Coast
28. Hon. Nancy C. Ngeywa	-	Western
29. Hon. Ngorongo Makanga	-	Political Parties
30. Hon. Peter Nyanducha	-	Nyanza
31. Hon. Raphael Bombo Ndeme	-	Coast

- | | | | |
|-----|--------------------------------|---|-------------------------|
| 32. | Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 33. | Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 34. | Hon. Rose Otieno Adiana | - | Nyanza |
| 35. | Hon. Saipstone Ngalaatu Musau- | | Eastern |
| 36. | Hon. Sophie Lepuchirit | - | Rift Valley |
| 37. | Hon. Winston Ogola Adhiambo- | | Political Parties |
| 38. | Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |
| 39. | Hon. Ibrahim Lethome | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | | |
|---|------------------------------|---|------------|
| 1 | Hon. Apollo Tsalwa | - | Western |
| 2 | Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | | |
|----|----------------------------|---|-------------------------|
| 1. | Hon. Asiya Mwanzi Mahmood | - | Religious Organizations |
| 2. | Hon. Mohammed A. Khalif | - | North Eastern |
| 3. | Hon. Mukhisa Kituyi | - | Western |
| 4. | Hon. Njoki S. Ndung'u | - | Central |
| 5. | Hon. Orwa Ojode | - | Nyanza |
| 6. | Hon. Richard N. Kibagendi | - | Nyanza |
| 7. | Hon. Sang Kipkorir Marisin | - | Rift Valley |

OBSERVERS

6. Mr. Joseph Mutuma

IN ATTENDANCE

- | | | |
|--------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.173/2004

PRELIMINARY

The Convenor called the meeting to order at forty five minutes past Nine O'clock.

MIN.NO.174/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon Miriam Muto and seconded by Hon. Rhoda Arupe.

MIN.NO.175/2004

CONFIRMATION OF MINUTES

Minutes of the Twenty Fifth Sitting held on Friday January 23, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Rhoda Arupe Loyer and seconded by Hon. David Wakahu.

MIN.NO.176/2004

CONSIDERATION OF OUTSTANDING ISSUES

The Committee deliberated on the following outstanding issues:-

Establishment of the Office of the Registrar of Political Parties.

The Committee resolved that it was necessary to specify the functions of the Registrar of Political Parties and his appointing authority.

Consequently, a Sub-Committee of eleven (11) was appointed to draft an article for inclusion in the Draft Bill for that purpose. The Membership of the Committee is as follows:-

10. Hon. Winston Ogola Adhiambo
11. Hon. Kenneth Njiru
12. Hon. Mary Wambui Kanyi
13. Hon. Danny Irungu
14. Hon. Justus Musyoki Mutweti
15. Hon. George Orwa Ochieng
16. Hon. Godfrey Mbuba M'thigaa
17. Hon. Luseno Liyai
18. Hon. David Wakahu
19. Hon. Miriam Muto
20. Hon. Kathini Maloba Caines - to assist the Committee

The Sub-Committee should report back to the Committee on Tuesday January 27, 2004.

7. Proof-reading the Proposed Final Version of Chapter Six

The Committee began proof-reading the proposed final version of Chapter six and proof –read articles 76 to 86.

MIN.NO.177/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting for lunch at fifteen minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at thirty minutes past Two O'clock.

MIN.NO.178/2004

CONSIDERATION OF OUTSTANDING ISSUES

The Committee continued deliberations on outstanding issues as follows:

- a. Proof-reading the proposed Final Version of Chapter Six

The Committee concluded proof-reading the proposed Final Version of Chapter Six.

- b. Establishment of the Office of the Registrar of Political Parties.

Rapporteur Ibrahim Lethome informed the Committee that no other country had been identified where there existed the office of the Registrar of political parties. The Chairperson of the Conference, Prof. Yash Pal Ghai, advised the Committee that the function of registering political parties is vested in the Electoral Commission in most jurisdictions. He was of the view that the role of registering political parties should be left to the Electoral Commission.

The Committee, nevertheless, resolved that it was necessary to have the office of the Registrar of Political Parties created reasoning that it was not a must that Kenya follows what was obtaining in other jurisdictions.

- c. Sub-Committee on Independent Candidates.

The Committee appointed a Sub-Committee to come up with a Draft Article on independent candidates.

The following are the members of the Sub-Committee:-

1. **Hon. Jane K. Kamwaga**
2. **Hon. Raphael Ndeme**
3. **Hon. Rashmin Chitnis**
4. **Hon. Sophie Lepuchirit**
5. **Hon. George Muchai**
6. **Hon. Ngorongo Makanga**
7. **Hon. Rose Aiana Otieno**
8. **Mr. Joseph Mutuma – Observer (advisor to the Sub-Committee.)**

- d. Other Outstanding Issues for Consideration by the Committee

The following issues require consideration by the Committee;

4. **Ensuring independence of the Office of the Registrar of Political Parties;**

5. Representation at devolved levels and the Senate;
6. Consequential and Transitional arrangements in as far as political parties are concerned;
7. Political Party Rights; and
8. Independent party candidates.

MIN.NO.179/2004

ANY OTHER BUSINESS

Visit to Uganda

The Committee resolved that there was need to visit Uganda to establish what was obtaining there in as far as affirmative action is concerned.

Consequently, Rapporteur Ibrahim Lethome was requested to communicate the desire of the Committee to the Rapporteur General and report back to the Committee.

MIN.NO.180/2004

ADJOURNMENT

The Convenor adjourned the sitting at thirty minutes past four to give the two Sub-Committee time to consult until Tuesday January 27, 2004 at 9.00 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday January 27, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY JANUARY 27, 2004 AT 10.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present: -

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. George Muchai	-	Trade Unions
16. Hon. George Orwa Ochieng	-	Nyanza
17. Hon. Godfrey Mbuba M'thigaa	-	Eastern
18. Hon. Hellen Mung'athia	-	Religious Organizations
19. Hon. Jacob Ochino Ogundo	-	Political Parties
20. Hon. Jane Kirangari Kamwaga	-	Central
21. Hon. Joel Onyancha	-	Nyanza
22. Hon. Justus Musyoki Mutweti	-	Eastern
23. Hon. Kathini Maloba Caines	-	Women Organizations
24. Hon. Kenneth Njiru	-	Political Parties
25. Hon. Luseno Liyai Indembukhani	-	Political Parties
26. Hon. Mary Wambui Kanyi	-	Civil Society
27. Hon. Miriam Muto	-	Persons With Disabilities
28. Hon. Mohammed Juma Abuti	-	Coast
29. Hon. Nancy C. Ngeywa	-	Western
30. Hon. Ngorongo Makanga	-	Political Parties
31. Hon. Peter Nyanducha	-	Nyanza
32. Hon. Raphael Bombo Ndeme	-	Coast
33. Hon. Rashmin P. Chitnis	-	Religious Organizations
34. Hon. Rhoda Arupe Loyor	-	Rift Valley

- | | | |
|---------------------------------|---|-------------------|
| 35. Hon. Richard N. Kibagendi | - | Nyanza |
| 36. Hon. Rose Otieno Adiana | - | Nyanza |
| 37. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 38. Hon. Sophie Lepuchirit | - | Rift Valley |
| 39. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 40. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|-------------------------------|---|----------------------------|
| Hon. Isaac Ongubo Kibwage | - | Professional Organizations |
| Hon. Saipstone Ngalaatu Musau | - | Eastern |

ABSENT

- | | | |
|------------------------------|---|---------------|
| Hon. Mohammed A. Khalif | - | North Eastern |
| Hon. Mukhisa Kituyi | - | Western |
| Hon. Njoki S. Ndung'u | - | Central |
| Hon. Orwa Ojode | - | Nyanza |
| Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

- Mr. Joseph Mutuma
- Mr. Hassan Wario
- Ms. Susan Ngugi
- Ms. Beatrice Ouma

IN ATTENDANCE

- | | | |
|--------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.181/2004

PRELIMINARY

The Convenor called the meeting to order at Ten O'clock and opened it with a word of prayer.

The Committee began its sitting late because Members of the Sub-Committees to draft articles for inclusion in the Draft Bill were still consulting.

MIN.NO.182/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. David Wakahu and seconded by Hon. George Orwa Ochieng.

MIN.NO.183/2004

CONFIRMATION OF MINUTES

Minutes of the Twenty Sixth Sitting held on Monday January 26, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Justus Musyoki Mutweti and seconded by Hon. Danny Irungu.

MIN.NO.184/2004

MATTERS ARISING

8. MIN.NO.176/2004 OF JANUARY 26, 2004

- i. Establishment of the Office of the Registrar of Political Parties.

The Sub-Committee to draft an article on the Establishment of the Registrar of Political Parties will report back in the afternoon.

- ii. Proposed Final Version of Chapter Six

The final version of proposed Chapter Six will be circulated to Committee Members once all corrections have been inserted by the Drafts Person.

1. MIN.NO.178/2004 OF JANUARY 26, 2004

- (i) Sub-Committee on Independent Candidates.

The Sub-Committee reported that they had finalized drafting the article on independent candidates.

- (ii) Outstanding Issues for Consideration by the Committee.

The Committee sought the advice of the Rapporteur General as to whether it was within its mandate to make provisions for representation of Kenyans in international bodies such as the East African Community, the Pan African Parliament and the COMESA, among others.

The Rapporteur General sent Mr. Charles Oyaya to guide the Committee over the issue. Mr. Oyaya informed the Committee that it was within the Committee mandate to make provisions on matters of representation in international bodies. Dr. Adronico Adede would provide further insight on the issue to the Committee.

2. MIN.NO.179/2004 OF JANUARY 24, 2004

Visit to Uganda

Rapporteur (Dr.) Phoebe Asiyu reported that the desire of the Committee to visit Uganda had been communicated to the Rapporteur General and the Finance Committee. She had, however, been advised that it was now too late for arrangements to be made for the Committee to travel to Uganda.

The Committee requested that their request be responded to in writing and reiterated that it was still necessary to visit Uganda.

MIN.NO.185/2004

CONSIDERATION OF OUTSTANDING ISSUES

The Committee deliberated on the following outstanding issues

- (i) Report of the Sub-Committee on Independent Candidates

The Sub-Committee submitted a new draft article on independent candidates, which the Committee accepted and deliberated on. The draft article states as follows:-

Independent Candidates

- (1) **A person is eligible for election as an independent candidate for election as a Member of Parliament, Regional Council, District Council and Location Council if the person-**
- (i) **is a citizen of Kenya;**
 - (ii) **has attained the age of eighteen years;**
 - (iii) **is a registered voter in a location, constituency, district or region;**
 - (iv) **is nominated by at least 100 registered voters;**
 - (v) **is registered with Electoral Commission of Kenya and subscribes to the code of conduct for candidates prepared by ECK;**
 - (vi) **has attained at least form four standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified; and**
 - (vii) **is of high moral integrity and character.**

- (2) A person is disqualified from being a Member of Parliament, Regional Council, District Council and Locational Council if that person-
- (i) holds an elective or appointive office in the Republic;
 - (ii) is of unsound mind;
 - (iii) is an undischarged bankrupt;
 - (iv) is convicted of any crime of an election offence;
 - (v) was a member of any political party in the past six months prior to the date of election for which the nomination is filed;
 - (vi) is a candidate for election for any other post or;
 - (vii) has been removed from a public office on grounds of gross misconduct.

Consideration of the New Draft Article on Independent Candidates

The Committee deliberated on the new draft article as follows;

Sub-Article (1) - **agreed to.**

Thus, Sub-Article (1) is adopted as in the new draft article and still reads as follows;

“A person is eligible for election as an independent candidate for election as a Member of Parliament, Regional Council, District Council and Location Council if the person-”

Sub-Article (1)(a)

Amendment proposed;

That, Sub-Article (1)(a) be amended to read as follows;

“is an indigenous Kenyan citizen.”

(Hon. Mary Kanyi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus Sub-Article (1)(a) is amended to read as follows:

“is an indigenous Kenyan citizen.”

MIN.NO.186/2004

ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting for lunch at thirty-five minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at Three O'clock.

MIN.NO.187/2004 CONSIDERATION OF OUTSTANDING ISSUES

New Draft Article on Independent Candidates

The Committee continued deliberations on the New Draft Article as follows;

Sub-Article (1)(b) - **agreed to.**

Thus, the Sub-Article still reads as follows:-

“has attained the age of eighteen years;”

Sub-Article(1)(c) - **agreed to.**

Thus, the Sub-Article still states as follows:-

“is a registered voter in a location, constituency, district or region;”

Sub-Article(1)(d)

Amendment proposed;

That, Sub-Article (1)(d) be amended to read as follows;

“is nominated by at least 100 delegates at the Locational level, 200 delegates at the Constituency level, 500 delegates at the district level and 1000 delegates at the Regional level.”

(Hon. Peter Nyanducha)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, the Sub-Article is amended to read as follows:-

“is nominated by at least 100 voters at the Locational level 200 voters at the Constituency level, 500 voters at the district level and 1000 voters at the Regional level.”

Sub-Article(1)(e) - **agreed to.**

Thus, the Sub-Article is adopted as in the new draft article and still reads as follows:-

“is registered with Electoral Commission of Kenya and subscribes to the code of conduct for candidates prepared by Electoral Commission of Kenya;”

Sub-Article (1)(f)

Amendment proposed;

That, Sub-Article 1(f) be amended to read as follow;

“has attained at least form four, standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified and provided that for Locational Councils one will only be required to be able to read and write; and”

(Hon. Godfrey Mbuba M’thigaa)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, the Sub-Article now states as follows:-

“has attained at least form four, standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified and provided that for Locational councils one will only be required to be able to read and write; and”

Sub-Article (1)(g)

Amendment proposed;

That, Sub-Article (1)(g) be amended to read as follows:

“satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament.”

(Hon Kenneth Njiru)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, the Sub-Article is amended to read as follows:-

“satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament.”

MIN.NO.188/2004

ANY OTHER BUSINESS

Election of Temporary Convenor

The Convenor informed the Committee that she would not be present in the afternoon the following day because she was unwell.

Consequently, the Committee elected Hon. Luseno Liyai Temporary Convenor for the period of time the Convenor would be away.

He was proposed by Hon. Richard Kibagendi and seconded by Hon. Jane Kamwaga.

MIN.NO.189/2004

ADJOURNMENT

The Convenor adjourned the sitting at Four O'clock until Wednesday January 28, 2004 at 9.00 a.m. The adjournment was so as to allow the Secretariat time to attend another meeting.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday January 28, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY EIGHTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY JANUARY 28, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
41. Hon. Luseno Liyai Indembukhani-	Ag. Convenor
42. Hon. Caroline W. Ng'ang'a	- Political Parties
43. Hon. Apollo Tsalwa	- Western
44. Hon. Asenath Kaimuri Nyamu	- Women Organizations
45. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
46. Hon. Carolyn Ruto	- Rift Valley
47. Hon. Chelagat Naftali Kemboi	- Rift Valley
48. Hon. Danny Irungu	- Civil Society
49. Hon. David Oloisa Mpilei	- Rift Valley
50. Hon. David Wakahu	- Political Parties
51. Hon. Emmy Kipsoi	- Rift Valley
52. Hon. Eng. Joshua Toro	- Central
53. Hon. Fares Ogada	- Nyanza
54. Hon. Fatuma Boru Jaldesa	- Eastern
55. Hon. Francis Kagwima	- Eastern
56. Hon. George Muchai	- Trade Unions
57. Hon. George Orwa Ochieng	- Nyanza
58. Hon. Godfrey Mbuba M'thigaa	- Eastern
59. Hon. Hellen Mung'athia	- Religious Organizations
60. Hon. Jacob Ochino Ogundo	- Political Parties
61. Hon. Jane Kirangari Kamwaga	- Central
62. Hon. Joel Onyancha	- Nyanza
63. Hon. Justus Musyoki Mutweti	- Eastern
64. Hon. Kathini Maloba Caines	- Women Organizations
65. Hon. Kenneth Njiru	- Political Parties
66. Hon. Mary Wambui Kanyi	- Civil Society
67. Hon. Miriam Muto	- Persons With Disabilities
68. Hon. Mohammed Juma Abuti	- Coast
69. Hon. Nancy C. Ngeywa	- Western
70. Hon. Ngorongo Makanga	- Political Parties
71. Hon. Peter Nyanducha	- Nyanza
72. Hon. Raphael Bombo Ndeme	- Coast

73. Hon. Rashmin P. Chitnis	-	Religious Organizations
74. Hon. Rhoda Arupe Loyor	-	Rift Valley
75. Hon. Richard N. Kibagendi	-	Nyanza
76. Hon. Rose Otieno Adiana	-	Nyanza
77. Hon. Sang Kipkorir Marisin	-	Rift Valley
78. Hon. Sophie Lepuchirit	-	Rift Valley
79. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
80. Hon. Winston Ogola Adhiambo	-	Political Parties
81. Hon. Orwa Ojode	-	Nyanza
82. Hon.(Dr.) Mosonik arap Korir	-	Rapporteur
83. Hon. (Dr.) Phoebe Asiyo	-	Rapporteur

ABSENT

Hon. Mohammed A. Khalif	-	North Eastern
Hon. Mukhisa Kituyi	-	Western
Hon. Saipstone Ngalaatu Musau	-	Eastern
Hon. Njoki S. Ndung'u	-	Central

OBSERVERS

Mr. Joseph Mutuma
 Mr. Hassan Wario
 Ms. Susan Ngugi
 Ms. Beatrice Ouma

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
Mr. George Mukundi	-	Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula	-	Parliamentary Counsel, National Assembly, Uganda
Mrs. Elizabeth Kimotho	-	Hansard

MIN.NO.190/2004

PRELIMINARY

The Convenor called the meeting to order at twenty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Peter Nyanducha.

MIN.NO.191/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. David Wakahu and seconded by Hon. Chelagat K. Naftali.

Minutes of the Twenty Seventh Sitting held on Tuesday January 27, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Kenneth Njiru and seconded by Hon. Richard Kibagendi.

The Committee deliberated on the following outstanding issues

- (3) Consideration of the Draft Article on Independent Candidates

The Committee deliberated on the draft article as follows;

Sub-Article (2) - **agreed to.**

Thus, Sub-Article (2)(a) to (g) is adopted as in the new draft article and still reads as follows;

- (4) “A person is disqualified from being a Member of Parliament, Regional Council, District Council and Locational Council if that person-
- (i) holds an elective or appointive office in the Republic;
 - (ii) is of unsound mind;
 - (iii) is an undischarged bankrupt;
 - (iv) is convicted of any crime of an election offence;
 - (v) was a member of any political party in the past six months prior to the date of election for which the nomination is filed;
 - (vi) is a candidate for election for any other post or;
 - (vii) has been removed from a public office on grounds of gross misconduct.”

The committee resolved the Drafts person should ensure the new article is appropriately fitted in the Draft Bill.

- (2) Sub-Committee to Draft an Article on Registrar of Political Parties

The Sub-Committee was given upto the following day to finalise its report on provisions for the office of Registrar of Political Parties.

- (3) Presentation by Dr. Adronico Adede on Representation in International Bodies

Dr. Adronico Adede, Commissioner, Constitution of Kenya Review Commission, appeared before the Committee and gave a presentation on the issue of Representation in International Bodies.

He informed the Committee that it was necessary to make provision for representation certain international forums such conferences to negotiate treaties in bodies such as East Africa Legislative Assembly and the Pan African Parliament among others.

The Committee resolved that it was necessary that Kenya be properly represented when treaties are negotiated and in relevant regional and international bodies so that the interests of Kenyan citizens are adequately protected.

MIN.NO.194/2004

ADJOURNMENT FOR LUNCH

The Ag. Convenor adjourned the sitting at fifteen minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee resumed deliberations at thirty minutes past Two O'clock.

The Committee continued deliberations on the outstanding issues as follows:

Appointment of Sub-Committee to Draft an article on Representation in International Bodies.

The Committee appointed a Sub-Committee to draft an article on representation in international bodies.

The Members of the Committee are:

- 8. Hon. Isaac Kibwage**
- 9. Hon. Joel Onyancha**
- 10. Hon. Ngorongo Makanga**
- 11. Hon. Caroline Ruto**
- 12. Hon. Mary Kanyi**

3. Sub-Committee to Frame on article on the Senate Representation

The following members were appointed to draft an article on representation at the Senate:

- 9. Hon. Richard Kibagendi**
- 10. Hon. Fatuma Boru Jaldesa**
- 11. Hon. Mbuba M’thigaa**
- 12. Hon. Joshua Toro**
- 13. Hon. Juma Abuti**

The Sub-Committees should report back to the Committee the following day.

MIN.NO.195/2004

ADJOURNMENT

The Convenor adjourned the sitting at fifteen minutes past Three O’clock until Thursday January 29, 2004 at 9.00 a.m. The adjournment was so as to allow the Sub-Committees time to consult.

CONFIRMED

.....
(CONVENOR)

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday January 29, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Acting Convenor.....
Hon. Luseno Liyai Indembukhani

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE TWENTY NINTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY JANUARY 29, 2004 AT 10.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. David Oloisa Mpilei	-	Rift Valley
8. Hon. David Wakahu	-	Political Parties
9. Hon. Emmy Kipsoi	-	Rift Valley
10. Hon. Fares Ogada	-	Nyanza
11. Hon. Fatuma Boru Jaldesa	-	Eastern
12. Hon. Francis Kagwima	-	Eastern
13. Hon. George Muchai	-	Trade Unions
14. Hon. George Orwa Ochieng	-	Nyanza
15. Hon. Hellen Mung'athia	-	Religious Organizations
16. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
17. Hon. Jacob Ochino Ogundo	-	Political Parties
18. Hon. Jane Kirangari Kamwaga	-	Central
19. Hon. Joel Onyancha	-	Nyanza
20. Hon. Justus Musyoki Mutweti	-	Eastern
21. Hon. Kathini Maloba Caines	-	Women Organizations
22. Hon. Kenneth Njiru	-	Political Parties
23. Hon. Luseno Liyai Indembukhani-	-	Political Parties
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Persons With Disabilities
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. Nancy C. Ngeywa	-	Western
28. Hon. Ngorongo Makanga	-	Political Parties
29. Hon. Orwa Ojode	-	Nyanza
30. Hon. Raphael Bombo Ndeme	-	Coast

- | | | |
|----------------------------------|---|-------------------------|
| 31. Hon. Rashmin P. Chitnis | - | Religious Organizations |
| 32. Hon. Richard N. Kibagendi | - | Nyanza |
| 33. Hon. Rose Otieno Adiana | - | Nyanza |
| 34. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 35. Hon. Sophie Lepuchirit | - | Rift Valley |
| 36. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 37. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|-------------------------|---|------------|
| Hon. Peter Nyanducha | - | Nyanza |
| Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |

ABSENT

- | | | |
|-------------------------------|---|---------------|
| Hon. Danny Irungu | - | Civil Society |
| Hon. Eng. Joshua Toro | - | Central |
| Hon. Godfrey Mbuba M’thigaa | - | Eastern |
| Hon. Mohammed A. Khalif | - | North Eastern |
| Hon. Mukhisa Kituyi | - | Western |
| Hon. Njoki S. Ndung’u | - | Central |
| Hon. Rhoda Arupe Loyor | - | Rift Valley |
| Hon. Saipstone Ngalaatu Musau | - | Eastern |

OBSERVERS

- Mr. Joseph Mutuma
 Mr. Hassan Wario
 Ms. Susan Ngugi
 Ms. Beatrice Ouma

IN ATTENDANCE

- | | | |
|--------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN.NO.196/2004

PRELIMINARY

The Convenor called the meeting to order at twenty minutes past Nine O’clock.

The meeting was opened with a word of prayer by Hon. Winston Ogola Adhiambo.

MIN.NO.197/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

MIN.NO.198/2004

CONFIRMATION OF MINUTES

Minutes of the Twenty Seventh Sitting held on Tuesday January 27, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Rose Adiana Otieno and seconded by Hon. David Mpilei.

MIN.NO.199/2004

MATTERS ARISING.

MIN.NO.193/2004 OF JANUARY 28, 2004

Sub-Article (2) of the Draft Article on Independent Candidates

The Committee resolved that the Drafts Person should ensure that language is harmonized to remove ambiguity in Sub-Article (2) in the preamble (a),(d) and (e).

MIN.NO.200/2004

CONSIDERATION OF OUTSTANDING ISSUES.

The Committee deliberated on the issue of establishment of an independent office of the Registrar of Political Parties, representation in international bodies and the Senate and resolved to continues deliberations on the matter in the afternoon.

MIN.NO.201/2004

ADJOURNMENT FOR LUNCH

The Ag. Convenor adjourned the sitting at fifty five minutes past Twelve O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

The Committee reconvened at three O'clock.

MIN.NO.202/2004

CONSIDERATION OF OUTSTANDING ISSUES.

The Committee resolved to invite an expert to give presentation on the Senate the following day.

MIN.NO.203/2004

ADJOURNMENT

The Ag. Convenor adjourned the sitting at twenty minutes past Four O'clock until Friday January 30, 2004 at 10.00 a.m.

CONFIRMED

.....

(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday January 30, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate/Expert input on the Senate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

**GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY
30, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA**

PRESENT

The following Members of the Committee were present:-

<u>Name</u>		<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Fares Ogada	-	Nyanza
12. Hon. Fatuma Boru Jaldesa	-	Eastern
13. Hon. Francis Kagwima	-	Eastern
14. Hon. George Muchai	-	Trade Unions
15. Hon. George Orwa Ochieng	-	Nyanza
16. Hon. Godfrey Mbuba M'thigaa	-	Eastern
17. Hon. Hellen Mung'athia	-	Religious Organizations
18. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Joel Onyancha	-	Nyanza
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kathini Maloba Caines	-	Women Organizations
23. Hon. Luseno Liyai Indembukhani-	-	Political Parties
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Persons With Disabilities
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. Nancy C. Ngeywa	-	Western
28. Hon. Raphael Bombo Ndeme	-	Coast
29. Hon. Rashmin P. Chitnis	-	Religious Organizations
30. Hon. Richard N. Kibagendi	-	Nyanza
31. Hon. Rose Otieno Adiana	-	Nyanza
32. Hon. Saipstone Ngalaatu Musau	-	Eastern
33. Hon. Sang Kipkorir Marisin	-	Rift Valley
34. Hon. Sophie Lepuchirit	-	Rift Valley

35. Hon. Winston Ogola Adhiambo - Political Parties
 36. Hon.(Dr.) Mosonik arap Korir - Rapporteur
 37. Hon. Peter Nyanducha - Nyanza

ABSENT WITH APOLOGY

- 1 Hon. Kenneth Njiru - Political Parties
 2 Hon. Ngorongo Makanga - Political Parties
 3 Hon. (Dr.) Phoebe Asiyo - Rapporteur

ABSENT

- Hon. Eng. Joshua Toro - Central
 Hon. Jacob Ochino Ogundo - Political Parties
 Hon. Mohammed A. Khalif - North Eastern
 Hon. Mukhisa Kituyi - Western
 Hon. Njoki S. Ndung'u - Central
 Hon. Orwa Ojode - Nyanza
 Hon. Rhoda Arupe Loyer - Rift Valley

OBSERVERS

Mr. Joseph Mutuma
 Mr. Hassan Wario
 Ms. Susan Ngugi

IN ATTENDANCE

- Mrs. Serah Kioko Ndeto - National Assembly
 Mr. Daniel Konyango - Constitution of Kenya Review Commission
 Mr. George Mukundi - Constitution of Kenya Review Commission
 Mrs. Margaret R. Ndawula - Parliamentary Counsel, National Assembly,
 Uganda
 Mrs. Elizabeth Kimotho - Hansard

MIN.NO.204/2004

PRELIMINARY

The Convenor called the meeting to order at Nine O'clock.

The meeting was opened with a word of prayer by Hon. George Orwa Ochieng.

MIN.NO.205/2004

GENERAL DEBATE

There was no General Debate.

MIN.NO.205/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Justus Musyoki Mutweti and seconded by Hon. Jane K. Kamwaga.

MIN.NO.206/2004

CONFIRMATION OF MINUTES

Minutes of the Twenty Ninth Sitting held on Thursday January 29, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Rose Adiana Otieno and seconded by Hon. David Mpilei.

MIN.NO.207/2004

MATTERS ARISING.

GENERAL DEBATE

Hon. Richard Kibagendi expressed concern that the General Debate as an item of the Agenda had on many occasions been omitted in the minutes in spite of the issue having been pointed out by Rapporteur (Dr.) Mosonik arap Korir.

The Committee resolved that the items should always be reflected in the minutes.

MIN.NO.208/2004 PRESENTATION ON THE SENATE BY COMMISSIONER (DR) ADNDRONICO ADEDE.

Dr. Adede informed the Committee that Kenyans had expressed the need to have a second Chamber that is the Senate. The role of the Senate would be: -

- 2. ensuring that bills are carefully considered before they are passed;**
- 3. vetting the appointment of key public officers;**
- 4. complimenting the National Assembly; and**
- 5. ensuring representation of the various regions in the devolved system.**

He cited various countries in Africa, which have an Upper Chamber. These include Nigeria, Rwanda, Ghana and South Africa.

Report of the Sub-Committee on the Establishment of the Office of the Registrar of Political Parties.

The Sub-Committee submitted an amended draft version of article 89, which reads as follows:-

89(1) There shall be established the office of the Registrar of Political Parties under the office of the Attorney General whose functions shall be-

13. to register, keep and maintain the register of all political parties;
14. to supervise the activities of political parties;
15. to arbitrate in party and inter-party disputes;
16. to promote civic education in democracy; and
17. to maintain political parties library and archives.

Consideration of the Draft Article on Registrar of Political Parties

The Committee considered the draft article as follows:

Article 89(1) - agreed to.

Thus, Article 89(1) is adopted as is in the draft article and reads as follows;

“There shall be established the office of the Registrar of Political Parties under the office of the Attorney General whose functions shall be-“

Article 89(1)(a) - **agreed to.**

Thus, Article 89(1)(a) is inserted on the Draft Bill and reads as follows;

“to register, keep and maintain the register of all political parties;”

Article 89(1)(b) - negatived.

Thus, Article 89(1)(b) is deleted and does not therefore form part of the draft article.

Article 89(1)(c) renumbered (b) – **agreed to**

Thus, Article 89(1)(c) as renumbered (b) is inserted on the Draft Bill and reads as follow;

“to arbitrate in party and inter-party disputes;”

New Article 89(d) renumbered – negatived.

Thus, Article 89(1)(d) is deleted and is therefore not part of the Draft.

Article 89(e) renumbered (c) - **agreed to.**

Thus, Article 89(e) renumbered (c) is adopted as in the draft article and still:

“to maintain political parties library and archives.”

Article 89(d) renumbered

Amendment proposed that a new Sub-Article 89(1)(d) be inserted immediately after Article 89(1)(c) in the draft article to read as follows:

“Supervision of elections of all registered political parties.”
(Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, the new Sub-Article is inserted to read as follows;

“supervision of elections of all registered political parties.”

MIN.NO.209/2004

ANY OTHER BUSINESS

Trip to Uganda

The Committee inquired about the progress made so far in as far as the trip to Uganda is concerned.

Rapporteur (Dr.) Mosonik arap Korir informed the Committee that the issue had been overtaken by events. The Conference Secretary would respond to the request of the Committee in writing.

MIN.NO.210/2004

ADJOURNMENT

The Convenor adjourned the sitting at fifty-five minutes past Twelve O’clock until Monday, February 02, 2004 at 9.00 a.m.

CONFIRMED

.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Monday February 02, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FIRST SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY, FEBRUARY 02, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. Fares Ogada	-	Nyanza
10. Hon. Fatuma Boru Jaldesa	-	Eastern
11. Hon. Francis Kagwima	-	Eastern
12. Hon. George Muchai	-	Trade Unions
13. Hon. Godfrey Mbuba M'thigaa	-	Eastern
14. Hon. Hellen Mung'athia	-	Religious Organizations
15. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
16. Hon. Jane Kirangari Kamwaga	-	Central
17. Hon. Justus Musyoki Mutweti	-	Eastern
18. Hon. Kathini Maloba Caines	-	Women Organizations
19. Hon. Kenneth Njiru	-	Political Parties
20. Hon. Luseno Liyai Indembukhani-	-	Political Parties
21. Hon. Mary Wambui Kanyi	-	Civil Society
22. Hon. Miriam Muto	-	Persons With Disabilities
23. Hon. Nancy C. Ngeywa	-	Western
24. Hon. Ngorongo Makanga	-	Political Parties
25. Hon. Peter Nyanducha	-	Nyanza
26. Hon. Raphael Bombo Ndeme	-	Coast
27. Hon. Rashmin P. Chitnis	-	Religious Organizations
28. Hon. Rhoda Arupe Loyor	-	Rift Valley
29. Hon. Richard N. Kibagendi	-	Nyanza
30. Hon. Rose Otieno Adiana	-	Nyanza
31. Hon. Sang Kipkorir Marisin	-	Rift Valley

32. Hon. Sophie Lepuchirit - Rift Valley

ABSENT WITH APOLOGY

Hon. Emmy Kipsoi - Rift Valley
Hon. George Orwa Ochieng - Nyanza

ABSENT

1 Hon. David Wakahu - Political Parties
2 Hon. Eng. Joshua Toro - Central
3 Hon. Jacob Ochino Ogundo - Political Parties
4 Hon. Joel Onyancha - Nyanza
5 Hon. Mohammed A. Khalif - North Eastern
6 Hon. Mohammed Juma Abuti - Coast
7 Hon. Mukhisa Kituyi - Western
8 Hon. Njoki S. Ndung'u - Central
9 Hon. Orwa Ojode - Nyanza
10 Hon. Saipstone Ngalaatu Musau - Eastern
11 Hon. Winston Ogola Adhiambo - Political Parties
12 Hon.(Dr.) Mosonik arap Korir - Rapporteur
13 Hon. (Dr.) Phoebe Asiyo - Rapporteur

OBSERVERS

Mr. Joseph Mutuma

IN ATTENDANCE

Mrs. Serah Kioko Ndeto - National Assembly
Mr. Daniel Konyango - Constitution of Kenya Review Commission
Mr. George Mukundi - Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula - Parliamentary Counsel, National Assembly,
Uganda
Mrs. Elizabeth Kimotho - Hansard

MIN.NO.211/2004

PRELIMINARY

The Convenor called the meeting to order at Nine O'clock.

Prayers were said in a gathering of all delegates held within the precincts of Bomas of Kenya.

MIN.NO.212/2004

GENERAL DEBATE

MIN.NO.213/2004

There was no General Debate.
ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Godrey Mbuba M’Thigaa and seconded by Hon. Jane K. Kamwaga.

MIN.NO.214/2004

CONFIRMATION OF MINUTES

Minutes of the Thirtieth Sitting held on Friday January 30, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Mary Wambui Kanyi and seconded by Hon. Asenath Kamuiru Nyamu.

MIN.NO.215/2004

MATTERS ARISING.

MIN.210/2004 OF JANUARY 30, 2004

Trip to Uganda

The Committee reiterated that it was still necessary to undertake the trip to Uganda and resolved to follow up the matter with the Secretary of the Conference.

MIN.NO.216/2004

CONSIDERATION OF OUTSTANDING ISSUES

1. Report of the Sub-committee to draft an Article on Representation Abroad.

Hon. Isaac Kibwage, on behalf of the Sub-Committee, presented the report of the Sub-Committee.

The Committee resolved to specifically address the issue of representation in line with the mandate of the Committee.

Consequently, the Committee requested the Draftperson to draft an article to that effect. The article should state who the representatives in legislative bodies such as the East Africa Legislative Assembly and the Pan African Parliament will be accountable to.

2. Report of the Sub-Committee to draft an article on the Senate

Hon. Richard Kibagendi, on behalf of the Sub-Committee, presented the report of the Sub-Committee.

The Committee resolved that the Draftperson should draft an amendment to article 77 to incorporate the Senate, while ensuring that the issue of affirmative action is taken care of.

3 Transitional and Consequential Arrangements in as far as Representation is concerned.

The Committee would seek the guidance of the Rapporteurs on the rationale behind the duration of time allocated for implementation of specific provisions.

MIN.NO.217/2004 NON-ATTENDANCE OF REPPORTEURS

The Committee expressed concern that the Committee Rapporteurs were not present to guide the Committee on issues that required clarification. The Committee would seek the guidance of the Rapporteur-General over the matter.

MIN.NO.218/2004 ADJOURNMENT

The Convenor adjourned the sitting at fifteen minutes past One O'clock until Two O'clock in the afternoon.

AFTERNOON SITTING

MIN.NO.217/2004 CONSIDERATION OF OUTSTANDING ISSUES

The Committee reconvened at three O'clock.

1. Consideration of the Amendment to Article 77 to Incorporate the Senate

Amendment proposed;

That, article 77(1)(a) be amended to read as follows:-

“the number and delimitation of the Constituencies for the election for the elections of Members of the Senate, National Assembly, Regional Councils, District Councils and Locational Councils.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus article 77(1)(a) is amended to read as follows:

“the number and delimitation of the Constituencies for the election of Members of the Senate, National Assembly, Regional Councils, District Councils and Locational Councils.”

Article 77(1)(c)

That, article 77(1)(c) be renumbered (d) and a new article 77(1)(c) be inserted to read as follows:

“the nomination of candidates for the election of members to the Senate, which shall be on non-partisan basis.”

(Hon. Richard Kibagendi)

Motion and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Hence a new 77(1)(c) is inserted to read as follows:-

“the nomination of candidates for the election of members to the Senate, which shall be on non-partisan basis.”

Article 77(4)

That, article 77(4) be amended to read as follow:

“In the interest of Affirmative Action five per cent of the seats in the National Assembly and eight point five percent in the Senate shall be reserved for special interest groups, that is, persons with disability, the aged, workers through the Labour Movement and other minorities; provided that at least one third of the seats go to the marginalized gender.”

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to;

Thus, article 77(4) is amended to read as follows:

“In the interest of Affirmative Action five per cent of the seats in the National Assembly and eight point five percent in the Senate shall be reserved for special interest groups, that is, persons with disability, the aged, workers through the Labour Movement and other minorities; provided that at least one third of the seats go to the marginalized gender.”

The Committee resolved that the words “Labour Movement” be used in place of the words “trade unions.”

MIN.NO.218/2004

ADJOURNMENT

The Convenor adjourned the sitting at twenty five minutes past Four O’clock until Tuesday, February 03, 2004 at 9.00 a.m.

CONFIRMED
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday February 17, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. Consideration of Zero Draft and other Outstanding Issues
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>		<u>Organization</u>
1. Hon. Apollo Tsalwa	-	Western
2. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
3. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
4. Hon. Caroline W. Ng'ang'a	-	Convenor
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. Danny Irungu	-	Civil Society
8. Hon. David Oloisa Mpilei	-	Rift Valley
9. Hon. David Wakahu	-	Political Parties
10. Hon. Emmy Kipsoi	-	Rift Valley
11. Hon. Eng. Joshua Toro	-	Central
12. Hon. Fares Ogada	-	Nyanza
13. Hon. Fatuma Boru Jaldesa	-	Eastern
14. Hon. Francis Kagwima	-	Eastern
15. Hon. George Orwa Ochieng	-	Nyanza
16. Hon. Godfrey Mbuba M'thigaa	-	Eastern
17. Hon. Hellen Mung'athia	-	Religious Organizations
18. Hon. Jacob Ochino Ogundo	-	Political Parties
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Joel Onyancha	-	Nyanza
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kathini Maloba Caines	-	Women Organizations
23. Hon. Luseno Liyai Indembukhani-	-	Political Parties
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Persons With Disability
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. Nancy C. Ngeywa	-	Western
28. Hon. Ngorongo Makanga	-	Political Parties
29. Hon. Peter Nyanducha	-	Nyanza
30. Hon. Raphael Bombo Ndeme	-	Coast
31. Hon. Rashmin P. Chitnis	-	Religious Organizations
32. Hon. Richard N. Kibagendi	-	Nyanza
33. Hon. Rose Otieno Adiana	-	Nyanza
34. Hon. Sang Kipkorir Marisin	-	Rift Valley

35. Hon. Winston Ogola Adhiambo - Political Parties
36. Hon. (Dr.) Phoebe Asiyo - Rapporteur

ABSENT

1. Hon. Mohammed A. Khalif - North Eastern
2. Hon. Mukhisa Kituyi - Western
3. Hon. Njoki S. Ndung'u - Central
4. Hon. Orwa Ojode - Nyanza
5. Hon. Rhoda Arupe Loyor - Rift Valley
6. Hon. George Muchai - Trade Unions
7. Hon. Isaac Ongubo Kibwage - Professional Organizations
8. Hon. Kenneth Njiru - Political Parties
9. Hon. Saipstone Ngalaatu Musau - Eastern
10. Hon. Sophie Lepuchirit - Rift Valley
11. Hon.(Dr.) Mosonik arap Korir - Rapporteur

OBSERVERS

Mr. Joseph Mutuma
Mr. Hassan Wario

IN ATTENDANCE

- Mr. Daniel Konyango - Constitution of Kenya Review Commission
Mr. George Mukundi - Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula - Parliamentary Counsel, National Assembly,
Uganda
Mrs. Elizabeth Kimotho - Hansard

ABSENT WITH APOLOGY

- Mrs. Serah Kioko Ndeto - National Assembly

MIN.NO.221/2004

PRELIMINARY

The Convenor called the meeting to order at Nine O'clock.

Prayers were led by Hon. Delegate No.432.

MIN.NO.222/2004

GENERAL DEBATE

There was no General Debate.

MIN.NO.223/2004

ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. George Orwa Ochieng and seconded by Hon. Jane K. Kamwaga.

MIN.NO.224/2004

CONFIRMATION OF MINUTES

Minutes of the Thirtieth Sitting held on Monday, February 02, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Hellen Mungathia and seconded by Hon. Asenath Kaimuri Nyamu.

MIN.NO.225/2004

MATTERS ARISING.

MIN.215/2004 OF FEBRUARY 02, 2004

Trip to Uganda

The Committee was of the opinion that there was a tight programme ahead for the delegates and therefore decided to give up the idea of the trip to Uganda since it had been overtaken by events.

MIN.217/2004 OF FEBRUARY 02, 2004

The Convenor invited Rapporteur Dr. Asiyo to tell the delegates about the absence of the Rapporteurs at most of the meetings. The Rapporteur said that usually whenever they are absent, the reasons are usually known to the secretariat and that she had no other comment on the issue.

MIN.216/2004 OF FEBRUARY 02, 2004

The Convenor informed the delegates that there were various outstanding issues that they were yet to deal with, and that other Committees were waiting for their input on the issues in order to finalise on them.

MIN.219/2004 OF FEBRUARY 02, 2004

Hon. Richard Kibagendi sought to inform the Committee that the change of the words “Trade Unions” to “Labour Movement” in the Committee’s Draft was not done procedurally. It was settled that this issue be revisited later if need be.

MIN.NO.226/2004

CONSIDERATION OF THE
ZERO DRAFT

The Convenor told the delegates that the Zero Draft replaces the Draft Bill that had been discussed. She assured the delegates that the Zero Draft was only a compendium of the decisions of the Technical Committees without any change. She

further informed the delegates that there are issues raised on the Committee's presentation at the Mombasa retreat, which the Members ought to consider.

MIN.NO.227/2004 CONSIDERATION OF OTHER OUTSTANDING ISSUES

The Convenor invited the delegates to consider the other outstanding issues before embarking on the Zero Draft.

The delegates however requested to be given time to go through the documents availed to them to enable them deal with the issues raised therein.

MIN.NO.228/2004 ADJOURNMENT

The Convenor adjourned the sitting at twenty minutes past Noon until Wednesday, February 18, 2004 at 9.00 a.m..

CONFIRMED.....
(CONVENOR)

DATE:.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on Wednesday **February 18, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
- 7. Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-THIRD SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY, FEBRUARY 18, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Carolyne Ruto	-	Rift Valley
6. Hon. Chelagat Naftali Kemboi	-	Rift Valley
7. Hon. David Oloisa Mpilei	-	Rift Valley
8. Hon. David Wakahu	-	Political Parties
9. Hon. Emmy Kipsoi	-	Rift Valley
10. Hon. Eng. Joshua Toro	-	Central
11. Hon. Fares Ogada	-	Nyanza
12. Hon. Francis Kagwima	-	Eastern
13. Hon. George Muchai	-	Trade Unions
14. Hon. George Orwa Ochieng	-	Nyanza
15. Hon. Godfrey Mbuba M'thigaa	-	Eastern
16. Hon. Hellen Mung'athia	-	Religious Organizations
17. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
18. Hon. Jacob Ochino Ogundo	-	Political Parties
19. Hon. Jane Kirangari Kamwaga	-	Central
20. Hon. Joel Onyancha	-	Nyanza
21. Hon. Justus Musyoki Mutweti	-	Eastern
22. Hon. Kathini Maloba Caines	-	Women Organizations
23. Hon. Luseno Liyai Indembukhani	-	Political Parties
24. Hon. Mary Wambui Kanyi	-	Civil Society
25. Hon. Miriam Muto	-	Persons With Disability
26. Hon. Mohammed Juma Abuti	-	Coast
27. Hon. Nancy C. Ngeywa	-	Western
28. Hon. Ngorongo Makanga	-	Political Parties
29. Hon. Orwa Ojode	-	Nyanza
30. Hon. Peter Nyanducha	-	Nyanza
31. Hon. Raphael Bombo Ndeme	-	Coast
32. Hon. Rashmin P. Chitnis	-	Religious Organizations

- | | | |
|---------------------------------|---|-------------------|
| 33. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 34. Hon. Richard N. Kibagendi | - | Nyanza |
| 35. Hon. Rose Otieno Adiana | - | Nyanza |
| 36. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 37. Hon. Sophie Lepuchirit | - | Rift Valley |
| 38. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 39. Hon. Ibrahim Lethome | - | Rapporteur |
| 40. Hon. (Dr.) Phoebe Asiyo | - | Rapporteur |

ABSENT

- | | | |
|----------------------------------|---|-------------------|
| 1. Hon. Danny Irungu | - | Civil Society |
| 2. Hon. Fatuma Boru Jaldesa | - | Eastern |
| 3. Hon. Kenneth Njiru | - | Political Parties |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Mukhisa Kituyi | - | Western |
| 6. Hon. Njoki S. Ndung'u | - | Central |
| 7. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 8. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

OBSERVERS

Mr. Joseph Mutuma
 Mr. Hassan Wako Wario
 Ms. Susan Wangui Ngugi
 Ms. Beatrice Atieno Auma

IN ATTENDANCE

- | | | |
|--------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National
Assembly, Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN. NO.229/2004 PRELIMINARY

The Convenor called the meeting to order at 9.35 a.m.

Hon. Delegate Miriam Muto led prayers

MIN. NO.230/2004 GENERAL DEBATE

There was no General Debate.

MIN. NO.231/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor,

It was proposed by Hon. Peter Nyanducha and seconded by Hon. David Mpilei.

MIN. NO.232/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Second Sitting held on Tuesday February 17, 2004 were confirmed and signed by the Convenor.

They were proposed by Hon. Asenath Kaimuri Nyamu and seconded by Hon. Rose Otieno Adiana.

MIN. NO.233/2004 MATTERS ARISING.

MIN. 225 OF FEBRUARY 17, 2004

The Convenor explained that under the Matters Arising form Min.219 as raised by Hon. Richard Kibagendi, there was nothing wrong with the procedure. She said that the two phrases 'Trade Unions' and 'Labour Movement' had been used interchangeably in the Committee's Draft and that there was need to adopt one phrase. She pointed out that this did not need a formal motion to be done.

MIN.NO.226 OF FEBRUARY 17, 2004

The honourable delegates pointed out that they did not have copies of the Zero Draft being referred to. The Convenor told them that the documents were being produced and that they would soon be available.

MIN.NO.234/2004 CONSIDERATION OF CROSS-CUTTING

Transitional and Consequential Arrangements.

The Committee considered the Transitional and Consequential Arrangements as they were the Draft Bill and as the Committee on Transitional and Consequential Arrangements had dealt with the various articles touching on Chapter Six as follows:

a. Article 46(6) of the Draft Bill as put in the Sixth Schedule

Amendment proposed:

That, the period for the implementation of the requirements of Article 46(6) as put in the Sixth Schedule of the Draft Bill be reduced to one year.

(Hon. Emmy Kipsoi)

Motion made and Question proposed;

Question of the amendment put and agreed to.

Thus, the period for implementation of the requirements of Article 46(6) as put in the Sixth Schedule of the Draft Bill be reduced to one year.

b. Articles 77(1), 77(2), 80(1)(a) and (b), 87(2), 87(4), 89(2) and 96(2) of the Draft Bill as put in the Sixth Schedule of the Draft Bill.

The Delegates were of the opinion that they should be informed of the reasons the periods stated in the Zero Draft were so put by the Committee on Transitional and Consequential Arrangements.

Discussion on these Articles was deferred awaiting input from a Rapporteur from the Committee on Transitional and Consequential Arrangements.

MIN.NO.235/2004 CONSIDERATION OF OUTSTANDING ISSUES

(i) Representation of the People at International Bodies or Missions

Inclusion of a new Article 100A proposed:-

That a new Article 100A be included in the Zero Draft immediately after Article 100 to read as follows:-

100A(1) Parliament shall enact laws governing:-

the constitution of national delegations to international meetings conferences or other fora for the negotiation of treaties, conventions and other agreements;

subject to the relevant treaties or agreements, the election or nomination of representatives to international legislative bodies;

100(2) In the exercise of his or her duties under Article 151(7)(a) the President shall, among others, be guided by the principles of professionalism, gender equity, integrity, moral probity and the diversity of the people of Kenya.

(Hon. Francis Kagwima)

Motion made and Question proposed;
Debate Arising;

Question of the inclusion put and agreed to.

Thus, Article 100A is included in the Zero Draft to read as follows:-

100A(1) Parliament shall enact laws governing:-

- (a) **the constitution of national delegations to international meetings conferences or other fora for the negotiation of treaties, conventions and other agreements;**
- (b) **subject to the relevant treaties or agreements, the election or nomination of representatives to international legislative bodies;**

100(2) In the exercise of his or her duties under Article 151(7)(a) the President shall, among others, be guided by the principles of professionalism, gender equity, integrity, moral probity and the diversity of the people of Kenya.

(ii) **Representation at the devolved levels of government.**

The Committee appointed a Sub-Committee to look into the issue of representation at the devolved levels of government and draft appropriate provisions to take care of the same in the Zero Draft.

The Sub-Committee comprised the following:-

Hon. David Wakahu Del.No.612
Hon. Miriam Muto Del.No.472
Hon. Mary Wambui Kanyi Del.No.467
Hon. George Muchai Del.No.439
Hon. Justus Mutweti Del.No.293

The Sub-Committee reported back to the Committee as follows:-

Article 77(6) in the Zero Draft, renumbered 77(5)

Amendment proposed;

That Article 77(6) renumbered 77(5) of the Zero Draft be amended by inserting the words “and devolved governments” between the words ‘Assembly’ and ‘eight’ in the preamble of the Article
(Hon. George Muchai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 77(6) renumbered (5) in the Zero Draft is amended to read as follows in the preamble:

in the interest of Affirmative Action, five percent of the seats in the National Assembly and devolved governments; and eight decimal five percent in the Senate shall be reserved for special interest groups that is.

A New Sub-Article 77(6)

Inclusion of a new Sub-Article 77(6) into the Zero Draft proposed;

That, a new Sub-Article 77(6) be included in the Zero Draft to read as follows:

the Principle of maintaining at least one-third Affirmative Action for the marginalized gender under Sub-Article (4) above shall apply for the Senate and devolved governments and shall further ensure that at no time will one gender have more than two-thirds representation.

(Hon. George Muchai)

Motion of inclusion made and Question proposed.

Debate Arising.

Question of the inclusion put and agreed to.

Thus, a new Sub-Article 77(6) be included in the Zero Draft to read as follows:-

the Principle of maintaining at least one third affirmative Action for the marginalized gender under Sub-Article (4) above shall apply for the Senate and devolved governments and shall further ensure that at no time will one gender have more than two-thirds representation.

MIN.NO.236/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at 1.10 p.m. to enable the delegates go for lunch.

AFTERNOON SITTING

The Committee reconvened at Three O'clock but did not transact business owing to lack of Quorum.

MIN. NO.237/2004 COMMUNICAITON FROM THE CHAIR

(1) Cross-Cutting Issues

The Convenor informed the Committee that there were a number of cross-cutting issues for consideration by the Committee. Consequently, she requested Members to prepare for deliberations on the following cross-cutting issues emerging from the following Committees:-

(i) Committee on Devolution

How to marry the proposal for the creation of a Boundaries Commission with the Electoral Commission.

(ii) Committee on Legislature

(a) How workers should choose their representation from the Trade Unions or the Labour Movement at large.

(b) Where members of the Senate should be drawn from.

(iii) Committee on the Bill of Rights

Whether the use of the word “indigenous” in determining qualifications for one to stand for elections would not deny some citizens their rights.

(iv) Committee on Constitutional Commissions

Whether the issue of the number of Electoral Commissioners and their nominating authority should not be left to the Constitutional Commissions Committee to determine.

(v) Registrar of Political Parties.

Whether registration of political parties should not be done by the Registrar of Societies as is the case currently.

(2) **Lack Of Quorum**

The Convenor noted with grave concern that the afternoon sitting had to be adjourned for lack of Quorum. Observing with similar concern that the issue of Quorum was greatly hampering the work of the Committee members present resolved to address the issue the following day.

MIN.NO.238/2004 ADJOURNMENT

The Convenor adjourned the Sitting at thirty minutes past Three O’clock until Thursday February 19, 2004 at 9.00 a.m.

SIGNED
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday February 19, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. **Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FOURTH SITTING OF TECHNICAL WORKING GROUP NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY, FEBRUARY 19, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	- Convenor
2. Hon. Apollo Tsalwa	- Western
3. Hon. Asenath Kaimuri Nyamu	- Women Organizations
4. Hon. Asiya Mwanzi Mahmood	- Religious Organizations
5. Hon. Chelagat Naftali Kemboi	- Rift Valley
6. Hon. Danny Irungu	- Civil Society
7. Hon. David Oloisa Mpilei	- Rift Valley
8. Hon. David Wakahu	- Political Parties
9. Hon. Emmy Kipsoi	- Rift Valley
10. Hon. Fares Ogada	- Nyanza
11. Hon. Fatuma Boru Jaldesa	- Eastern
12. Hon. George Muchai	- Trade Unions
13. Hon. George Orwa Ochieng	- Nyanza
14. Hon. Godfrey Mbuba M'thigaa	- Eastern
15. Hon. Hellen Mung'athia	- Religious Organizations
16. Hon. Isaac Ongubo Kibwage	- Professional Organizations
17. Hon. Jacob Ochino Ogundo	- Political Parties
18. Hon. Jane Kirangari Kamwaga	- Central
19. Hon. Joel Onyancha	- Nyanza
20. Hon. Justus Musyoki Mutweti	- Eastern
21. Hon. Kathini Maloba Caines	- Women Organizations
22. Hon. Luseno Liyai Indembukhani-	- Political Parties
23. Hon. Mary Wambui Kanyi	- Civil Society
24. Hon. Miriam Muto	- Persons With Disability
25. Hon. Mohammed Juma Abuti	- Coast
26. Hon. Nancy C. Ngeywa	- Western
27. Hon. Ngorongo Makanga	- Political Parties
28. Hon. Orwa Ojode	- Nyanza
29. Hon. Raphael Bombo Ndeme	- Coast
30. Hon. Rashmin P. Chitnis	- Religious Organizations
31. Hon. Rhoda Arupe Loyor	- Rift Valley
32. Hon. Richard N. Kibagendi	- Nyanza

33. Hon. Rose Otieno Adiana	-	Nyanza
34. Hon. Sang Kipkorir Marisin	-	Rift Valley
35. Hon. Sophie Lepuchirit	-	Rift Valley
36. Hon. Stephen Tarus	-	Rift Valley
37. Hon. Winston Ogola Adhiambo	-	Political Parties
38. Hon.(Dr.) Mosonik arap Korir	-	Rapporteur
39. Hon. (Dr.) Phoebe Asiyo	-	Rapporteur

ABSENT WITH APOLOGY

Hon. Kenneth Njiru	-	Political Parties
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ABSENT

Hon. Carolyn Ruto	-	Rift Valley
Hon. Eng. Joshua Toro	-	Central
Hon. Francis Kagwima	-	Eastern
Hon. Mohammed A. Khalif	-	North Eastern
Hon. Mukhisa Kituyi	-	Western
Hon. Njoki S. Ndung'u	-	Central
Hon. Peter Nyanducha	-	Nyanza
Hon. Saipstone Ngalaatu Musau	-	Eastern

OBSERVERS

Mr. Joseph Mutuma
 Mr. Hassan Wako Wario
 Ms. Susan Wangui Ngugi
 Ms. Beatrice Atieno Auma

IN ATTENDANCE

Mrs. Serah Kioko Ndeto	-	National Assembly
Mr. Daniel Konyango	-	Constitution of Kenya Review Commission
Mr. George Mukundi	-	Constitution of Kenya Review Commission
Mrs. Margaret R. Ndawula	-	Parliamentary Counsel, National Assembly, Uganda
Mrs. Elizabeth Kimotho	-	Hansard

MIN. NO.239/2004 PRELIMINARY

The Convenor called the meeting to order at ten minutes past ten O'clock.

The meeting was opened with a word of Prayer by Hon. Helen Mung'athia.

MIN. NO.240/2004 GENERAL DEBATE

There was no General Debate.

MIN. NO.241/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor,

It was proposed by Hon. Miriam Mutto and seconded by Hon. Chelegat Naftali Kemboi.

MIN. NO.242/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Third Sitting held on Wednesday 18th February, 2004 were confirmed.

They were proposed by Hon. George Orwa Ochieng and seconded by Hon. Helen Mung'athia.

MIN. NO.243/2004 MATTERS ARISING.

MIN. 234 OF FEBRUARY 18, 2004

The Convenor informed the Committee that she had formally written to the Rapporteur General requesting for the Rapporteur of the Committee on Transitional and Consequential Arrangements to provide input on the reasons for the periods provided for implementation of various provisions in the Zero Draft. A response from the Rapporteur General was being awaited.

MIN. 237 OF FEBRUARY 18, 2004

The Convenor urged members to desist from making technical appearances during meetings of the Committee. She warned that she would raise the issue with the Steering Committee and name those members who persistently made technical appearances or left before meetings were adjourned.

MIN.NO.244/2004 CONSIDERATION OF CROSS-CUTTING AND OTHER OUTSTANDING ISSUES

The Committee revisited the use of the terms “Labour Movement” *vis-a-vis* “Trade Unions” in determining the constituency from which workers should choose their representatives.

After lengthy deliberations a motion of amendment was moved as follows:

That the words “Labour Movement” be deleted wherever they appear in Chapter Six and the words “Workers Organizations” be inserted in place thereof.

(Hon. Mbuba M'thigaa)

Motion made and Question proposed:

Debate Arising

Question of the amendment put and agreed to.

Thus, the words “Labour Movement” are deleted and the words “workers organizations” inserted wherever they occur in Chapter Six.

Minority Position

Hon. George Muchai registered a minority position over the use of the “Workers Organizations”,. He was of the view that the term “Trade Unions” should be used instead, in order to conform with provisions of the Chapters on the Bill of Rights and the Legislature.

Establishment of a Boundaries Commission

The Committee resolved that the duties of Boundaries Commission should be left to the Electoral Commission.

A Sub-Committee of Five was established to look at the duties of Boundaries Committee as they emerged from the Devolution Committee and consider how they can be incorporated within the duties of the Electoral Commission.

The following are the Members of the Committee:-

Hon. Kathini Maloba Caines
Hon. Orwa Ojode
Hon Naftali Chelagat Kemboi
Hon. Rose Otieno Aadiana
Hon. Ngorongo Makanga.

Where Members of the Senate should be drawn from.

An Article will be formulated to state where senators will be drawn from.

MIN.NO.245/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at 1.25 p.m. to enable the delegates go for lunch.

AFTERNOON SITTING

The sitting resumed at 2.57 p.m.

MIN.NO.246/2004 CONSIDERATION OF CROSS-CUTTING AND OTHER OUTSTANDING ISSUES

(1) Report of the Sub-Committee on Reconciliation of the Boundaries Commission and Electoral Commission.

The Sub-Committee reported back to the Committee as follows:-

Amendment proposed;

That Article 86(1) of the Zero Draft be amended by adding the words “ and also make recommendations concerning the fixing, review and variation of boundaries of regions, districts and locations” at the end of the Sub-Article.

(Hon. Kathini Maloba Caines)

Motion made and Question proposed;

Question of the amendment put and agreed to.

Debate Arising;

Thus Article 86(1) of the Zero Draft is amended to read as follows:-

86(1) The Electoral Commission shall by Statutory Order determine the names and boundaries of the electoral units and also make recommendations concerning the fixing, review and variation of boundaries of regions, districts and locations.

(2) Use of the Word ‘Indigenous’ to Determine Eligibility to

Stand for Elections

Article 76(1) and 78(2) of the Zero Draft

Amendment Proposed;

That Article 76(1) be amended by inserting the words “only indigenous Kenyan citizens” between the words ‘and’ and ‘to’ in the Sub-Article.

(Hon. Ngorongo Makanga)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus Article 76(1) is amended to read as follows;

76(1) The electoral system is based on the right of all eligible citizens to vote and only indigenous Kenyan citizens to stand for election to legislative and executive bodies.

Article 78(2)

Amendment proposed;

That Article 78(2) be amended by deleting the words ‘or’ and inserting the words ‘and an indigenous Kenyan citizen.’

(Hon. Ngorongo Makanga)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 78(2) is amended to read as follows:-

“78(2) Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen’s right to vote and an indigenous Kenyan citizen, stand for elections and shall include a system of continuous registration and civic education.”

The Committee also mandated the Draftperson to amend any provision dealing with standing for elections to reflect the principle of only indigenous Kenyan citizens having the right to stand for elections.

MIN.NO.247/2004 ADJOURNMENT

The Convenor adjourned the sitting at twenty minutes past Four O’clock until Friday, February 20, 2004 at 9.00 a.m.

CONFIRMED.....

(CONVENOR)

Date.....

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Friday February 20, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
7. **Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-FIFTH SITTING OF TECHNICAL WORKING GROUP
NO. 'C' ON REPRESENTATION OF THE PEOPLE HELD ON FRIDAY,
FEBRUARY 20, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. Asiya Mwanzi Mahmood	-	Religious Organizations
5. Hon. Chelagat Naftali Kemboi	-	Rift Valley
6. Hon. Danny Irungu	-	Civil Society
7. Hon. David Oloisa Mpilei	-	Rift Valley
8. Hon. David Wakahu	-	Political Parties
9. Hon. Emmy Kipsoi	-	Rift Valley
10. Hon. Fares Ogada	-	Nyanza
11. Hon. Fatuma Boru Jaldesa	-	Eastern
12. Hon. George Muchai	-	Trade Unions
13. Hon. George Orwa Ochieng	-	Nyanza
14. Hon. Godfrey Mbuba M'thigaa	-	Eastern
15. Hon. Hellen Mung'athia	-	Religious Organizations
16. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
17. Hon. Jacob Ochino Ogundo	-	Political Parties
18. Hon. Jane Kirangari Kamwaga	-	Central
19. Hon. Joel Onyancha	-	Nyanza
20. Hon. Justus Musyoki Mutweti	-	Eastern
21. Hon. Kathini Maloba Caines	-	Women Organizations
22. Hon. Luseno Liyai Indembukhani-	-	Political Parties
23. Hon. Mary Wambui Kanyi	-	Civil Society
24. Hon. Miriam Muto	-	Persons With Disability
25. Hon. Mohammed Juma Abuti	-	Coast
26. Hon. Nancy C. Ngeywa	-	Western
27. Hon. Ngorongo Makanga	-	Political Parties
28. Hon. Orwa Ojode	-	Nyanza
29. Hon. Raphael Bombo Ndeme	-	Coast
30. Hon. Rashmin P. Chitnis	-	Religious Organizations
31. Hon. Rhoda Arupe Loyor	-	Rift Valley
32. Hon. Richard N. Kibagendi	-	Nyanza
33. Hon. Rose Otieno Adiana	-	Nyanza

- | | | |
|----------------------------------|---|-------------------|
| 34. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 35. Hon. Sophie Lepuchirit | - | Rift Valley |
| 36. Hon. Stephen Tarus | - | Rift Valley |
| 37. Hon. Winston Ogola Adhiambo | - | Political Parties |
| 38. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |
| 39. Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|--------------------|---|-------------------|
| Hon. Kenneth Njiru | - | Political Parties |
|--------------------|---|-------------------|

ABSENT

- | | | |
|----------------------------------|---|---------------|
| 1. Hon. Carolyne Ruto | - | Rift Valley |
| 2. Hon. Eng. Joshua Toro | - | Central |
| 3. Hon. Francis Kagwima | - | Eastern |
| 4. Hon. Mohammed A. Khalif | - | North Eastern |
| 5. Hon. Mukhisa Kituyi | - | Western |
| 6. Hon. Njoki S. Ndung'u | - | Central |
| 7. Hon. Peter Nyanducha | - | Nyanza |
| 8. Hon. Saipstone Ngalaatu Musau | - | Eastern |

OBSERVERS

Mr. Joseph Mutuma
 Mr. Hassan Wako Wario
 Ms. Susan Wangui Ngugi
 Ms. Beatrice Atieno Auma

IN ATTENDANCE

- | | | |
|--------------------------|---|---|
| Mrs. Serah Kioko Ndeto | - | National Assembly |
| Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Margaret R. Ndawula | - | Parliamentary Counsel, National Assembly,
Uganda |
| Mrs. Elizabeth Kimotho | - | Hansard |

MIN. NO.248/2004 PRELIMINARY

The Convenor called the meeting to order at ten minutes past ten O'clock and opened it with a word of prayer.

She informed the Committee that there would be an early adjournment to allow women delegates to attend the HIV/AIDS Awareness Seminar/Workshop in Kasarani.

The Committee asked the women delegates to inform the workshop money set aside for HIV/AIDS purposes should be spent to purchase drugs for people who are infected and not on awareness workshops.

MIN. NO.249/2004 GENERAL DEBATES

During General Debate, a representative of the Kenya Community Abroad informed the Committee that:-

1. Kenyans abroad had no representative in the National Constitutional Conference,
2. It was necessary to have the interests of Kenyans abroad taken into consideration by the conference.
3. Certain provision in the Draft Bill would curtail their rights as voters. He cited the provisions of Article 79 (b) which require one to have been resident in the electoral unit for a specified period of time.
4. It was necessary to have an Article to provide for how Kenyans abroad will be represented.

The Committee resolved that the presenter should bring a write up proposing who and how Kenyans abroad be represented in the various electoral units.

MIN. NO.250/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Luseno Liyai and seconded by Hon. Kathini Maloba Caines.

MIN. NO.251/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Fourth Sitting held on Thursday 19th February, 2004 were confirmed.

They were proposed by Hon. Justus Musyoki Mutweti and seconded by Hon. Mary Wambui Kanyi.

MIN. NO.252/2004 MATTERS ARISING

MIN.NO.243 OF FEBRUARY 18, 2004

1. Provisions on Implementation Period for Various Clauses.

The Convenor informed the Committee that Rapporteur Mosonik arap Korir had informed her that the one of the Rapporteur was read to provide input the previous

day but owing to lack of quorum she did not find it prudent to allow the presentation.

2. **Quorum**

The Convenor informed the Committee that leaving meetings early had been raised and had been resolved that the issue of members who persistently made technical appearances or left before meeting were adjourned. Rapporteur (Dr) Phoebe Asiyo informed the Committee that the Rapporteur from the Committee on Transition Consequential Arrangements was not in a position to make the presentation that day owing to exigencies of duty.

MIN. NO.253/2004 **CONSIDERATION**

1. The Boundaries Commission:-

Amendment proposed;

That, a new Sub-Article 86(2)(c), (d) and (e) be inserted immediately after 86(2)(b) to read as follows:-

(2)(c)

“-have regarded to viability, sustainability and effectiveness of the region, districts or location taking into account:-

- (i) Population and area
- (ii) Historical and cultural ties
- (iii) Economic and natural resources
- (iv) Objects and principles of devolution of government.
- (v) after consultation with the governments of any region, district and location affected and recommendation of the electoral commission, Parliament may by enactment vary the boundaries of regions, districts or locations.
- (vi) no such an enactment can have effect to abolish any region or district or to create a new region or district otherwise than by

(Hon. Kathini Maloba Caines)

2. Establishment of a Boundaries Commission

The Committee resolved that the Draftsperson should ensure that the Draft article to marry with well the Boundaries Commission is and is appropriately drafted and fitted in the Draft Bill.

3. **Title of Part II**

Amendment proposed;

That, the title of Part II be changed to “Electoral and Boundaries Commission”

(Hon. Isaac Kibwage)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, the Title is amended to read as follow:-

“The Electoral and Boundaries Commission.”

The Committee instructed the Draftperson to replace the words “Electoral Commission with the words “Electoral and Boundaries Commission” wherever they appear.

MIN.NO.254/2004 ADJOURNMENT

The Convenor adjourned the sitting at fifty five minutes past Twelve O’clock until Monday, February 23, 2004 at 9.00 a.m. The adjournment was so as to allow women delegates to attend the HIV/AIDS awareness workshop in Kasarani.

CONFIRMED.....

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Monday February 23, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
- 7. Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-SIXTH SITTING OF TECHNICAL WORKING GROUP 'C' ON REPRESENTATION OF THE PEOPLE HELD ON MONDAY, FEBRUARY 23, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. David Oloisa Mpilei	-	Rift Valley
5. Hon. David Wakahu	-	Political Parties
6. Hon. Fares Ogada	-	Nyanza
7. Hon. Fatuma Boru Jaldesa	-	Eastern
8. Hon. George Muchai	-	Trade Unions
9. Hon. George Orwa Ochieng	-	Nyanza
10. Hon. Godfrey Mbuba M'thigaa	-	Eastern
11. Hon. Hellen Mung'athia	-	Religious Organizations
12. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
13. Hon. Jane Kirangari Kamwaga	-	Central
14. Hon. Justus Musyoki Mutweti	-	Eastern
15. Hon. Kathini Maloba Caines	-	Women Organizations
16. Hon. Luseno Liyai Indembukhani-	-	Political Parties
17. Hon. Mary Wambui Kanyi	-	Civil Society
18. Hon. Miriam Muto	-	Persons With Disability
19. Hon. Mohammed Juma Abuti	-	Coast
20. Hon. Nancy C. Ngeywa	-	Western
21. Hon. Ngorongo Makanga	-	Political Parties
22. Hon. Raphael Bombo Ndeme	-	Coast
23. Hon. Rashmin P. Chitnis	-	Religious Organizations
24. Hon. Richard N. Kibagendi	-	Nyanza
25. Hon. Rose Otieno Adiana	-	Nyanza
26. Hon. Saipstone Ngalaatu Musau	-	Eastern
27. Hon. Sophie Lepuchirit	-	Rift Valley
28. Hon. Winston Ogola Adhiambo	-	Political Parties
29. Hon. Danny Irungu	-	Civil Society
30. Hon. Emmy Kipsoi	-	Rift Valley
31. Hon. Orwa Ojode	-	Nyanza
32. Hon. Francis Atwoli	-	Trade Unions

33. Hon. (Dr.) Phoebe Asiyo - Rapporteur

ABSENT WITH APOLOGY

Hon. Asiya Mwanzi Mahmood - Religious Organizations
Hon. Chelagat Naftali Kemboi - Rift Valley
Hon. Joel Onyancha - Nyanza
Hon. Kenneth Njiru - Political Parties
Hon. Peter Nyanducha - Nyanza
Hon.(Dr.) Mosonik arap Korir - Rapporteur

ABSENT

1. Hon. Eng. Joshua Toro - Central
2. Hon. Francis Kagwima - Eastern
3. Hon. Jacob Ochino Ogundo - Political Parties
4. Hon. Mohammed A. Khalif - North Eastern
5. Hon. Mukhisa Kituyi - Western
6. Hon. Njoki S. Ndung'u - Central
7. Hon. Rhoda Arupe Loyor - Rift Valley
8. Hon. Stephen Tarus - Rift Valley
9. Hon. Carolyne Ruto - Rift Valley
10. Hon. Sang Kipkorir Marisin - Rift Valley

OBSERVERS

Ms. Susan Wangui Ngugi
Mr. Hassan Wako Wario
Mr. Joseph Mutume

IN ATTENDANCE

Mrs. Serah Kioko Ndeto - National Assembly
Mr. Daniel Konyango - Constitution of Kenya Review Commission
Mr. George Mukundi - Constitution of Kenya Review Commission
Mrs. Elizabeth Kimotho - Hansard

MIN. NO.249/2004 PRELIMINARY

The Ag. Convenor (Hon. George Muchai) called the meeting to order at thirty minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Helen Mung'athia.

MIN. NO.250/2004 GENERAL DEBATE

During General Debate, the Committee deliberated on the Sub-Article 76(8) at length and majority of Members were in favour of the deletion of the Sub-Article.

MIN. NO.251/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Godfrey Mbuba M’Thigaa and seconded by Hon. Helen Mung’athia.

MIN. NO.252/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Fifth Sitting held on Friday 20th February, 2004 were confirmed.

They were proposed by Hon. Rashmin Chitnis and seconded by Hon. Jane Kamwaga.

MIN. NO.253/2004 MATTERS ARISING

MIN.NO.248/2004 OF FEBRUARY 20, 2004

Hon. Kathini Maloba Caines informed the Committee that the message of the Committee to the HIV/AIDS Awareness Workshop was not communicated owing to logistical problems.

The Committee resolved to formally send the message to the Ministry of Health, through a letter. Hon. Kathini Maloba was mandated to draft the letter, on behalf of the Committee.

MIN.NO.249/2004 OF FEBRUARY 20, 2004

Representation of the Kenya Community Abroad

The Committee was still awaiting the Submission of the representative of the Kenya Community Abroad, Mr. Gichane Muraguri.

MIN.NO.252 OF FEBRUARY 20, 2004

Provisions on Implementation Period for Various Clauses.

Rapporteur (Dr.) Phoebe Asiyu informed the Committee that Rapporteur Abida Aaron (from the Committee on Transitional and Consequential Arrangements) would, the following day, provide input on the reasons behind the durations set for the implementation of various provisions in the Draft Bill.

The Substantive Convener took over the Chair at thirty-five minutes past eleven O’clock.

9. Limitation of the Number of Terms for Elected Leaders (Article 76(8))

Motion of deletion.

That Article 76(8) be deleted from the Zero Draft.

(Hon. David Wakahu)

Motion made and Question proposed.

Debate Arising;

Question of the deletion put and negatived.

Thus, Article 76(8) still remains as it stands in the Zero Draft.

e. Transitional and Consequential Arrangements.

Two delegates from the Committee on Transitional and Consequential Arrangements Hon. Joel Sang and Hon. Lydia Kimani came to the Committee and gave a presentation as to why their Committee had fixed the periods for implementation of the requirements of the various provisions of the Zero Draft. The salient features of their presentation were as follows:-

- (vii) **Consideration was given to various factors when coming up with various periods in the Sixth Schedule, i.e.**
- **The urgency of the requirements of the particular provisions of the Zero Draft.**
 - **The logistical requirements for the implementation of the provisions.**
 - **The expectations of Kenyans from the new Constitution.**
- vi) **The earliest the new Constitution can come into force is after 90 days from the date of its passing by Parliament. This is to allow time to put the necessary measures for its implementation in place.**
- vii) **The outer limit for implementation of the requirements of the new Constitution is 3 years after coming into force of the new Constitution.**
- viii) **All Constitutional Commissions have to be put in place within 6-9 months after coming into force of the new Constitution.**

- ix) The new Constitution can only be amended after five years from its inception. This is to give time to gauge the practicability and effectiveness of the new Constitution.
- x) Election under the new Constitution will have to be staggered.

MIN. NO.255/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at twenty minutes past One O'clock to enable the delegates go for lunch.

AFTERNOON SESSION.

The Afternoon Session began at forty minutes past Two O'clock in which the Committee continued with deliberations on cross-cutting and outstanding issues as follows:-

Transitional and Consequential Arrangements.

The Committee adopted the recommendation of the Committee on Transitional and Consequential Arrangements as regards the provisions in the Sixth Schedule of the Zero Draft touching on Representation of the People as far as the same related to maximum period for the implementation of the requirements of the various provisions of Chapter Six as follows:-

Article 77(1):	Two (2) years
Article 77(2):	One (1) year
Article 80(1) (a) and (b)	One (1) year
Article 87(2):	One (1) year
Article 89(2):	One (1) year
Article 96(2):	One (1) year

(But the mention of 50% proportional representation under Article 77(2) is not to be in the Zero Draft.)

- (b) Constitutional Commissions (Article 83(1)(b))

Amendment proposed;

That Article 83(1)(b) be amended by deleting the words "eight" and "twenty-one" in the paragraph and inserting the words "two" and "ten" respectively in places thereof.

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 83(1)(b) is amended to read as follows:

“not less than two and not more than ten other members, at least one-third of whom shall be from the marginalized gender and one-tenth from persons with disabilities.”

f. Chair of the Electoral and Boundaries Commission (Article 83(5)).

Amendment proposed;

That Article 83(5) be amended by deleting the words “held or is qualified to hold office of a judge of Superior Court of Record” and inserting the words “experience and adequate qualifications relevant to the functions of the Commission” in place thereof.

(Hon. Richard Kibagendi)

Motion made and question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 83(5) is amended to read as follows:-

“A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has experience and adequate qualifications relevant to the functions of the Commission.”

10. Registrar of Political Parties (Article 89(1))

Amendment proposed;

That Article 89(1) be amended by deleting the words “under the office of the Attorney General’ in the paragraph.

(Hon. Richard Kibagendi)

Motion made and Question proposed.

Debate Arising;

Question of the amendment put and agreed to.

Thus, Article 89(1) is amended to read as follows:-

“There shall be established the office of the Registrar of Political Parties whose functions shall be:-”

g. Nomination of Senators (Article 77(2))

Amendment proposed;

That Article 77(2) be amended by deleting the whole of the Sub-Article and replacing with the following 77(2). “A person wishing to stand as a candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit”.

(Hon. Richard Kibagendi)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and agreed to.

Thus Article 77(2) is amended to read as follows:-

“A person wishing to stand as a candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit.”

MIN. NO.256/2004 CONDUCT OF SOME MEMBERS OF THE COMMITTEE

Hon. Richard Kibagendi decried the perpetual absenteeism of some members of the Committee. He complained that those members who are usually absent come and interrupt the progress of the Committee by taking others back. He particularly warned that there was a plot by a section of these delegates to challenge the decision of the Committee to retain Article 76(8) in its Draft. He urged the Committee to be wary of such schemes.

MIN.NO.257/2004 ADJOURNMENT

The Convenor adjourned the sitting at five O’clock until Tuesday, February 24, 2004 at 9.00 a.m.

CONFIRMED.....

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, February 24, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
- 7. Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

GROUP 'C' ON REPRESENTATION OF THE PEOPLE HELD ON TUESDAY, FEBRUARY 24, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT The following Members of the Committee were present:-

<u>Name</u>	-	<u>Organization</u>
34. Hon. Caroline W. Ng'ang'a	-	Convenor
35. Hon. Apollo Tsalwa	-	Western
36. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
37. Hon. David Oloisa Mpilei	-	Rift Valley
38. Hon. David Wakahu	-	Political Parties
39. Hon. Fares Ogada	-	Nyanza
40. Hon. Fatuma Boru Jaldesa	-	Eastern
41. Hon. George Muchai	-	Trade Unions
42. Hon. George Orwa Ochieng	-	Nyanza
43. Hon. Godfrey Mbuba M'thigaa	-	Eastern
44. Hon. Hellen Mung'athia	-	Religious Organizations
45. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
46. Hon. Jane Kirangari Kamwaga	-	Central
47. Hon. Justus Musyoki Mutweti	-	Eastern
48. Hon. Kathini Maloba Caines	-	Women Organizations
49. Hon. Luseno Liyai Indembukhani-	-	Political Parties
50. Hon. Mary Wambui Kanyi	-	Civil Society
51. Hon. Miriam Muto	-	Persons With Disability
52. Hon. Mohammed Juma Abuti	-	Coast
53. Hon. Nancy C. Ngeywa	-	Western
54. Hon. Naftali K. Chelegat	-	Rift Valley
55. Hon. Ngorongo Makanga	-	Political Parties
56. Hon. Raphael Bombo Ndeme	-	Coast
57. Hon. Rashmin P. Chitnis	-	Religious Organizations
58. Hon. Richard N. Kibagendi	-	Nyanza
59. Hon. Rose Otieno Adiana	-	Nyanza
60. Hon. Sophie Lepuchirit	-	Rift Valley
61. Hon. Winston Ogola Adhiambo	-	Political Parties
62. Hon. Danny Irungu	-	Civil Society
63. Hon. Orwa Ojode	-	Nyanza
64. Hon. Francis Atwoli	-	Trade Unions
65. Hon. Eng. Joshua Toro	-	Central
66. Hon. Jacob Ochino Ogundo	-	Political Parties
67. Hon. Carolyne Ruto	-	Rift Valley
68. Hon. Sang Kipkorir Marisin	-	Rift Valley

69. Comm. Ibrahim Lethome - Rapporteur

ABSENT WITH APOLOGY

Hon. Joel Onyancha - Nyanza
Hon. Kenneth Njiru - Political Parties
Hon. Peter Nyanducha - Nyanza
Hon. Saipstone Ngalaatu Musau - Eastern
Hon. Emmy Kipsoi - Rift Valley
Hon. Asiya Mwanzi Mahmood - Religious Organisations
Hon.(Dr.) Mosonik arap Korir - Rapporteur
Hon. (Dr.) Phoebe Asiyo - Rapporteur

ABSENT

Hon. Francis Kagwima - Eastern
Hon. Mohammed A. Khalif - North Eastern
Hon. Mukhisa Kituyi - Western
Hon. Njoki S. Ndung'u - Central
Hon. Rhoda Arupe Loyor - Rift Valley
Hon. Stephen Tarus - Rift Valley

OBSERVERS

Ms. Susan Wangui Ngugi
Mr. Hassan Wako Wario
Mr. Joseph Mutuma

IN ATTENDANCE

Mrs. Sarah Kioko Ndeto - National Assembly
Mr. Daniel Konyango - Constitution of Kenya Review Commission
Mr. George Mukundi - Constitution of Kenya Review Commission
Mrs. Elizabeth Kamotho - Hansard

MIN. NO.258/2004 PRELIMINARY

The Convenor called the meeting to order at forty-five minutes past Nine O'clock.

The meeting was opened with a word of prayer by Hon. Asenath Nyamu

MIN. NO.259/2004 GENERAL DEBATE

There was no General Debate.

MIN. NO.260/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Mary Wambui Kanyi and seconded by Hon. Fares Ogada.

MIN. NO.261/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Sixth Sitting held on Monday 23rd February, 2004 were confirmed.

They were proposed by Hon. Rose Otieno Adiana and seconded by Hon. Miriam Muto.

MIN. NO.262/2004 MATTERS ARISING

MIN.NO.253/2004 OF FEBRUARY 20, 2004

Committee Message on HIV/AIDS Awareness Workshop

Hon. Kathini Maloba Caines informed the Committee that she would bring the draft letter to the Ministry of Health in the afternoon that day.

MIN. NO.263/2004 CONSIDERATION OF OUTSTANDING ISSUES AND ADOPTION OF THE CONVENORS REPORT

The Committee began considering the Convenor's Report and made a number of observations including the following:-

It should be reflected that the new inclusions in the Draft Bill by the Committee were derived from views of Kenyans reflected in the Main Report

The Report should be updated to reflect the position of the Committee as at the time of adoption of the Report.

MIN. NO.264/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting at twenty-two minutes past one O'clock to enable the delegates go for lunch.

AFTERNOON SESSION.

The afternoon session began at fifty five minutes past two O'clock.

The Committee continued with the consideration of the Report to the Steering Committee and Plenary of the Conference with a view to adopting it. The delegates went through the Report and made the necessary corrections. It was thereafter adopted with the corrections by the delegates.

MIN. NO.265/2004 OTHER OUTSTANDING ISSUES.

Representation of Kenyans Abroad.

Mr. Gichane Muraguri, the representative of the Kenyan Community Abroad gave a brief presentation to the Committee on the need to have this category of Kenyans represented in Parliament. From the debate arising on the presentation, the Committee set up a Sub-Committee to look into this issue and made appropriate recommendations to the Committee. The Sub-Committee that was to report back to the Committee the following day comprised the following:

- | | | | |
|----|------------------------|---|-------------|
| 1. | Hon. Ngorongo Makanga | - | Del. No.605 |
| 2. | Hon Luseno Liyai | - | Del.No.601 |
| 3. | Hon. Miriam Muto | - | Del.No.472 |
| 4. | Hon Fatuma Jaldesa | - | Del.No.267 |
| 5. | Hon. Mary Wambui Kanyi | - | Del.No.467 |
| 6. | Mr. Gichane Muraguri | - | Ex-Officio |

MIN. NO.266/2004 ADJOURNMENT.

The Convenor adjourned the sitting at ten minutes past four O'clock until Wednesday February 25, 2004 at 9.00 a.m.

CONFIRMED.....

(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Wednesday, February 25, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
- 7. Consideration of Cross-Cutting and other Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....

Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-EIGHTH SITTING OF TECHNICAL WORKING GROUP 'C' ON REPRESENTATION OF THE PEOPLE HELD ON WEDNESDAY, FEBRUARY 25, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT

The following Members of the Committee were present:-

<u>Name</u>		<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. David Oloisa Mpilei	-	Rift Valley
5. Hon. David Wakahu	-	Political Parties
6. Hon. Fares Ogada	-	Nyanza
7. Hon. Fatuma Boru Jaldesa	-	Eastern
8. Hon. George Muchai	-	Trade Unions
9. Hon. George Orwa Ochieng	-	Nyanza
10. Hon. Godfrey Mbuba M'thigaa	-	Eastern
11. Hon. Hellen Mung'athia	-	Religious Organizations
12. Hon. Jane Kirangari Kamwaga	-	Central
13. Hon. Justus Musyoki Mutweti	-	Eastern
14. Hon. Luseno Liyai Indembukhani-	-	Political Parties
15. Hon. Mary Wambui Kanyi	-	Civil Society
16. Hon. Miriam Muto	-	Persons With Disability
17. Hon. Mohammed Juma Abuti	-	Coast
18. Hon. Nancy C. Ngeywa	-	Western
19. Hon. Naftali K. Chelegat	-	Rift Valley
20. Hon. Ngorongo Makanga	-	Political Parties
21. Hon. Raphael Bombo Ndeme	-	Coast
22. Hon. Rashmin P. Chitnis	-	Religious Organizations
23. Hon. Richard N. Kibagendi	-	Nyanza
24. Hon. Rose Otieno Adiana	-	Nyanza
25. Hon. Sophie Lepuchirit	-	Rift Valley
26. Hon. Winston Ogola Adhiambo	-	Political Parties
27. Hon. Orwa Ojode	-	Nyanza
28. Hon. Eng. Joshua Toro	-	Central
29. Hon. Jacob Ochino Ogundo	-	Political Parties
30. Hon. Carolyne Ruto	-	Rift Valley
31. Hon. Emmy Kipsoi	-	Rift Valley
32. Hon. Kenneth Njiru	-	Political Parties

- | | | |
|------------------------------------|---|------------|
| 33. Hon. Peter Nyanducha | - | Nyanza |
| 34. Hon. Saipstone Ngalaatu Musau- | | Eastern |
| 35. Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |
| 36. Comm. Ibrahim Lethome | - | Rapporteur |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------|---|-------------------------|
| 1. Hon. Asiya Mwanzi Mahmood | - | Religious Organizations |
| 2. Hon. Kathini Maloba Caines | - | Women Organizations |
| 3. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|-------------------------------|---|----------------------------|
| 1. Hon. Francis Kagwima | - | Eastern |
| 2. Hon. Mohammed A. Khalif | - | North Eastern |
| 3. Hon. Mukhisa Kituyi | - | Western |
| 4. Hon. Francis Atwoli | - | Trade Unions |
| 5. Hon. Njoki S. Ndung'u | - | Central |
| 6. Hon. Sang Kipkorir Marisin | - | Rift Valley |
| 7. Hon. Isaac Ongubo Kibwage | - | Professional Organizations |
| 8. Hon. Joel Onyancha | - | Nyanza |
| 9. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 10. Hon. Danny Irungu | - | Civil Society |
| 11. Hon. Stephen Tarus | - | Rift Valley |

OBSERVERS

Ms. Susan Wangui Ngugi
 Mr. Hassan Wako Wario
 Mr. Joseph Mutuma

IN ATTENDANCE

- | | | |
|------------------------|---|---|
| 1. Mrs. Serah Kioko | - | Kenya National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| Mrs. Elizabeth Kamotho | - | Hansard |

MIN. NO.267/2004 PRELIMINARY

The Ag. Convenor (Hon. Miriam Muto) called the meeting to order at twenty minutes past Ten O'clock.

The meeting was opened with a word of prayer by Hon. Hellen Mung'athia.

MIN. NO.268/2004 GENERAL DEBATE

There was no General Debate.

MIN. NO.269/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor. It was proposed by Hon. Godfrey M’thigaa and seconded by Hon. Asenath Kaimuri Nyamu.

MIN. NO.270/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Seventh Sitting held on Tuesday 24th February, 2004 were confirmed.

They were proposed by Hon. Raphael Bombo Ndeme and seconded by Hon. Jane Kamwaga.

MIN. NO.271/2004 MATTERS ARISING

MIN.NO.262 OF FEBRUARY 24, 2004

Committee Message on HIV/AIDS Awareness Workshops

The letter to the Minister for the Health should be signed by the Convenor on behalf of the Committee.

MIN.NO.265 OF FEBRUARY 24, 2004

Hon. Ngorongo Makanga the representative of the Sub-Committee that was set up to look into the issue of Representation of Kenyans abroad gave a report to the Committee that the Sub-Committee had consulted widely and came up with the view that representation of Kenyans abroad cannot be accorded an elective position but rather a seat for nomination of the representative. It was reported that the appropriate step the Committee could do was to amend Article 78(5) to include representation of Kenyans in the Diaspora; and 79(1)(b) to exempt the Kenyans abroad from the requirements of the Sub-Article.

MIN. NO.272/2004 CONSIDERATION OF OUTSTANDING ISSUES

Representation of Kenyans Abroad.

Motion of Amendment:

That Article 76(5) of the Zero Draft be amended by adding the words “including Kenyans in the Diaspora” between the words ‘communities’ and ‘and’ to read:

“Elections shall ensure fair representation of women, persons with disabilities, workers through the workers’ organizations and marginalized communities,

including Kenyans in the Diaspora, and for that purpose the state shall take the necessary affirmative action measures.”

(Hon. Luseno Liyai)

Motion made and Question proposed;

Debate Arising;

Question of the amendment put and negatived.

Thus the Article 76(5) remains as it stands in the Zero Draft.

MIN. NO.273/2004 ADJOURNMENT FOR LUNCH

The Ag. Convenor adjourned the sitting at thirty minutes past twelve O’clock to go for lunch earlier awaiting the Convenor since the Committee could not deliberate on the minority position in her absence.

AFTERNOON SESSION.

The afternoon Session did not begin for lack of quorum.

MIN. NO.274/2004 ADJOURNMENT.

The Convenor adjourned the sitting until Thursday February 25, 2004 at 9.00 a.m.

CONFIRMED.....
(CONVENOR)

DATE

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP “C” ON REPRESENTATION OF THE PEOPLE

The Convenor presents her compliments to Members of the Technical Working Committee “C” and has the honour to inform them that a sitting of the Committee will be held on **Thursday February 26, 2004** in Tent No.3, **Bomas of Kenya** at **9.00 a.m.**

AGENDA

1. Prayers
2. General Debate
3. Adoption of the Agenda
4. Apologies
5. Confirmation of Minutes
6. Matters Arising
- 7. Consideration of the Outstanding Issues**
8. Any Other Business
9. Date of the Next Sitting

Approved for circulation -Convenor

Convenor.....
Hon. Caroline Ng’ang’a

Date

NATIONAL CONSTITUTIONAL CONFERENCE

MINUTES OF THE THIRTY-NINTH SITTING OF TECHNICAL WORKING GROUP
'C' ON REPRESENTATION OF THE PEOPLE HELD ON THURSDAY, FEBRUARY
26, 2004 AT 9.00 A .M. IN TENT NO.3, BOMAS OF KENYA

PRESENT The following Members of the Committee were present:-

<u>Name</u>		<u>Organization</u>
1. Hon. Caroline W. Ng'ang'a	-	Convenor
2. Hon. Apollo Tsalwa	-	Western
3. Hon. Asenath Kaimuri Nyamu	-	Women Organizations
4. Hon. David Oloisa Mpilei	-	Rift Valley
5. Hon. David Wakahu	-	Political Parties
6. Hon. Fares Ogada	-	Nyanza
7. Hon. Fatuma Boru Jaldesa	-	Eastern
8. Hon. George Muchai	-	Trade Unions
9. Hon. George Orwa Ochieng	-	Nyanza
10. Hon. Godfrey Mbuba M'thigaa	-	Eastern
11. Hon. Hellen Mung'athia	-	Religious Organizations
12. Hon. Jane Kirangari Kamwaga	-	Central
13. Hon. Justus Musyoki Mutweti	-	Eastern
14. Hon. Luseno Liyai Indembukhani-	-	Political Parties
15. Hon. Mary Wambui Kanyi	-	Civil Society
16. Hon. Miriam Muto	-	Persons With Disability
17. Hon. Isaac Ongubo Kibwage	-	Professional Organizations
18. Hon. Mohammed Juma Abuti	-	Coast
19. Hon. Nancy C. Ngeywa	-	Western
20. Hon. Naftali K. Chelegat	-	Rift Valley
21. Hon. Ngorongo Makanga	-	Political Parties
22. Hon. Francis Atwoli	-	Trade Unions
23. Hon. Raphael Bombo Ndeme	-	Coast
24. Hon. Rashmin P. Chitnis	-	Religious Organizations
25. Hon. Richard N. Kibagendi	-	Nyanza
26. Hon. Rose Otieno Adiana	-	Nyanza
27. Hon. Sophie Lepuchirit	-	Rift Valley
28. Hon. Winston Ogola Adhiambo	-	Political Parties
29. Hon. Orwa Ojode	-	Nyanza
30. Hon. Eng. Joshua Toro	-	Central
31. Hon. Jacob Ochino Ogundo	-	Political Parties
32. Hon. Carolyne Ruto	-	Rift Valley
33. Hon. Emmy Kipsoi	-	Rift Valley

- | | | |
|-----------------------------------|---|-------------------|
| 34. Hon. Kenneth Njiru | - | Political Parties |
| 35. Hon. Peter Nyanducha | - | Nyanza |
| 36. Hon. Saipstone Ngalaatu Musau | - | Eastern |
| 37. Hon. (Dr.) Phoebe Asiyu | - | Rapporteur |
| 38. Comm. Ibrahim Lethome | - | Rapporteur |
| 39. Hon. Rhoda Arupe Loyor | - | Rift Valley |
| 40. Hon. Sang Kipkorir Marisin | - | Rift Valley |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------|---|-------------------------|
| 1. Hon. Asiya Mwanzi Mahmood | - | Religious Organizations |
| 2. Hon.(Dr.) Mosonik arap Korir | - | Rapporteur |

ABSENT

- | | | |
|-------------------------|---|---------------|
| Hon. Francis Kagwima | - | Eastern |
| Hon. Mohammed A. Khalif | - | North Eastern |
| Hon. Mukhisa Kituyi | - | Western |
| Hon. Francis Atwoli | - | Trade Unions |
| Hon. Njoki S. Ndung'u | - | Central |
| Hon. Joel Onyancha | - | Nyanza |
| Hon. Danny Irungu | - | Civil Society |
| Hon. Stephen Tarus | - | Rift Valley |

OBSERVERS

Ms. Susan Wangui Ngugi
 Mr. Hassan Wako Wario
 Mr. Joseph Mutuma

IN ATTENDANCE

- | | | |
|---------------------------|---|---|
| 1. Mrs. Serah Kioko | - | Kenya National Assembly |
| 2. Mr. Daniel Konyango | - | Constitution of Kenya Review Commission |
| 3. Mr. George Mukundi | - | Constitution of Kenya Review Commission |
| 3. Mrs. Elizabeth Kamotho | - | Hansard |

MIN. NO.275/2004 PRELIMINARY

The Convenor called the meeting to order at twenty minutes past Ten O'clock.

Hon.Asenath Nyamu opened the meeting with a word of prayer.

MIN. NO.276/2004 GENERAL DEBATE

There was no General Debate.

MIN. NO.277/2004 ADOPTION OF THE AGENDA

The Committee adopted the agenda as approved by the Convenor.

It was proposed by Hon. Kathini Maloba Canies and seconded by Hon. Miriam Muto.

MIN. NO.278/2004 CONFIRMATION OF MINUTES

Minutes of the Thirty Seventh Sitting held on Tuesday 24th February, 2004 were confirmed.

They were proposed by Hon. George Muchai and seconded by Hon. Peter Nyanduca.

MIN. NO.279/2004 MATTERS ARISING

MIN.NO.262 OF FEBRUARY 24, 2004

Committee Message on HIV/AIDS Awareness Workshops

The letter to the Minister for Health on the issue of HIV/AIDS was presented by Hon. Kathini Maloba Caines for adoption of the Committee. The letter was adopted with amendments to capture the point that the awareness campaign be decentralized to Locational and district levels.

MIN. NO.280/2004 CONSIDERATION OF OUTSTANDING ISSUES

Reconsideration of Minority Positions

The Convenor invited the delegated to look at the minority positions that had been recorded by various members of the Committee with a view to convincing the ones who stated them to withdraw them so that the Committee goes to the Plenary a united house.

Minority Positions on Articles 76(7) and 76(8)

These two minority positions which had been stated by Hon. Joshua Toro were read out but Hon. Toro was absent and therefore they remained in the Committee Report.

Minority Position on Article 79(1)(b)

Hon. Isaac Kibwage who had stated this minority position on his own volition sought to withdraw the position, and therefore it was effectively expunged from the Committee Report.

Minority Position on Article 83(3)

The Committee sought to convince the movers of this minority position to withdraw the position. Hon. Mary Kanyi on behalf of Hon. Danny Irungu stated that the position remains and be taken to the Plenary of the Conference.

Minority Position on Article 92(d)

The Committee reconsidered the whole Sub Article and resolved to delete it from the Draft. Consequently the minority position that had been recorded on the Sub Article effectively collapsed.

Reconsideration of Articles 92(d) and 95

Motion of deletion

That Sub Article 92(d) be deleted from the Zero Draft.
(Hon. Isaac Kibwage)

Motion made and Question proposed.

Debate arising

Question of the deletion put and agreed to

Motion of insertion

That a new Sub Article 95 (5) be inserted into the Zero Draft to read as follows:-

“A political party that has not, for each of the two previous general elections secured at least one seat in the National Assembly or a Council of a devolved government shall not qualify for funding under Sub Article (4) above.”

Motion made and Question proposed.

Debate arising.

Question of the insertion put and agreed to

Thus, a new Sub Article 95(5) is inserted to the Draft Bill to read as follows:-

“A political party that has not, for each of the two previous general elections secured at least one seat in the National Assembly or a Council of a devolved government shall not qualify for funding under Sub Article (4) above.”

MIN. NO.281/2004 COMPLETION OF THE COMMITTEE WORK

The Convenor declared the work of the Committee officially completed but for the confirmation of the Committee Reports and the Zero Draft.

MIN. NO.282/2004 ADJOURNMENT FOR LUNCH

The Convenor adjourned the sitting it twenty minutes past One O'clock to enable the delegates go for lunch.

MIN.NO.283/2004 ADJOURNMENT

The Convenor adjourned the sitting at two minutes past Three O'clock until Friday February 27 at 9.00 a.m.

CONFIRMED:.....
(CONVENOR)

DATE:.....

**APPENDIX V:
LEGISLATIVE DRAFTPERSON'S REPORT**

PROPOSED AMENDMENTS TO DRAFT CONSTITUTION

General principles

76(1) The electoral system is based on the right of all **eligible** citizens to vote and **only indigenous Kenyan citizens** to stand for election to legislative and executive bodies.

- (2) Voting **shall be** by secret ballot.
- (3) Elections **shall be** free and fair.
- (4) Elections shall ensure the fair representation of the people.
- (5) Elections shall ensure fair representation of women, **persons with disabilities, workers through the Workers' Organizations and marginalized communities, and for that purpose the State shall take the necessary Affirmative Action measures.**
- (6) Elections **shall be** conducted by an independent body, free from political **or any other form of** interference.
- (7) *Elections shall ensure inter-generational equity.*
- (8) *All persons in elective offices shall be eligible to serve two consecutive terms but may seek re-election after a five-year break.*

Elections

77 (1) Subject to any provisions in this Constitution, Parliament shall enact a law to provide for –

- (a) the number and delimitation of electoral units for the election of members of **the Senate, National Assembly, Regional Councils, District Councils and Locational Councils;**
- b) **the** nomination of candidates;
- (c) the manner of voting at elections;
- (d) the continuous registration of citizens as voters;
- (e) the conduct of public elections and referenda;

- (f) the efficient supervision of public elections and referenda including, where necessary, voting on the basis of proportional representation; and
- (g) the registration of, and voting by, citizens who are outside Kenya.
- (1A) A person wishing to stand as a candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit.*
- (2) A political party shall ensure adherence to the Affirmative Action principles in its nomination of candidates for direct elections.**
- (3) For the purpose of maintaining the at least one-third Affirmative Action principle for women's representation in the National Assembly, every District and borough shall be an electoral unit for the election of women representatives.*
- (4) In the interest of Affirmative Action, five percent of the seats in the National Assembly and devolved governments; and eight decimal five percent in the Senate shall be reserved for special interest groups- that is:*
- (c) persons with disabilities, the youth, workers through the Workers' Organisations and other minorities;*
- (d) in the case of the Senate, persons with disabilities, the elderly, workers through the Workers' Organizations and other minorities-provided that at least one-third of the seats go to the marginalized gender.*
- (5) the principle of maintaining at least one-third Affirmative Action for the marginalized gender under sub Article (4) above shall apply to all levels of government and shall further ensure that at no time will one gender have more than two-thirds representation.*

The right to vote

- 78(1) A citizen who is **at least** eighteen years of age has the right to vote.
- (2) Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen's right to vote **and an indigenous Kenyan citizen, a right** to stand for elections and shall include a system of continuous registration **and civic education.**
- (3) The Electoral and Boundaries Commission shall ensure that clause 44(2) of this Constitution, regarding observance of a day of worship, is not violated.*

Qualifications for registration as a voter

- 79 (1) A citizen qualifies for registration as a voter for public elections or referenda if at the date of the application for registration that citizen -

- (a) is **at least** eighteen years of age;
- b)* has for a period of, or periods amounting in the aggregate to, not less than five months in **the** twelve months immediately preceding that date –
 - (i) been ordinarily resident in the **electoral unit** in which the application for the registration is made; or
 - (ii) has been employed there, carried on business, or has lawfully possessed land or residential building in the **electoral unit**.
- (2) A citizen who qualifies for registration as a voter shall only be registered at one place.

Disqualification from Registration as a Voter.

- 80 (1) A citizen is disqualified from registration as a voter for public election or referenda who –
- (a) under a law of Kenya is declared to be of unsound mind; or
 - (b) is disqualified by an Act of Parliament for conviction of an election offence.
- (2) The question whether a citizen is disqualified to be registered as a voter for public election or referenda shall be determined by the High Court.

Voting

81. At every election, the Electoral **and Boundaries Commission** shall ensure that -
- (a) the voting procedure is simple and precise;
 - (b) **where a** ballot box is used, **it is** transparent;
 - (c) the votes cast are counted, tabulated and the results **promptly** announced by the Presiding Officer at the polling station;
 - (d) the results from the polling stations are transparently and accurately collated and promptly announced by the Returning Officer;*
 - (e) special arrangements are made to accord members of the Armed Forces, the Police, staff of Diplomatic Missions, citizens living or working abroad, prisoners, election officials and patients admitted in hospitals, opportunity to vote; and*

(f) appropriate structures and mechanisms to eliminate all forms of electoral malpractice are put in place, including the safe keeping of all election materials.

Independent Candidates

81A. (1) Subject to Article 108, a person is eligible to stand as an independent candidate for election as a Member of Parliament, if that person-

(a) is an indigenous Kenyan citizen;

(b) has not been a member of a registered political party for at least six months prior to the date of the elections for which election is sought;

(c) has been registered by the Electoral Commission as an independent candidate and complies with the code of conduct prepared by the Electoral and Boundaries Commission for such candidates; and

(d) has been nominated by at least two hundred registered voters from the constituency in which the person intends to stand as a candidate.

(2) Subject to any qualification set for a member of a Council, a person is eligible to stand as an independent candidate for election as a member of a Regional, District or Locational Council if that person -

(a) is an indigenous Kenyan citizen;

(b) has not been a member of a registered political party for at least six months prior to the date of elections for which election is sought;

(b) has been registered by the Electoral and Boundaries Commission as an independent candidate and complies with the code of conduct prepared by the Electoral and Boundaries Commission for such candidates;

(c) has been nominated by the following number of registered voters from the electoral area in which the person intends to stand as a candidate –

(i) in the case of a Location, one hundred registered voters;

(ii) in the case of a District, five hundred registered voters;

(iii) in the case of a Region one thousand registered voters.

Unopposed Candidates

82. (1) Subject to Article 95, where only one candidate is nominated on nomination day previous to an election, the election shall nevertheless be held for the purpose of determining the number of votes obtained by each political party at the election.

(2) After the votes have been counted for determining votes obtained by each political party, the candidate shall be declared elected

(3) Parliament shall make laws providing for the proper implementation of clause (1).

Part II – The Electoral and Boundaries Commission.

Establishment of the Electoral and Boundaries Commission.

83 (1) There is established the Electoral and Boundaries Commission consisting of –

(a) the chairperson; and

(b) not less than **two and not more than ten members, at least one-third of whom shall be from the marginalised gender and one-tenth from persons with disabilities.**

(2) *The membership of the Commission shall reflect the principle of inter-generational equity.*

(3) **Political parties will nominate persons** from whom the President shall, with the approval of the National Assembly, appoint the Chairperson and other members of the Commission.

(4) **Taking into account gender balance,** the Commission shall elect a vice-chairperson from among its members.

(6) A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has **experience and adequate qualifications relevant to the functions of the Commission.**

(6) A citizen is not qualified to be appointed a member of the Commission if the citizen-

(a) is a member of Parliament; or

(b) holds or is acting in an office in the public service or in the Defence Forces of the Republic.

(7) At the time of the initial appointment of the Commissioners, half of the Commissioners shall be appointed for a three-year period.

- (8) The office of a member of the Commission shall become vacant –
- (d) at the expiry of a five-year term from the date of appointment;
 - (e) if the member becomes disqualified to be appointed a member of the Commission; or
 - (f) if the member is removed from office on the ground of inability to perform the function of the office as member, whether arising from infirmity of body or mind or from any other cause or of misbehaviour; or
- (d)if the member dies or resigns from office.
- (9) at the expiry of the term of office, the appointment of a member may be renewed for one more term only.***

Functions of the Electoral and Boundaries Commission.

85. (1)The Electoral **and Boundaries** Commission shall be responsible for-
- (a) the continuous registration of voters;
 - (b) the delimitation of **electoral units**;
 - (c) the **efficient** conduct and supervision of elections and referenda;
 - (d) the promotion of free and fair elections and referenda;
 - (e) the supervision of political parties;
 - (f) the management of **the** Political Parties' Fund;
 - (g) the settlement of electoral disputes;
 - (h) the promotion of voter education and culture of democracy;
 - (i) the facilitation of the observation, monitoring and evaluation of elections;
 - (j) the clearing of all presidential, parliamentary and devolved governments' candidates in consultation with the Ethics and Integrity Commission.***
- (2) The Electoral **and Boundaries** Commission shall be an independent Commission that conducts its work in accordance with the Constitution.

Staff of the Electoral and Boundaries Commission

- (85) The **Electoral and Boundaries Commission** shall appoint officers and other employees of the Commission.

Delimitation of Electoral Units

86. (1) The **Electoral and Boundaries Commission** shall by Statutory Order determine the names and boundaries of the electoral units **and also make recommendations concerning the fixing, review and variation of boundaries of regions, districts and locations.**

- (2) In demarcating the boundaries **and naming** of electoral units, the Commission shall-

(d) consult with all interested parties;

(e) take into account the population density and the need to ensure adequate representation for urban and sparsely- populated areas; and-

(i) the population trends;

(ii) the means of communication;

(iii) the geographical features;

(iv) community of interest;

(v) the boundaries of administrative areas;

(vi) the latest census of the population in accordance with the law; and

(vii) the Voters Register and the proportional representation of the people to the nearest five thousand registered voters.

(c) have regard to viability, sustainability and effectiveness of the region, district or location taking into account:

(i) population and area

(ii) historical and cultural ties

(iii) economic and natural resources

(iv) objects and principles of devolution of government

(v) after consultation with the governments of any region, district and location affected and recommendation of the Electoral and Boundaries

Commission, Parliament may by enactment vary the boundaries of regions, districts or locations.

(vi) no such an enactment can have effect to abolish any region or district or to create a new region or district other than by amendment of the Constitution.

(3) The Commission shall every after ten years or before the end of that period, review and where necessary, make alterations of names and boundaries of electoral units.

(4) An order made under clause (1) of this Article shall be published in the Kenya Gazette and shall come into effect on the dissolution of Parliament following the publication of the Order.

Appeals from Decisions of the Electoral and Boundaries Commission.

86A (1) Any person aggrieved by a decision or order of the Electoral and Boundaries Commission may appeal to the High Court.

(2) Parliament shall make laws providing for the procedure for the expeditious disposal of appeals under this article.

Prosecution of Election Offenders

86B. The Electoral and Boundaries Commission shall cause the prosecution of election offenders by identifying and forwarding any suspected offenders to the Director of Public Prosecutions who shall, after investigations, expeditiously prosecute the offenders.

PART III- Political Parties

The right to form a political party

87. (1) In accordance with Article 50, any citizen may form a political party.

(2) A political party shall be entitled to financial support from the State through the Political Parties Fund **in accordance with the provisions of Article 95.**

(3) Parliament shall enact a law regulating political parties.

Roles and Functions of Political Parties

88. In order to ensure democracy and the participation of the people, a political party shall -

- (a) mobilize public opinion on matters of national interest, and foster national values and outlook;
- (b) bring together opinions and resources of people with similar views, interests or persuasion so as to generate development of the Republic;
- (c) provide the means through which the people participate in the political and constitutional processes as well as exercise their civil and political rights;
- (d) use its facilities to mediate between civil society and institutions of the state;
- (e) use its facilities to ensure representation of the people in state institutions and offer them economic, political and social alternatives through the electoral process as well as allow public opinion to have a bearing on the policies of the Government;
- (f) ensure that cohesion and discipline in the conduct of Government is maintained;
- (g) hold the Government accountable to Parliament and the people.

Registrar of Political Parties

89. (1) There shall be established the office of the Registrar of Political Parties whose functions shall be-

- (e) to register, keep and maintain the register of Political Parties;***
- (f) to arbitrate in intra- party and inter-party disputes;***
- (g) to maintain a Political Parties Library and Archives; and***
- (h) to supervise the election of the officials of all registered political parties.***

(4) Parliament shall enact laws providing for the –

- (i) registration of political parties and other related matters; and**
- (ii) the functioning of the office of Registrar of political parties.**

Qualifications for Registration of Political Parties

90. (1) The Registrar of Political Parties shall register a political party if that party, by its constitution or articles of association, has a national character with a governing body which seeks-

- (a) to promote and uphold national unity;

(b) to abide by democratic principles of **good** governance, and to promote and practice democracy through regular, fair and free elections within the party;

(c) to promote and respect human rights and gender equality and equity;

(d) to promote the objects and principles of the Constitution and the rule of law.

(2) **The Registrar of Political Parties** shall not register a political party if that party-

(a) is founded purely on religious, linguistic, racial, ethnic, sex, corporatist or regional basis or seeks to engage in propaganda based on any of those matters;

(b) does not, by its constitution or articles of association, subscribe to the code of conduct for political parties; and

(f) does not enjoin itself and its members to observe the code of conduct for political parties as a legally binding code.

(3) A political party shall not-

(a) engage in or encourage violence or intimidation of its members, supporters, or opponents or any other person;

(b) establish or maintain a paramilitary militia or similar organization.

Corporate Status of Party

91. On registration, a political party shall become a body corporate.

Cancellation of Registration of a Political Party

92. (1) **The Registrar of Political Parties** shall cancel the registration of a political party if satisfied that the party-

(a) is in breach of or has not complied with any provisions of articles 90,95,or 96 or any provision of its constitution or articles of association;

(b) obtained its registration in a fraudulent manner;

(c) has instigated or connived in the commission of an election offence;

(d) has used moneys allocated to it other than as is provided by Article 95.

(2) Before the registration of a Political Party is cancelled, **the Registrar of Political Parties** shall inform the party concerned of the intention to cancel the registration

and direct the party, where **possible, to remedy the breach or comply with the law.**

- (3) A member of, or a political party aggrieved by a decision of the **Registrar of Political Parties** under this article may appeal to the High Court.

Political Parties' Fund

93. (1) There is established a fund to be known as the Political Parties' Fund.

(2) The Fund shall be administered by the Electoral and Boundaries Commission.

Sources of the Fund

94. (1) The sources of the Fund **shall be-**

(c) money provided by Parliament each year equal to not more than decimal three percent of the national budget for the preceding financial year;

(d) contributions and donations to the Fund from any other source.

(2) The moneys in the Fund not immediately required for payment to political parties shall be invested in such securities as may be approved by the Treasury

Purposes of The Fund

95.(1)The purpose of the Fund is to provide financial support to registered political parties in the discharge of their roles and functions under Article 88.

(2) Moneys allocated to a registered political party from the Fund shall be used only-

(a) to cover the election expenses of the political party and the broadcasting of the policies of the political party;

(b) for the organization by the political party of civic education in democracy and the electoral processes;

(c) not more than ten percent for the administrative expenses of the party; or

(d) for the discharge of any of the roles or functions under Article 88.

(3) Money allocated to a political party shall not be used for -

(a) paying directly or indirectly remuneration, fees, rewards or any other benefit to a member or supporter of the party; and

(b) any other purpose incompatible with the promotion of a multi-party democracy.

(4):Thirty percent of the moneys allocated by Parliament to the Political Parties' Fund shall be distributed equally among the registered Political Parties annually; and the remaining seventy percent shall be paid proportionately by reference to the number of votes secured by each political party in the previous National Assembly elections and the number of women candidates and special interest groups elected or nominated at that election.

(5) A political party that has not for each of the two previous general elections secured at least one seat in the National Assembly or a council of devolved government shall not qualify for funding under sub Article (4) above.

Other Sources of Funds for Political Parties

96. (1) The sources of other funds for a political party shall be -

(a) subscriptions and contributions from the members and **supporters of the party**;

(b) donations to the party by members and supporters of the party.

(2) Parliament shall specify the maximum donation that an individual or a corporation can make to a political party.

(3) A political party shall, within three months after the end of the Government financial year, publish the sources of its funds clearly stating amounts received from-

(a) the Political Parties Fund;

(b) subscriptions and contributions from its members and supporters;

c) donations to the party by its members and supporters, giving details of each donation.

Books and Records of Account and Audit

96A (1) A political party shall keep proper books and records of accounts in a form approved by the Auditor General.

(2) Within three months after the end of the Government financial year, a political party shall submit its books and records of accounts to the Auditor General for audit.

(3) The Auditor General shall, within three months of the submission of the accounts to the Auditor General under clause (2), audit the accounts and submit the report on the audit to the political party.

(4) After receipt of the audited accounts and the Auditor General's report, the political party shall -

(a) within one month publish the accounts and the report in the Kenya Gazette and the national newspapers; and

(b) submit the accounts and report to the Electoral and Boundaries Commission and Parliament.

Supervision of Political Parties

97 (1) The Electoral and Boundaries Commission shall supervise the general conduct of political parties.

(2) A political party shall, within seven months after the end of the Government financial year, submit to the Electoral and Boundaries Commission an annual report of its activities.

(3) The annual report of a political party may be inspected during normal office hours by any person.

(4) The Electoral **and Boundaries** Commission shall, by statutory order, prescribe the maximum amount of money that a political party may spend on each of its candidate, and the amount an independent candidate can spend for election to a public office.

Party Discipline

98. (1) The constitution or the articles of association of a political party shall contain provisions that ensure internal discipline of the members of the party, consistent with the principles of democracy, justice and the rule of law.

(2) A political party shall not punish a Member of the **National Assembly** of the party for anything said in Parliament by that member in the exercise of the privilege of freedom of speech in Parliament.

(5) A political party shall conduct its affairs in a manner that promotes democracy and peaceful politics.

(4) A Member of the National Assembly or a local council who resigns from a political party that sponsored the member's election shall lose the seat in the National Assembly or the Council.

(5) A person sponsored by a political party for election to a public office shall be bound by the policies, ideology, philosophy and the manifesto of the party.

Restriction on use of Public Resources

99. Except as is provided under this Chapter or any law made by Parliament, a person shall not, whether the person is a member of a political party or not, use public resources to promote the interests of a political party.

Restriction on Holding Political Party Office

- 100 The President, Vice-President, Prime Minister, Deputy Prime Minister, a Minister, Deputy Minister or any Public Officer shall not hold any elective office in a Political Party.**

Representation of the people at international bodies and missions

100A (1) Parliament shall enact laws governing:-

- (a) the Constitution of national delegations to international meetings, conferences or other fora for the negotiation of treaties, conventions and other agreements;**
 - (b) the election or nomination of representatives to international legislative bodies subject to the relevant treaties or agreements;**
- (2) In the exercise of his or her duties under Article 151(7)(a) the President shall, among others, be guided by the principles of professionalism, gender equity, integrity, moral probity and the diversity of the people of Kenya.**