

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “T” ON
DEFENCE AND NATIONAL SECURITY**

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

The Committee on Defence and National Security would like to recognise and appreciate dedicated and tireless efforts of: -

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1. INTRODUCTION

The Committee on Defence and National Security commenced its work on 9th September 2003 and adjourned on 26th September 2003. It reconvened on 13th January 2004 and completed debate on 27th February 2004. The Committee had a total membership of forty-one honourable delegates who represented various categories including Members of Parliament, District Representatives, Political Party Representatives, Religious Organisations, Professional Organizations, Womens' Organisations, Special Interest and NGO's and Trade Unions.

Under the able stewardship of Hon. Maj. Hon. Marsden Madoka as the Convenor, Rapporteurs Prof. A.I. Salim and Domiziano Ratanya, the committee was able to complete its mandate by considering all articles in Chapter Fifteen of the Draft Bill and further deliberated and considered relevant articles in Chapter Fourteen of the Draft Bill and the Annotated Draft.

The Committee on Defence, in consultation with the Committee on Public Finance, Public Service, Leadership and Integrity resolved that Part II of Chapter 14, (Kenya Police Service) be discussed and deliberated upon, under the Defence Chapter as the Police had been incorporated as one of the organs of National Security. Further, the Committee resolved to include the National Intelligence Service and the Administration Police as organs of National Security and ultimately their inclusion into Chapter 15 of the Draft Bill.

2. MANDATE AND METHOD OF WORK

2.1 Committee's Mandate

The Committee was established under regulation 49 of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2003. Under regulation 45, the Committee was mandated to discuss and make recommendations on all issues relating to Chapter 15 - Defence and National Security- of the Draft Bill.

Specifically, the Committee had the mandate to: -

- Examine all issues raised during the general debate and any other matter touching on the Draft and Report,
- Propose amendments to the contents of the Report and Draft Bill relevant to the subject,
- Report the proposed amendments to the Steering Committee for presentation to and debate by the Conference.

2.2 Method Of Work

The Working Group in its proceedings was guided by the Regulations of the Conference and the Guidelines for the NCC *Ad hoc* and Technical Working

Groups. The Committee considered issues on Defence and National Security in the Main Report of the Commission. Further, it examined the issues raised during the general debate touching on Defence and National Security and proposed amendments, additions or changes to the Articles in Chapter 15 of the Draft Bill.

Throughout its deliberations, all debate and questions were addressed through the Convenor. The Rapporteurs assigned to the Committee would explain to the members the rationale behind the provisions in the Report and Draft Bill and did, in a number of cases, make reference to the Annotated version of the Draft Bill. In addition to the documents furnished by the Commission, the Committee also considered memoranda from the National Security Intelligence Service, Administration Police and Kenya Police Service and further made reference to the Statutes of these organs.

On a number of occasions the Draft-person assigned to the Committee gave justification and significance of certain provisions in the Draft Bill. The Committee also invited one expert, Lt. Gen. (Rtd) John M. Sawe, to give specific expert opinion. Several delegates from other Committees were also given time to express their views in the Committee. These delegates included, Hon. Dr. Bonaya Godana (Del 029), Hon. Zaddock Syongoh (Del. 195), Hon. Yusuf Haji (Del 031), Hon. Dr. Simon Shitemi (Del 545) and Hon. James Mathenge (Del 308). Similarly, the Administration Police Commandant, Kinuthia Mbugua was invited to represent the Service and give his views.

The Committee commenced its work by discussing the NCC Regulations on the Technical Working Groups during which members were able to deliberate on the method of work and understand the procedure of the Working Committees. It resolved to discuss issues in the Main Report of the Commission relevant to Defence and National Security, the provisions of the Draft Bill and its Annotated Version. During the discussion some Articles of the Draft Bill were adopted with or without amendment,s while others were deleted and/or replaced. The Committee also discussed and adopted some provisions from the National Security Intelligence Service Act. The Police Act and Administration Police Act were referred to during the deliberations.

Whereas most members preferred to have motions moved on the floor, some preferred presenting formal motions for amendment of the Draft Bill.

3. THE COMMITTEE DEBATE

3.1 General issues raised about the Committee's work

1. At the members' request the convenor informed members that they were not mandated to re-number Articles but they could amend articles by deleting, introducing new articles by way of formal motions.

2. The question of whether to use parliamentary language while recording minutes was raised. Members of the Committee indicated that the language used was too technical. On one occasion, members sought an explanation on the use of the words '**debate arising**' and were informed that any time '**debate arising**' appears it means that the matter in question was concluded.
3. The issue of minority reports was raised and the Convenor assured members that every member's view would be recorded.
4. The Committee decided that it would revisit Articles already adopted if any vital issues are brought up on those Articles.
5. It was resolved that the Kenya Police Service would be transferred from Chapter 14 (Public Service) to Chapter 15. Committee H on Public Finance, Public Service, Leadership and Integrity discussed the Kenya Police Service and referred its deliberations to the committee on Defence and National Security, but this committee decided to discuss the Service afresh without considering proposals made by Committee H.
6. The question of whether minutes of the committee require to be proposed and seconded for confirmation arose. Members agreed that procedure must be followed and all subsequent minutes were to be proposed and seconded for confirmation.
7. Clarification was sought as to whether the Committee had the mandate to amend Articles, discuss and amend articles in other Chapters. However, clarification was given that the Defence and National security Committee had no mandate to embark upon any articles outside its mandate. On the other hand, the Committee was also informed that the Commission would avail some time to ensure harmony between Chapters.
8. Occasionally, the Committee had to adjourn prematurely due to lack of quorum.
9. Occasionally non-committee members were requested to leave the committee tent during voting to ensure that only members of the Defence Committee participated in the voting exercise.

3.2 Issues Raised on the Report

As stipulated by regulation 45(11) of the National Constitutional Conference (Procedure) Regulations 2003, the Committee on Defence and National Security considered and deliberated on the Main Report of the Commission. The following issues were raised:

- To guarantee political neutrality, members of the disciplined forces be prohibited from being members of political parties.
- Similarly, the Police and Defence Forces be barred from forming Trade Unions.
- The Committee deliberated on whether to include a specific provision in the Constitution to bar members of the Police and disciplined forces from forming Trade Unions. However, it was deemed fit to have such a provision in an Act of Parliament.

The Committee observed that issues noted in the Main Report of the Commission had been adequately provided for in the Draft Bill and therefore resolved to adopt the Report of the Commission.

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

- It was proposed that the title of the Chapter be changed from “Defence and National Security” to “National Security” since defence is a part of National Security.
- The Committee considered inclusion of a definition for “National Security” into the Chapter.
- Members of the Committee expressed the need to identify organs that would constitute National Security. The following were proposed :Defence Forces (Navy, Army and the Air Force), Kenya Police, National Security Intelligence Service, and Administration Police. It was further deliberated whether the Kenya Correctional Services be included as an organ of National Security, but this was defeated.
- Wherever “Defence and National Security” appeared in the Draft it should be replaced with “National Security”.

Article 271- Principles and objects of and National Security

- The Constitution should recognize traditional approaches to conflict resolution.
- Members of the Defence Forces should not be affiliated to Political Parties. Further, they should not act in a partisan manner, especially where religion is concerned.
- It was proposed that the Constitution compel national security organs to ensure that their recruitment reflects a balance in terms of ethnicity. Alternatively this could be covered under the chapter on National Goals Values and Principles or in an Act of Parliament.
- Gender balance should be upheld in the recruitment process by the organs of national security.

Article 271 (3)

- The National Security Organs shall abide only by those international agreements ratified by the Kenyan government.

- International agreements that may be detrimental to Kenya should not be domesticated.
- It is necessary to recognise customary international law in the constitution as it denotes laws that are not written but are however normally observed internationally.

Article 272- Establishment of the National Security Council

- Service Commanders of the Defence Forces should be excluded from membership of the National Security Council as the Chief of Defence Forces adequately represents them.
- The Director of Kenya Correctional Service should be excluded from the National Security Council, as the office is not an organ of the National Security.
- The question of whether to include the Attorney General in the National Security Council arose.
- Further, the question of whether the Chairperson of the relevant Parliamentary Committee should be a member of the National Security Council.
- Other proposed membership of the National Security Council were:
 - i. Minister for Foreign Affairs,
 - ii. Minister for Home Affairs,
 - iii. Minister for Internal Security,
 - iv. Administration Police Commandant,
 - v. Head of Civil Service, and
 - vi. Secretary to the Cabinet (as secretary to the council).

Article 273- Functions of the National Security Council

Article 273(1) (b)

- It was proposed that “military power” be replaced with “National Security Power”
- The term “power” be replaced with “capabilities”.

Article 273(1) (c)

- The Committee was advised that “environment” as mentioned in Article 273(1) (c) was redundant.
- The term “departments” be deleted and replaced with “organs”.
- The term “agencies” be retained as it would incorporate sub-sets of security organs, such as Interpol, Police Reserve or East African Community Police Chief Officers.
- Some Members were of the opinion that the National Security Council should “exercise control” instead of playing a supervisory role over the security organs. This proposal was, however, opposed by other Members who proposed that the National Security Council should be overseeing policy matters, therefore, play a supervisory role.

Article 273 (4)

- Provisions of Article 273 (4) were not considered as functions of the National Security Council. It was, therefore, recommended that they be placed under the amended, Article 271, Organs of National Security.
- A new Article was proposed to give authority to the National Security Council as the sole organ responsible for controlling peace-keeping missions and that Parliament should be given mandate to approve decisions of the Council

Article 274-Defence Forces

It was proposed that the title “Chief of General Staff” be changed to “Chief of Defence Forces.”

Article 274 (1)

- It was proposed that Article 274(1) be deleted as it was a repetition of 273(4).
- The Committee proposed that organs of the Defence Forces should be included in the Chapter and should consist of the Kenya Army, Kenya Navy and Kenya Air force.
- The question arose on whether the Kenya Defence Forces Reserve should be included as part of the Defence Forces. The Committee was informed that the reserve serves as a reservoir for the Defence Forces and they include regular and voluntary retired members of the Defence Forces.

Article 274 (2) - Defence Forces Council

- The Committee indicated that the President, the Vice President and the Prime Minister are above sitting in the Defence Forces Council and therefore should be excluded.
- It was proposed that the Permanent Secretary for Defence be included in the Defence Council.
- That the Minister in charge of Defence should be the Chairperson of the Council and the Assistant Minister in the same Ministry shall be the Vice-Chairperson.

Article 275 - Commanding Officers

It was proposed that the sub-title “Commanding Officers” should be changed to “Command of defence Forces.”

Article 275 (1)

The question of the appointment process of Commanding Officers was raised. It was proposed that the president should have the authority to appoint in consultation with the Defence Council, in place of the National Security Council.

Article 275 (2)

Functions of the Commanding Officers should be dealt with exclusively under the Armed Forces Act.

From discussions held at the Committee, it was evident that some elements concerning national security were omitted from the Draft Bill. The Committee therefore, resolved to include the National Security Intelligence Council and the Administration Police in its debate and deliberations and ultimately proposed to include these services in the chapter. The following were issues raised:

NATIONAL SECURITY INTELLIGENCE SERVICE

- The Committee agreed that there is need to entrench the National Security Intelligence Service (NSIS) in the Constitution. Members discussed and agreed on the establishment of the NSIS as proposed in the Annotated Draft with other additions.
- It was proposed that the President should appoint the Director-General of the Service with the approval of Parliament, as proposed in the Annotated Draft. A few Members felt that, since the President appoints other security heads without the approval of Parliament, the same should apply to the Director-General of NSIS.
- Debate arose as to whether the Director-General should have security of tenure.
- There was a proposal to have an Internal Director-General and External Director-General. Majority of the Members did not support this proposal.
- It was noted that the mandate of the Service extends beyond security matters. It provides intelligence on industry, trade, agriculture, marketing e.t.c. Therefore the word ‘security’ should be deleted to indicate that the service shall handle intelligence on all matters of national concern.
- Members of the Committee were of the opinion that details of the functions of the NSIS should be dealt with under the relevant Act.

National Security Intelligence Council

Members deliberated on the provisions of the National Security Intelligence Service Act so as to entrench the National Security Intelligence Council in the Constitution.

(i) **Establishment**

It was proposed that Section 23(1) of the NSIS Act be adopted to establish the Council under the Constitution.

Issues raised

- The National Security Intelligence Council should not be entrenched in the Constitution as it is in-house.
- Should Military Intelligence be represented in the Council?

Military Intelligence is strictly a military issue and is a client of the NSIS, therefore, the two cannot work together in the Council.

- It is necessary to have the Council constitutionalised so that it can evaluate the intelligence collected before it is handed over to the National Security Council.

(ii) **Membership**

Issues raised:

- The Constitution should state expressly that the Minister of State for the time being responsible for matters relating to the National Intelligence and Security should be a member of the National Security Council. The NSIS Act does not state which Minister is referred to in Section 23(1) (a) because there is a definition in the Act.
- It was felt that Attorney General should sit in the Council in his capacity as the State's legal advisor. The Council would require legal advice, as its functions would include administration and policymaking. Another view was expressed to exclude the Attorney General from the Council as the Service has its own legal experts.

- (iii) Functions of the council should include rationalization of the salaries and allowances of the officers as provided by the body empowered to determine salaries of Public Servants (Salaries and Remuneration Commission).

KENYA POLICE SERVICE

As the Committee contemplated to include the Kenya Police as one of the National Security Organs, it was decided that Part II of Chapter 14 of the Draft Bill concerned with the Kenya Police Service, be discussed and incorporated into Chapter 15.

Issues emerging from the Debate on Police:

- It was suggested that the Police should be trained to deal with victims of crime and disorder because today they are incapable of providing any kind of support to such victims.
- The Police Service has not been very professional in the past, therefore, professionalism has to be stressed in the constitution.
- Considering the proposed devolved structure of Government, the police should be posted as and where they are needed.
- The Police should actively participate in "Community policing."
- Qualifications for recruitment into the Police Service should be a university degree.

The Commissioner of the Kenya Police Service

- It was proposed that Kenya should adopt the title “Inspector-General instead of Commissioner of Police, in line with to Tanzania and Uganda, which have adopted the same.
- Some members felt that the role/position of the Inspector General be dealt with under the terms and conditions of Service and this should not come into the Constitution. However, it was established that the Police Act does not contain terms and conditions of service for the Police.
- The Inspector-General (currently Commissioner of Police) should be completely independent from the direction of any authority including the President save for the constitution. The Ghanaian and Indian Constitutions provide that the Inspector-General shall not be under the direction of anyone except where the Constitution stipulates.
- A tribunal would suffice in establishing grounds for dismissal of the Inspector General.
- To prevent manipulation of the tribunal, the Inspector-General should be appointed by the President with the approval of Parliament.
- Powers of the Inspector General should be checked.
- Provisions of Article 197 of the Draft Bill on removal of judges should also apply to the Inspector-General.
- The President should not act independently in removal of the Commissioner of Police but should only act on the recommendation of a tribunal. The 1963 Kenya Constitution, Fiji’s and Uganda’s Constitutions provide for removal of the Inspector General from office on the recommendation of a tribunal.
- The Police Service Commission should act as the proposed tribunal.
- Members of the Committee indicated that since Parliament approves the appointment of the Inspector General, it should also have a say in the dismissal of the Inspector General.

Establishment of the Police Service Commission

- Members of the Committee expressed the need to establish a Police Service Commission, as proposed in the Annotated Draft Bill.
- The Commission would address the concerns of both the Kenya Police Service and the Administration Police Service.
- The Police Service is a unique Service whose needs should be addressed by a special body. So far, the Public Service Commission has not adequately addressed the needs of the Police Service.
- The Commission would undertake appropriate measures to guarantee justified promotions.
- It would oversee adequate and proper terms of service of the two services including housing, annual leave, proper and adequate Police equipment, promotion, compensation and health services.

- It would undertake to ensure regular training programmes and also undertake disciplinary action.

Composition of the Police Service Commission

- It was proposed that the Chairman of the Public Service Commission be the Chairperson of the Police Service Commission. A counter suggestion arose that the independence of the Police Service Commission shall be compromised if the Chairperson of the Public Service Commission shall be a Member of the Police Service Commission. However some members felt that the Police Service Commission should comprise technical experts on Police matters.
- The Committee deliberated on whether the Inspector-General should be a Member or ex-officio member of the Police Service Commission.
- For purposes of providing legal advice to the Commission, a judge would suffice. However it was noted that being a Member of the Police Service Commission shall be a full time job, consequently requiring a judge to work in the commission full time. Other members proposed that the Judge be an Ex-officio Member to the Commission.
- The Commission should have representation from the public, specifically from persons of integrity who have served the public with integrity.

Functions of the Police Service Commission

The Commission should have the responsibility of reviewing all matters relating to salaries, ensure adequate budgetary allocations, exercise disciplinary control and hear appeals.

THE ADMINISTRATION POLICE SERVICE

The Committee resolved to entrench the Administration Police in the Chapter as one of the organs of National Security.

General Views on the Administration Police

- The Administration Police Service supports civil authority in mobilization for development, e.g. maintaining order during elections, examinations, etc. Further it was noted that they are closest to the people and accessible when need arises. They are found even at village level.
- They are easy to mobilize and can work even in very small numbers.
- In the devolved structure of Government, the Administration Police should be the security force in the regions. Training should be central but recruitment regional. The Administration Police should implement the laws passed by counties.

- Terms and conditions of service should be improved and the Administration Police should be given ranks as high as those of regular Police.
- Core functions of the regular Police and those of Administration Police should be clearly defined.
- Administration Police should be re-trained to carry out “social duties” rather than “combat activities”.
- The Administration Police should be empowered to prosecute.
- The involvement of the Administration Police in combating crime has reduced crime rate in the cities.
- The name of the Administration Police should be changed to one of the following: ‘Regional Police’, ‘Local Police’ or ‘Zone Security Service’.

Principles and objects of Administration Police

- Should the constitution provide specific principles for the Administration Police Service yet general principles and objects of National security, as set out in Article 271 cover all organs of national security?
- The Administration Police Service should carry out its functions to complement those of the Police Service.

Debate, on whether or not to merge the Administration Police with the Kenya Police.

- There is need to merge the Administration Police with the regular Police for reasons that they perform similar functions. Further, if the Administration Police would fall under the Police Service Commission, it would pave the way for better terms of service and hence the proposal of the merger. However, some felt that a merger between the two services would result in delays in responding to security crises, which, so far only, the Administration Police has proved to be efficient to deal with.
- A very strong view arose from the members that the Administration Police Service should remain an independent service under the Command of the Commandant of the Administration Police. The continued existence of the Administration Police should be justified by the role they play in the country, i.e. maintaining internal security.
- With the hope of better remuneration, members of the Administration Police Force may favour a merger with the Police.
- That their command structure be retained at the national level, but also have command at the level of the division and location.
- Delink Administration Police from the patronage of the Provincial Administration.
- The Administration Police should be a specialized service in the devolved units managed under the Kenya Police Service Commission.
- The Administration Police falls under the Provincial Administration, therefore, it is a devolved institution and should remain as such.

- The devolved nature of the Administration Police is the reason for its efficiency, therefore, it should remain devolved while being centralized through the Minister in charge of Devolved Government.

Proposed Commission for the Administration Police

Members of the Committee discussed whether the Administration Police should have its own Commission, fall under the Police Service Commission or stay under the Public Service Commission. The following were the issues raised from the debate:

- The Committee resolved that there should be no independent commission established specifically for the Administration Police since this option is likely to have great financial implications for the country.

If the Administration Police should fall under the Public Service Commission:

- The Administration Police Service was formed to serve public administration and, therefore, it should remain under the Public Service Commission with reviewed terms and conditions of service.
- The Administration Police should remain under the Public Service with autonomy to run itself.
- The Administration Police work well on their own but do not work well with the Police Service. If the Administration Police Service are put under the Police Service Commission they may end up facing the same problems the Police Service is facing today.
- Even though the Administration Police are employees of the Public Service Commission their recruitment is carried out at district level.

If the Administration Police were to fall under a Police Service Commission:

- The commission shall make policies, which shall be implemented by the Inspector General of Police, and the Commandant of the Administration Police.
- If the Administration Police Service shall be under the Police Service Commission then it should be merged with the Police Service. Reason being, evidently there shall be two parallel forces under the same commission which may result into a conflict of interest between the two services. However, the roles of the two services should be defined so as to make an informed decision as to where each should fall.

The Commandant of the Administration Police Service

- The Committee deliberated on whether the Commandant of the Administration Police Service should sit in the National Security Council.
- To create harmony in the Draft Bill as pertains to all other Constitutional Offices, the Constitution should specify the term of office for the Commandant of the Administration Police Service.

- It was proposed that the Commandant of the Administration Police Service should serve for one term of five years.
- The Constitution should specify who should appoint the Commandant of the Administration Police Service. The following were suggested:
 - (i) the President;
 - (ii) the Public Service Commission.
- It was felt that if the President were to make the appointment, it should be with the approval of Parliament.
- Qualifications for persons who hold the office of Commandant to the Administration Police Service should be specified.
- The title ‘Commandant’ should be changed to ‘Commandant General’.

4. TECHNICAL RECOMMENDATIONS AND DECISIONS ON THE REPORT AND DRAFT BILL

4.1 General Comments on the Report

After consideration of the issues in the Main Report of the Commission, the Committee resolved to adopt the Report.

4.2 General Recommendations on the Draft Bill

The Committee on Defence and National Security discussed and considered Chapter 15 of the Draft Bill on Defence and National Security. It proposed a number of amendments to the Chapter and adopted some new provisions, as provided.

The following were recommendations proposed by the Committee:

- i. Title of the Chapter.
Some members proposed that “Defence” was redundant and that “National Security” was sufficient.
- ii. A working definition of National Security should stand as part of the chapter.
- iii. Organs of National Security
The following were proposed: *The Defence Forces (Navy, Army, and Air Force), The Kenya Police Service, National Security Intelligence Service and The Administration Police and the Kenya Correctional Services.*
- iv. Membership of the National Security Council should include:
 - Minister for the time being responsible for Foreign Affairs,
 - Minister for the time being responsible for Home Affairs,
 - Minister responsible for Internal Security,
 - The Commandant of Administration Police.

However, the following offices were proposed for removal from the Council:

 - All service commanders of the Armed Forces
 - Director of Kenya Correctional Services
 - The Chairperson of the relevant Parliamentary Committee.

- v. The Committee pondered changing the title “Chief of General Staff” to “Chief of Defence Forces.”
- vi. Establishment of the Defence Council.
The following were considered for exclusion from the Council:
 - The President
 - The Prime Minister
 - The Vice President
 The following were considered for inclusion into the Council
 - Assistant Minister responsible for Defence
 - The Permanent Secretary responsible for Defence.
- vii. Establishment of Police Service Commission.
The commission would address the plight of both the Kenya Police Service and the Administration Police Service.
- viii. The Committee considered changing the title “Police Commissioner” to “Inspector-General”.
- ix. Members also discussed the inclusion of the National Security Intelligence Service into the Chapter and also considered changing its name to National Intelligence Service. It was felt that the Service should be headed by a Director General, appointed by the President, and it should have the responsibility of enhancing the country’s security and counter intelligence services.
- x. The Committee considered the inclusion of the Administration Police in the Chapter. The debate on the Administration Police was centered on whether to have the Service as an organ independent from the Police or whether to merge the two Services. This was one of the issues upon which a minority report was recorded.

4.3 Specific Recommendations on or annotation to the Draft Bill

- Title: Heading of the chapter should be amended to read “National Security”, by deleting “Defence”
- A new provision to define National Security was incorporated to read;
“National Security is the preservation of the people of Kenya, their freedom, property and other national interests against threats emanating from within and without.”
- A new provision that includes Organs of National Security as; ***Defence Forces (Navy, Army and the Air Force), Kenya Police Service, National Security Intelligence Service, and the Administration Police,*** was introduced.
- **Article 273 (4)** was transferred to **Article 271** under the Organs of National Security to read: *‘An agency, establishment or any other organisation concerned with national security shall not be established except by or under an Act of Parliament.’*
- Members of the Committee agreed, through voting, that a new principle be added to read *‘The national security organs shall be subordinate to civil authority.’*

- Where “Defence and National Security” appears in the Draft, it should be replaced with “National Security”.
- In **Article 271** “Defence Forces” was replaced with “National Security Organs” and “Its sovereignty” was included between “Kenya” and “the peace.” The word “territorial” was added between “and’ and “integrity.”
- **Article 271(2)(c)** was amended by replacing “Defence Forces” with “National Security Organs” and by deleting all the words after “shall” and replacing them with “*respect the traditions and customs of diverse communities within Kenya in discharging their duties*”
- A new sub clause **271(2)(d)** was adopted to read: “ Recruitment by the National Security Organs should reflect the diversity of the Kenya People in equitable proportions.”
- **Article 271(3)** was adopted with amendments by replacing “Defence Forces” with “National Security Organs” to read ‘*The National Security Organs shall act and train and require their members to act, in accordance with the Constituion and the law, including customary international law and international agreements that are binding on Kenya*’.
- **Article 271(4)** was adopted with amendments by replacing “Defence Forces” with “National Security Organs,” to read ‘*In the performance of their functions, the National Security Organs and every member of the National Security Organs.....*’
- A new clause **271(5)** was adopted to read:
Parliament shall enact legislation for the organization, administration and discipline of the national security organs including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service.
- **Article 272 (1)** was adopted with amendments by deleting:
 - (f) Army Commander,
 - (g) Navy Commander,
 - (h) Air Force Commander,
 - (l) Chairperson of the relevant Parliamentary Committee,
 - (j) Director of Correctional Services.
 and replacing them with :
 - the Ministers in charge of Internal Security; and
 - the and Foreign Affairs.
 Further, the Sub- clauses was amended by
 - (e) replacing the title ‘Chief of General Staff’ with ‘Chief of Defence Forces.’
 - (i)replacing ‘Commissioner of Police’ with ‘Inspector- General’
 - (k) adding the word ‘General’ after the word ‘Director’
- **Article 272 (2) and (3)** were adopted without amendments
- **Article 272 (4)** was amended by deleting the phrase “from among its members,” to read ‘*The Council shall elect or appoint its secretary.*’
- **Article 273(1)(a)** was adopted with amendments by deleting the words “military services, departments and agencies” and replacing them with

“National Security Organs” and deleting the words “ in matters relating to national security.” To finally read

“to ensure the integration of the domestic, foreign and military policies relating to the national security in order to enable the National Security Organs to co-operate effectively”

- **Article 273(1)(b)** was amended by replacing “military power” with “national security capabilities” and deleting all the words after “power,” to read *‘to assess and appraise the objectives, commitments and risks to the Republic in relation to actual and potential national security capabilities’*
- **Article 273(1)(c)**; was amended by replacing “departments and agencies of environment concerned with national security” with “national security organs” and replacing the words “ these departments” with “National Security Organs” to finally read;

“to consider policies on matters of common interest to the National Security organs and to exercise supervisory control over the National Security Organs.”

- **Article 273 (2)** was deleted and a new one inserted to read:
“The Council shall keep Parliament informed on the State of security of the Republic through the relevant Departmental Committee.”
- **Article 273 (3)** The Article was adopted without amendments.
- **Article 273 (4)** Provisions of this article were not considered as functions of the National Security Council rather they be placed under the amended, Article 271, Organs of National Security. A new provision was proposed read: *The National Security Council may with the approval of Parliament:-*

(a) deploy national forces outside Kenya for –

(i) United Nations and other peace support operations;

(ii) other support operations; or

(b) approve the deployment of foreign forces in Kenya.

Article 274(1) was amended by replacing the phrase “authority of an Act of Parliament” with “authority of this Constitution, ”to read

“No one may raise a defence force or military or a paramilitary organisation except by or under the authority of this Constitution.”

- **Article 274[1]** of the Draft Bill was amended by adding a new provision to read:

There is hereby established the Kenya Defence Forces consisting of:

Kenya Army; Kenya Navy; and Kenya Air force.

- **Article 274(2) (a)** was amended by deleting
 - (a) the President,
 - (b) Vice President and
 - (c) the Prime Minister

Sub-clause (d) was amended by indicating that the Minister for Defence will be the Chairperson.

(d) The Minister for the time being responsible for defence, who shall be the Chairperson

A new sub-clause was added to include;

- *the Deputy Minister for the time being responsible for defence who shall be the Vice-Chairperson;*
- *Principal Secretary for Defence.*

(4) The Defence Council shall be responsible for the overall policy, control, and supervision of the Defence Forces and such other functions as may be specified by Parliament.

- **Article 274(2) (b)**, a new provision was introduced to read ‘The Defence Council shall appoint its Secretary.’
- A new provision was introduced “*The Defence Forces Council shall be responsible for the overall policy, control and supervision of the Defence Forces and such other functions as may be given by Parliament.*”
- The sub-title of article 275 was changed from “Commanding Officers” to “*Command of Defence Forces*”
- It was also resolved that **Clauses 1, 2 and 3 of Article 275** be deleted and replaced with;
“The President who is Commander in Chief of the Armed Forces shall appoint the Chief of Defence Forces, the Army Commander, Air force Commander and Navy Commander in consultation with the Defence Council”.
- **A new provision** was introduced to read THAT, “*the Chief of Defence Forces and Service Commanders shall exercise command over the defence forces and perform such other duties as may be given by Parliament*”.
- **Articles 275(4) – (7)** - were deleted.

New Provision

Part III- NATIONAL INTELLIGENCE SERVICE

Establishment of The National Intelligence Service

275A(1) There is established a service to be known as the National Intelligence Service.

(2) The National Intelligence Service shall be under the command of the Director-General who shall be appointed by the President with the approval of Parliament.

(3) The National Intelligence Service shall be responsible for security intelligence, and counter intelligence to enhance national security, defend the constitution, the interest of the state and the well being of the people of Kenya.

(4) *Subject to this Constitution, the National Intelligence Service shall be organized and administered in such manner and shall exercise such functions as Parliament may prescribe.*

(5) *The National Intelligence Service shall in exercising its functions observe respect for human rights, fundamental freedoms and the rule of law.*

(6) *No intelligence service, other than an intelligence division of the defence Force or the Kenya Police Service shall be established except by or under an Act of Parliament.*

Establishment of the National Intelligence Council.

275B (1) *There is established a National Intelligence Council consisting of –*

- (a) the Minister for the time being responsible for matters relating to national security and Intelligence who shall be the Chairperson;*
- (b) the Minister for the time being responsible for foreign affairs;*
- (c) the Minister for the time being responsible for finance;*
- (d) the Attorney-General; and*
- (e) the Permanent Secretary, Secretary to the Cabinet and Head of Public Service..*

(2) *The Director-General of the National Intelligence Service shall be the Secretary to the National Intelligence Council.*

(3) *The functions of the National Intelligence Council shall be -*

(a) to advise the National Intelligence Service on all matters pertaining to

–

- (i) national security and intelligence policies;*
- (ii) the administration of the service;*
- (iii) the expenditure of the service; and*

(b) to perform such other functions as are conferred on the Council by an Act of Parliament.

CHAPTER 14 PART II (of the Draft Bill)

KENYA POLICE SERVICE

Principles and objects

- **Article 264(1) (a)–(e)** were adopted without amendments
- **Article 264(1) (f)** was amended by inserting “life” between “of” and “and” to read; “*The protection of life and property*”.
- **Article 264(2) (a) and (b)** were adopted without amendments.

- **Article 264(2)(c)** was deleted in its entirety and replaced with “ *in the performance of their duties, the service shall abide by principles spelt out in Article 271 (4)*”
- **Article 264(2) (d)** was adopted without amendments to read.
- **Article 264(2) (e)** was adopted without amendments to read.
- **Article 264 (2) (f)** was amended by deleting the words “recognize the duty of” and replacing them with “shall abide by the principle of” to read “*shall abide by the principles of transparency and accountability to society and democratic institutions*”.
- **Article 264(2)(g)** was amended by deleting the provision and replacing it with “ *foster and promote positive relations with the society at large*”
- **Article 264(2) (h)** was deleted.

Establishment of the Kenya Police Service

- **Article 265(1)** was adopted without amendments.
- **Articles 265(2)-(5)** were amended by including “Kenya” before “Police Service” to read;
 - (2) *Subject to this Constitution, the Kenya Police Service shall be organized and administered in such a manner and shall have such functions as Parliament shall prescribe*”
 - (3) *“The Kenya Police Service shall be professional and disciplined”.*
 - (4) *“The Kenya Police Service shall remain a National Police Force, and the division of its functions shall be organized to take into account the structure of devolution.”*
 - (5) *“The Kenya Police shall work closely with communities to ensure security and safety for all citizens.”*
- **Art 266(1)** was amended by deleting all the words after “be” and replacing them with “an Inspector General who shall be the Head of the Kenya Police Service” to finally read, *“There shall be an Inspector-General who shall be the head of the Kenya Police Service.”*
- **Article 266(2)** was amended by replacing the words “Commissioner” with “Inspector General” and replacing the words “one term of ten years” with “one term of five years” to read *“The Inspector General shall be appointed by the president with the approval of Parliament for one term of five years.”*
- **Article 266 (3) and (4)** were deleted
- **Article 266 (5)** was deleted in its entirety and replaced with *‘Subject to the provisions of this Constitution, the Inspector - General shall, in exercise of his functions not be subject to the direction or control of any person or authority.’*
- **Article 266 (6)** was deleted and replaced with;

Subject to this Constitution, the Inspector-General may be removed from office by the President only for –

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

- (b) *misconduct; or*
- (c) *incompetence; or*
- (d) *any other just cause.*

The Inspector-General shall not be removed from office except on the recommendation of a tribunal appointed by the President comprising of the following -

- (a) *the Chairperson of the Kenya Police Service Commission;*
- (b) *a High Court Judge; and*
- (c) *one other person.*

New Provisions:

Establishment of Police Service Commission

- (a) *There is established a commission to be known as the Police Service Commission.”*

Composition of the Police Service Commission

- *The Police Service Commission shall consist of –*
 - a) *a chairperson appointed by the President from amongst members of the Commission;*
 - b) *a person who is qualified to be appointed as a High Court judge;*
 - c) *two retired senior police officers, one from each of the services;*
 - d) *three persons of integrity who have served the public with distinction;*
 - e) *the Inspector- General of the Kenya Police Service who shall be an ex-officio member; and*
 - f) *the Commandant of the Administration Police service who shall be an ex-officio member.*
- *The Police Service Commission shall appoint its secretary.*
- *The Commissioners appointed above shall hold office for a period of five years and shall be eligible for re-appointment for only one further term of five years.*
- *The functions of the Police Service Commission shall be to-*
 - a) *Recruit and appoint persons to hold or act in an office, to determine promotions in the Kenya Police Service, and to exercise disciplinary control over such persons;*
 - b) *keep under review all matters relating to the standards or qualifications required of members of the Kenya Police Service.*
 - c) *keep under review all matters relating to salaries, allowances and other terms and conditions of service of Members.*

- d) *ensure adequate budgetary provisions from the Police Service.*
- e) *promote and exercise disciplinary control, including hearing and disposal of appeals by persons in the Police Service; and*
- f) *exercise such powers, including policy making, control, supervision, organization and discharge such functions, as are provided by this Constitution or under an Act of Parliament.*

New Provision:

ADMINISTRATION POLICE SERVICE

Principles and Objects

- 1) The Primary object of the Administration Police Service is to work with and for the people to-
 - a) preserve and maintain public peace; and
 - b) prevent commission of offences.
- 2) The Administration Police Service is established to work with and for the people supporting and assisting within existing law with administration in the public service.
- 3) In the discharge of the functions specified above, the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms.
- 4) In furtherance of these objects the Administration Police Service shall-
 - a) Strive for the highest standards of professionalism;
 - b) Work to eliminate and avoid corruption of all sorts;
 - c) Train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;
 - d) Abide by principles of transparency and accountability to society and democratic institutions; and
 - e) Foster and promote relationships with the border society.

Establishment of the Administration Police Service

- 1) There is established a service to be known as the Administration Police Service.
- 2) The Administration Police Service shall be a separate service from the Kenya Police Service.
- 3) The Administration Police Service shall be organised to take into account the structure of devolution.
- 4) The Administration Police Service shall be a service under the Police Service Commission.

Appointment of the Commandant of the Administration Police Service

There shall be a Commandant of the Administration Police Service who shall be appointed by the President with the approval of Parliament, for one term of five years.

4.4. Decisions Reached As Recommendations To The Conference (By Consensus Or Voting)

CHAPTER FIFTEEN

NATIONAL SECURITY

Definition.

270A National Security is the preservation of the people of Kenya, their property, freedoms, and other national interests against internal and external threats.

National Security Organs

270B (1) There shall be National Security Organs, which shall comprise the following –

- (a) the Defence Forces;
 - (b) the National Security Intelligence Service;
 - (c) the Kenya Police Service; and
 - (d) the Administration Police Service.
- (2) An agency, establishment or any other organisation concerned with national security shall not be established except by or under an Act of Parliament.
- (3) The National Security Organs shall be subordinate to civil authority.

Principles and Objects of National Security

271. (1). The primary object of the National Security Organs and security system of the Republic of Kenya is to safeguard the well-being of the people of Kenya, its sovereignty, the peace, national unity and territorial integrity of the Republic.

(2) The defence and national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles -

- (a) national security is subject to the authority of the Constitution and Parliament;
- (b) national security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;
- (c) the national security organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties; and

- (d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.
- (3) The National Security Organs shall act and train and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements that are binding on Kenya
- (4) In the performance of their functions, the National Security Organs and every member of the National Security Organs shall not -
- (a) act in a partisan manner;
 - (b) further any interest of a political party or cause; or
 - (c) prejudice a political interest or political cause that is legitimate in terms of the Constitution.

Establishment of the National Security Council.

272. (1) There is established a National Security Council consisting of –
- (a) the President;
 - (b) the Vice President;
 - (c) the Prime Minister;
 - (d) the Minister for the time being responsible for Defence;
 - (e) the Chief of Defence Forces General;
 - (f) the Inspector-General of the Kenya Police Service;
 - (g) the Director-General of the National Security Intelligence Service;
 - (h) the Attorney General.
 - (i) the Minister for the time being responsible for foreign affairs and
 - (j) the Minister for the time being responsible for internal security;
- (2) The President shall preside at the meetings of the Council, and, in the absence of the President, the Vice-President, and in the absence of the Vice President, the Prime Minister shall preside.
- (3) The National Security Council shall make rules of procedure to guide the conduct of its meetings.
- (4) The National Security Council shall elect or appoint its secretary.

Functions of the National Security Council

273. (1) The National Security Council has the responsibility-

- (a) to ensure the integration of the domestic, foreign and military policies relating to the national security in order to enable the National Security Organs to co-operate effectively;
 - (b) to assess and appraise the objectives, commitments and risks to the Republic in relation to actual and potential national security capabilities; and
 - (c) to consider policies on matters of common interests to the national security organs and to exercise supervisory control over the national security organs.
- (2) The National Security Council shall inform Parliament of the state of the security of the Republic through the relevant Committee.
- (3) Where a state of emergency is declared by the President, the National Security Council shall be the authority responsible, subject to the Constitution, for taking and implementing the measures that are reasonably justifiable for dealing with the situation that had arisen.
- (4) The National Security Council may with the approval of Parliament:-
- (a) deploy national forces outside Kenya for –
 - (i) United Nations and other peace support operations;
 - (ii) other support operations; or
 - (b) approve the deployment of foreign forces in Kenya.

Defence Forces

274. (1) No one may raise a defence force, military or a paramilitary organization except by or under the authority of this Constitution.
- (1A) There is established the Kenya Defence Forces consisting of the following:
- (a) the Kenya Army and its reserve ;
 - (b) the Kenya Air force and its reserve; and
 - (c) the Kenya Navy and its reserve.
- (2) There is established a Defence Council consisting of –
- (a) the Minister for the time being responsible for defence who shall be the Chairperson;
 - (b) the Assistant Minister for the time being responsible for defence who shall be the Vice-Chairperson;
 - (c) the Chief of Defence Forces;

- (d) the Army Commander;
- (e) the Air Force Commander; and
- (f) the Navy Commander;
- (g) the Permanent Secretary for the time being responsible for defence.

(3) The Defence Council shall appoint its Secretary.

(4) The Defence Council shall be responsible for the overall policy, control, and supervision of the Defence Forces and such other functions as may be specified by Parliament.

Command of Defence Forces.

275.(1) The President, who is the Commander-in-Chief of the Armed Forces shall, in consultation with the Defence Council appoint the Chief of Defence Forces, the Army Commander, the Air force Commander, and the Navy Commander.

(2) The Chief of Defence Forces and service commanders shall exercise command over the defence forces and perform such other duties as may be specified by Parliament.

Establishment of The National Intelligence Service

275A(1) There is established a service to be known as the National Security Intelligence Service.

(2) The National Security Intelligence Service shall be under the command of the Director-General who shall be appointed by the President with the approval of Parliament.

(3) The National Security Intelligence Service shall be responsible for security intelligence, and counter intelligence to enhance national security, defend the constitution, the interest of the state and the well being of the people of Kenya.

(4) Subject to this Constitution, the National Security Intelligence Service shall be organized and administered in such manner and shall exercise such functions as Parliament may prescribe.

(5) The National Security Intelligence Service shall, in its functions observe respect for human rights, fundamental freedoms and the rule of law.

(6) No intelligence service, other than an intelligence division of the defence Force or the Kenya Police Service shall be established except by or under an Act of Parliament.

Establishment of the National Security Intelligence Council.

275B (1) There is established a National Security Intelligence Council consisting of –

- (a) the Minister for the time being responsible for matters relating to national security and Intelligence who shall be the Chairperson;
- (b) the Minister for the time being responsible for foreign affairs;
- (c) the Minister for the time being responsible for finance;
- (d) the Attorney-General; and
- (e) the Permanent Secretary, Secretary to the Cabinet and Head of Public Service..

(2) The Director-General of the National Security Intelligence Service shall be the Secretary to the National Security Intelligence Council.

(3) The functions of the National Security Intelligence Council shall be -

- (a) to advise the National Security Intelligence Service on all matters pertaining to –
 - (i) national security and intelligence policies;
 - (ii) the administration of the service;
 - (iii) the expenditure of the service; and
- (b) to perform such other functions as are conferred on the Council by an Act of Parliament.

KENYA POLICE SERVICE

Principles and objects

264. (1) The primary object of the Kenya Police Service is to work with and for the people to ensure –

- (a) a peaceful and safe environment;
- (b) the protection of rights and freedoms;
- (c) the security of the people;
- (d) the prevention and detection of crime;
- (e) the support of victims of crime and disorder; and
- (f) the protection of life and property.

(2) In furtherance of these objects the Kenya Police Service shall -

- (a) strive for the highest standards of professionalism;
- (b) work to eliminate and avoid corruption of all sorts;
- (c) observe the principles specified in Article 271(4);
- (d) observe human rights standards;
- (e) train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;

- (g) foster and promote relationships with the broader society.

Establishment of the Kenya Police Service

265. (1) There is established a service to be known as the Kenya Police Service.
- (2) Subject to this Constitution, the Police Service shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe.
 - (3) The Police Service shall be professional and disciplined.
 - (4) The Police Service shall remain a national police force, and the division of its functions shall be organized to take into account the structure of devolution.
 - (5) The Police Service shall work closely with communities to ensure security and safety for the people of Kenya.

Appointment of the Inspector-General of the Kenya Police Service

266. (1) There shall be an Inspector-General of the Kenya Police Service who shall be the head of the Kenya Police Service.
- (2) The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years.
 - (3) Subject to the provisions of this Constitution; the Inspector - General shall, in exercise of his functions not be subject to the direction or control of any person or authority.
 - (4) Subject to this Constitution, the Inspector-General may be removed from office by the President only for –
 - (e) inability to perform the functions of his or her office arising from infirmity of body or mind; or
 - (f) misconduct; or
 - (g) incompetence; or
 - (h) any other just cause.
 - (5) The Inspector-General shall not be removed from office except on the recommendation of a tribunal appointed by the President comprising of the following -
 - (a) the Chairperson of the Kenya Police Service Commission;
 - (d) a High Court Judge; and

- (e) one other person.

ESTABLISHMENT OF THE KENYA POLICE SERVICE COMMISSION

- 266A(1) There is established a Service to be known as the Kenya Police Service Commission.
- (2) The Kenya Police Service Commission shall consist of -
 - (a) a chairperson appointed by the President from amongst the members of the Commission;
 - (b) a person who is qualified to be appointed as a High court Judge;
 - (c) two retired senior police officers;
 - (d) three persons of integrity who have served the public with distinction; and
 - (e) the Inspector-General of the Kenya Police Service who shall be an ex-officio member.
 - (3) The Commissioners appointed under sub-article (2) shall hold office for a period of five years and shall be eligible for re-appointment for only one further term.
 - (4) The functions of the Kenya Police Service Commission shall be to -
 - (a) recruit and appoint persons to hold or act in an office, to determine promotions in the Kenya Police Service, and to exercise disciplinary control over such persons;
 - (b) keep under review all matters relating to the standards or qualifications required of members of the Kenya Police Service;
 - (c) keep under review all matters relating to salaries, allowances and other terms and conditions of service;
 - (d) ensure adequate budgetary provisions for the Kenya Police Service;
 - (e) promote and exercise disciplinary control, including hearing and disposal of appeals by persons in the Kenya Police Service;
 - (f) exercise such powers including the power to delegate and discharge such functions as are provided for by this Constitution or under an Act of Parliament.

THE ADMINSTRATION POLICE SERVICE

Principles And Objects

275C(1) The primary object of the Administration Police Service is to work with and for the people to -

- (a) preserve and maintain public peace; and
- (b) prevent commission of offences

(2) The Administration Police Service is established to work with and for the people supporting and assisting within existing law with Administration in the public service.

(3) In the discharge of the functions specified in sub article (2), the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms.

Establishment of the Administration Police Service

275D (1) There is established a service to be known as the Administration Police Service.

(2) The Administration Police Service shall be a separate service from the Kenya Police Service.

(3) Parliament shall enact legislation for the organisation, administration and discipline of the Administration Police Service including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service.

(4) The Administration Police Service shall be organised to take into account the structure of devolution.

(5) The Administration Police Service shall be a Service under the Public Service Commission.

Appointment of the Commandant of the Administration Police Service.

275E There shall be a Commandant of the Administration Police Service, who shall be appointed by the President with the approval of Parliament, for one term of five years.

APPENDICES

Appendix A: Minority Report

Minority Opinion 1

Article 272 (1) (m),

Whereas majority of the members voted against Article 272 (1) (m), the Attorney General being a member of the National Security Council, a minority registered their minority position upon the vote.

Minority Opinion 2

Some members recorded minority opinion against the motion, that reads;

“Administration Police Service be maintained as a separate service from the Kenya Police Service”.

The Members were:

Hon. Waitiki John Kinuthia	Del. No. 317
Hon. Daniel Njagi	Del. No. 486
Hon. King’ori Mwangi	Del. No. 624
Hon. James John Mageria	Del. No. 528

Minority Opinion 3

Some members recorded minority opinion against the motion, that reads;

“Recruitment by the National Security Organs should reflect the diversity of the Kenya People in equitable proportions.”

The members were;

1. Hon. Gen. (Rtd) Nkaiserry	Delegate no. 146
2. Hon. James Mageria	Delegate no. 528
3. Hon. Moses Akaranga	Delegate no. 005
4. Hon. Esther Lelei	Delegate no. 445
5. Hon. Daniel Njagi	Delegate no. 486
6. Hon. John Waitiki	Delegate no. 317

Minority Opinion 4

Art 275C(1)

“The primary object of the Administration Police service is to work with and for the people to-

- (a) preserve and maintain public peace; and
- (b) prevent commission of offences.

The following motion was moved:

That Article 275C (1) should be amended by adding, “ the two functions should be carried out to complement the role of the Police Service”.
The motion was defeated.

The following recorded a minority opinion:

Hon. Brig. T.K. Githiora (Del. 629)
Hon. John Kinuthia Waitiki (Del. 317)
Hon. King’ori Mwangi (Del. 624)
Hon. James John Mageria (Del. 528)

Minority Opinion 5

Some members recorded a minority opinion against the motion that reads:

“The Administration Police Commandant shall be a member of the National Security Council”.

The members were:

Hon. Brig. T.K. Githiora (Del. 629)
Hon. John Kinuthia Waitiki (Del. 317)
Hon. King’ori Mwangi (Del. 624)
Hon. James John Mageria (Del. 528)
Hon. Daniel Njagi (Del. 486)

Appendix B: Formal Motions

<u>DATE</u>	<u>NAME</u>	<u>SUMMARY OF MOTION</u>	<u>COMMENT</u>
9/9/03	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, the title of the chapter be amended by deleting all the words appearing before ‘National Security’	Motion carried
	Hon. Brig. T.K Githiora (del 629)	THAT, the following definition of National Security be included in the Constitution: “National Security is the preservation of the people of Kenya, their property, freedoms and other national interests against threats emanating from within and without.”	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	<i>Article 271</i> THAT, the words ‘defence forces’ be amended to read ‘national security organs’.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, the national security organs shall comprise:- Defence Forces The Kenya Police National Security Intelligence Service The Administration Police	Motion carried
	Hon. Gen (Rtd) Nkaisery (del 146)	THAT, clause 271(1) be amended by inserting the words ‘its sovereignty’ between the words ‘Kenya’ and ‘the’ on the third line.	Motion carried
10/9/03	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, clause 271(2)(c) be amended to read: “National security organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties.”	Motion carried with amendment.
11/9/03	Hon. Brig. T. K Githiora (del 629)	THAT, “National security organs shall be suborbinata to civil authority”	Motion carried

	Hon. Wycliffe Osundwa (del 172)	<i>Article 272(1) – Membership of the National Security Council.</i> THAT, clause 272(1)(l) be deleted.	Motion carried
	Hon. Charles Lwanga (del 380)	THAT, clause 272(1)(j) be deleted.	Motion carried
	Hon. John Watiki (del 317)	THAT, clause 272(1)(m) be deleted.	Motion defeated
	Hon. John Waitiki (del 317)	THAT, clause 272(1)(f)(g) and (h) be deleted.	Motion carried
	Hon. Charles Lwanga (del 380)	THAT, the Administration Police Commandant be a member of the National Security Council.	Motion defeated
	Hon. Brig. T.K Githiora (del 629)	THAT, the minister in charge of internal security be a member of the National Security Council.	Motion carried
	Hon. Ekwee Ethuro (del 024)	THAT, the Head of Civil Service and Secretary to the Cabinet be a member of the National Security Council.	Motion defeated
	Hon. John Waitiki (del 317)	THAT, the National Security Council shall appoint the Director of National Security Intelligence Service its Secretary.	Motion defeated
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, clause 272(4) be amended by deleting all the words appearing between the words ‘shall’ and ‘appoint’ and all the words appearing after the word ‘secretary’	Motion carried
	Hon. Moses Akaranga (del 005)	THAT, clause 273(3) be deleted and replaced with the following: “The National Security Council will keep Parliament informed on the state of the security of the Republic through the relevant departmental committee.”	Motion carried
12/9/03	Hon. Maj. (Rtd) Marsden Madoka (del 086)	<i>Article 272(1)</i> THAT, the Minister responsible for Foreign Affairs be a member of the National Security Council.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, the National Security Council shall obtain parliamentary approval for the deployment of security forces outside Kenya for UN peace support operations as well as the deployment of foreign forces in Kenya for agreed operational purposes.	Motion carried

12/9 03	Hon. Brig. T.K Githiora (del 629)	THAT, clause 274(1) be amended by deleting all the words appearing after the word 'of' and substituting them with the words 'this constitution'.	Motion carried
	Hon. John Waitiki (del 317)	THAT, the following new clause be included in the Draft bill: "There is hereby established the Kenya Defence Forces, consisting of: The Kenya Army The Kenya Airforce The Kenya Navy"	Motion carried
	Hon. Brig. T.K Githiora (del 629)	THAT, clause 274(2) be amended by deleting the word 'Forces' appearing between the words 'Defence' and 'Council'.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, clause 274(2)(d) be amended by inserting the words 'who shall be Chairman' immediately after the word 'Defence'.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, clause 274(2)(a)(b) and (c) be deleted.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, the words "the Assistant Minister for Defence, who shall be Vice-Chairperson" be inserted immediately after sub-clause (d).	Motion carried
12/9/03	Hon. John Watiki (del 317)	THAT, the Permanent Secretary for Defence be a member of the Defence Council.	Motion carried
	Hon. Brig. T.K Githiora (del 629)	THAT, the Defence Council shall appoint its Secretary.	Motion carried
	Hon. Brig. T.K Githiora (del 629)	THAT, the Defence Council shall be responsible for the overall policy, control and supervision of the Defence Forces and such other functions as may be prescribed by parliament.	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	THAT, clauses 275(1)(2) and (3) be amended to read: "The President, who is Commander-in-Chief of the Armed Forces shall appoint the Chief of General Staff, the Army Commander, the Airforce Commander and the Navy Commander in consultation with the Defence Council."	Motion carried

	Hon. Brig. T.K Githiora (del 629)	THAT, the Chief of General Staff and Service Commanders shall exercise command over the defence forces and perform such other functions as may be given by parliament.	Motion carried
12/9/03	Hon. John Watiki (del 317)	THAT, clauses 275(4) – (7) be deleted	Motion carried
17/9/03	Hon. William Boit (del 017)	THAT, clause 273(1)(b) be amended to read as follows: “to assess and appraise the objectives and commitments of and risks to the Republic in relation to actual and potential national and security capabilities.”	Motion carried
	Hon. Petkay Miriti (del 104)	THAT, clause 273(1)(c) be amended to read: “to consider policies on matters of common interest to the organs and agencies concern with national security and to exercise supervisory control over them.”	Motion carried
	Hon. Maj. (Rtd) Marsden Madoka (del 086)	<i>The National Security Intelligence Service.</i> THAT, there is established a service to be known as the National Security Intelligence Service.	Motion carried
	Hon. Wycliffe Osundwa (del 005)	THAT, the NSIS shall be headed by a Director-General appointed by the President with the approval of Parliament.	Motion carried
	Hon. Brig. T.K Githiora (del 629)	THAT, the Service shall be responsible for security intelligence, counter intelligence, to enhance national security, defend the Constitution, the interests of the state and the well being of the people of Kenya.	Motion carried
	17/9/03	Hon. Charles Lwanga (del 380)	THAT, the Service shall in its functions observe respect for human rights and fundamental freedoms, and the rule of law.
Hon. Brig. T.K Githiora (del 629)		THAT, the Service shall be organised and administered in such manner and shall exercise such other functions as Parliament may by law prescribe.	Motion carried
Hon. Petkay Shen Miriti (del 104)		THAT, no intelligence Service, other than any intelligence division of the Defence Force or the Police Service, shall be established except by or under an Act of Parliament.	Motion carried
18/9/03	Hon. Petkay Shen Miriti (del 104)	THAT, the National Security Intelligence Council be entrenched in the constitution.	Motion carried

	Hon. John Watiki (del 017)	<i>Kenya Police Service</i> THAT, clause 264(2)(c) be deleted and replaced with the following NEW CLAUSE: THAT, in furtherance of these objects, the Service shall observe the principles spelt out in Article 271(4).	Motion carried
18/9/03	Hon. Prof. Idah Salim (del 549)	THAT, clause 264(2)(f) be amended to read as follows:- “abide by the principles of transparency and accountability to society and democratic institutions”	Motion carried
	Hon. Prof. Idha Salim (del 549)	Clause 264(2)(g)- amendment proposed, THAT, the sub-clause be amend to read as follows:- “foster and promote relationships with the broader society.”	Motion carried
	Hon. Joel Sang (del 368)	Clause 264(2)(h) – amendment proposed, THAT, clause 264(2)(h) be deleted.	Motion carried
19/9/03	Hon. Petkay Miriti (del 104)	THAT, the following shall be members of the National Security Intelligence Council: (a) The Minister of state for the Time Being responsible for matters of national security Intelligence and Security, who shall be Chairperson. (b) The Minister responsible for Foreign Affairs. (c) The Minister responsible for Finance. (d) The Attorney General. (e) Head of public Service and Secretary to the Cabinet.	Motion carried
19/9/03	Hon. Petkay Miriti (del 104)	THAT, the funtions of the National Security Intelligence Council shall be: - (a) to advice the Service generally on matters pertaining to:- (i) national Security and intelligence policies; (ii) expenditure of the Service; (b) to perform such other functions as are conferred on it by an Act of Parliament.	Motion carried
	Hon. King’ori Mwangi (del 624)	THAT, clause 265(5) be amended to read as follows: “The Police Service shall work closely with communités to ensure security and safety for all citizens.”	Motion carried

19/9/03	Hon. King'ori Mwangi (del 624)	THAT, clause 266(1) be amended by deleting the word 'Commissioner' appearing between the word 'a' and 'of' and replacing therewith the word 'Inspector General'.	Motion carried
	Hon. Ekwee Ethuro (del 024)	THAT, clause 266(2) be amended to read as follows: - "The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years."	Motion carried
22/9/03	Hon. Brig. T.K Githiora (del 629)	THAT, clause 266(3)(a) and (b) be deleted.	Motion carried
	Hon. Charles Lwanga (del 380)	THAT, clause 266(4) be deleted.	Motion carried
	Hon. Kingo'ri Mwangi (del 624)	THAT, clause 266(5) be amended by deleting the entire sub-section and replacing it with: "In the performance of his/her functions, the Inspector General shall not be under the direction or control of any person or authority, except where the constitution so specifies."	Motion carried
22/9/03	Hon. Brig T.K Githiora (del 629)	THAT, the Inspector General may be removed from office by the President for inability to exercise the functions of his/her office whether arising from infirmity of body or mind or any other cause or for misconduct, and shall not be so removed except on the recommendation of a tribunal appointed by the President comprising the following:- 1. Chair of the Police Service Commission. 2. A High Court judge 3. One other person	Motion carried with amendment
	Hon. Kingo'ri Mwangi (del 624)	THAT, there is established a Service to be known as the Police Service Commission.	Motion carried
	Hon. James Mageria (del 528)	THAT, the Chairperson of the Public Service Commission be a member of the Police Service Commission.	Motion defeated
22/9/03	Hon. James Mageria (del 528)	I. THAT, the Police Service Commission shall consist of: - (a) the Inspector General (b) a person who holds qualifications of a judge of the High Court. (c) seven other members, two of whom	Motion carried with amendment

		shall be retired police officers, appointed by the President from among persons who have held high public offices II. That, the President shall appoint the Chairperson from amongst the members.	
23/9/03	Hon. James Mageria (del 528)	THAT, the commissioners appointed to the Police Service commission shall serve for a term of five years and may be renewed for a period not exceeding two terms.	Motion carried with amendment.
	Hon. Charles Lwanga (del 380)	<i>The Police Service Commission shall:</i> (a) Recruit and appoint persons to hold or act in an office, determine promotions in the Kenya Police Service and exercise disciplinary control over such persons.	Motion carried with amendment
	Hon. Daniel Njagi (del 486)	(b) Keep under review all matters relating to the standards or qualifications required of members of the Kenya Police Service.	Motion carried
23/9/03	Hon. Kingi Kahindi (del 064)	(c) Keep under review all matters relating to salaries, allowances and all other terms and conditions of service.	Motion carried
	Hon. Brig. T.K Githiora (del 629)	(d) Exercise such powers including the power to delegate and discharge such other functions as are provided for under this constitution or by an Act of Parliament.	Motion carried with amendment.
	Hon. Charles Lwanga (del 380)	(e) Ensure adequate budgetary provisions for the Police Service.	Motion carried
	Hon. James Mageria (del 528)	(f) Promote and exercise disciplinary control, including hearing and disposal of appeals by such persons.	Motion carried
	Hon. James Mageria (del 528)	THAT, the Inspector General shall be an ex-officio member of the Police Service Commission.	Motion carried
24/9/03	Hon. William Boit (del 017)	THAT, the Administration Police Service, be a service separate from the Kenya Police Service.	Motion carried
25/9/03	Hon. Maj. Marsden Madoka (del 086)	THAT, the primary object of the Administration Police Service is to work with and for the people to:- (a) preserve and maintain public peace (b) prevent commission of offences	Motion carried
	Hon. Brig. T.K Githiora (del 629)	<i>Principles and objects of Administration Police.</i> 1. The Administration Police Service is established to work with and for the	Motion carried with amendment.

		<p>people supporting and assisting within existing law with Administration in Public Service.</p> <p>2. In the discharge of those functions the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms.</p> <p><i>Establishment of the Administration Police Service</i></p> <p>1. Parliament may enact legislation for the organisation, administration and discipline of the Administration Police Service including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of Service.</p> <p>2. The Administration Police Service shall be a national service and the division of its functions shall be organised to take into account the structure of devolution.</p>	
25/9/03	Hon. Maj (Rtd) Marsden Madoka (del 086)	THAT, there shall be a commandant of the Administration Police Service.	Motion carried
15/1/04	Hon. Ekwee Ethuro (del 024)	THAT, sub-clause 273(1)(a) be amended to read as follows: “to ensure the integration of the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate effectively.	Motion carried
	Hon. T.K Githiora (del 629)	THAT, the title ‘Chief of General Staff’ be amended to read ‘Chief of Defence Forces’.	Motion carried
	Hon. Esther Lelei (del 445)	THAT, the Administration Police Commandant who shall be appointed by the President with the approval of Parliament, will serve for one term of five years.	Motion carried
	Hon. Gen (Rtd) J. Nkaissery (del 146)	THAT, there is established the Kenya Defence Forces consisting of: (a) the Kenya Army and its reserve; (b) the Kenya Airforce and its reserve; (c) the Kenya Navy and its reserve.	Motion defeated

	Hon. Gen (Rtd) J. Nkaisery	THAT, Article 275 be amended by deleting the title ‘Commanding Officers’ and substituting therewith the title ‘Command of Defence Forces’.	Motion carried
30/1/04	Hon. Rukia Subow (del 504)	THAT, Clause 271(2) be amended by inserting the following new sub-clause: “The recruitment by the National Security Organs shall reflect the diversity of the Kenyan people in equitable proportions”.	Motion carried
19/2/04	Hon. Brig. T.K Githiora (del 629)	THAT, the Administration Police Service shall compliment the role of the Kenya Police Service.	Motion defeated
	Hon. Mkawerwen Chebii (del 336)	THAT, the Administration Police Service be under the Police Service Commission.	Motion carried
23/2/04	Hon. Mkawerwen Chebii (del 336)	THAT, the Commandant of the Administration Police Service shall be an ex-officio member of the Police Service Commission.	Motion carried
	Hon. Moses Akaranga (del 005)	THAT, the Commandant of the Administration Police Service shall be a member of the National Security Council.	Motion carried
	Hon. James Mageria (del 528)	THAT, the title ‘National Security Intelligence Service’ be substituted with ‘National Intelligence Service’	Motion carried

Appendix C: Minutes

NATIONAL CONSTITUTIONAL CONFERENCE

September 8, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, September 09, 2003 in Tent No. 9, Bomas of Kenya at 8.30 a.m.**

AGENDA

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

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SECOND MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON TUESDAY, SEPTEMBER 09, 2003 AT 10.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. David Koros	076
7. David Mwenje	135
8. Elizabeth Mayieka	503
9. Emmanuel Lomorukai	322
10. Esther Lelei	445
11. Francis Kilemi	592
12. Galgallo Tuye Adano	266
13. James John Mageria	528
14. John Kinuthia Waitiki	317
15. K. N. Mamonda	596
16. Kihara Njeri Jane	058
17. Kingi Kahindi Joseph	064
18. King'ori Mwangi	624
19. Kiplagat arap Koech	373
20. Maj. General (Rtd.) Nkaisserry	146
21. Maj. (Rtd.) Marsden Madoka	086
22. Mkawerweren Chebii	336
23. Odhiambo Omamba	165
24. Ogur Tobias O. Ochola	158
25. Petkay Shen Miriti	104
26. Robert Maithya Maluki	289
27. Simon L. Alew	326
28. T. K. Githiora	629
29. Waithaka Mwangi	201
30. William Boit	017
31. Wycliffe Osundwa	172
32. Dr. Julia Ojiambo	220

IN ATTENDANCE

1. Prof. Idha Salim	-	Commissioner (Rappoteur)
2. Mr. D. M. Ratanya	-	Commissioner (Rappoteur)

- | | | | |
|----|-----------------------|---|-------------------|
| 3. | Ms. Christine Mwambua | - | National Assembly |
| 4. | Ms. Leah Symekher | - | CKRC |
| 5. | Ms. Grace Kamau | - | CKRC |
| 6. | Mary A. Babu | - | CKRC |

MIN. NO. 04/2003 PRAYERS

1. Proceedings were opened with prayer.

MIN. NO. 05/2003

The Convenor called the meeting to order and confirmed the names of the Delegates present as they appeared in the list of membership.

MIN. NO. 06/2003 CONFIRMATION OF MINUTES

Minutes of the previous meeting held on May 27, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. T. K. G. Githiora Delegate No. 629 and seconded by the Hon. E. Mayieka, Delegate No. 503.

MIN. NO. 07/2003 CONSIDERATION OF BUSINESS

The Draft Bill and the Draft Report were adopted by the Committee after they were proposed by Hon. Adano Tuye Galgallo, Delegate No. 266 and seconded by Hon. Charles Lwanga Lwole, Delegate No. 380 respectively.

The Convenor drew the attention of Members to the regulations governing the procedures during Committee proceedings and informed them that the proceedings will be as accommodative as possible of Members views. Members were also informed that decisions will be made by consensus.

During general debate, Members were informed that the Armed Forces Act Cap. 199 was not originally entrenched in the Constitution, but that the Forces operated by an Act of Parliament. The Armed Forces were now going to be entrenched in the Constitution unlike in the past.

Delegate No. 262, Abdikadir Guyo, raised the issue of landmines and raids on residents of the border town of Moyale by neighbouring countries as did the Hon. Adano Galgallo Tuye, Delegate No. 266 and implored the Committee to address these issues.

The Members were further advised that the main reason the Committee was convened was to consider Chapter 15 of the Draft Bill Clause by Clause and see how the Chapter could be improved.

The Members' attention was drawn to the reference materials and proposals made on the Chapter. The Rapporteurs urged Members to acquaint themselves with the materials

focussing on the proposals already made and see what improvements could be made on the Chapter – think of amendments that could be made.

MIN. NO. 08/2003 ADJOURNMENT

The Convenor adjourned the sitting for tea at 10.45 a.m. until 11.15 a.m.

**MIN. NO. 09/2003 CONSIDERATION OF CHAPTER 15, ARTICLES 271
- 274**

Chapter 15 - TITLE

Amendments proposed,

- (a) THAT, the Title of Chapter 15 be amended by deleting all the words appearing before “National Security”.

Debate arising.

Question put and **agreed to.**

Question of the TITLE as amended proposed, put and **agreed to.**
Thus the TITLE of Chapter 15 to appear as “NAITIONAL SECURITY”.

- (b) THAT, the following definition of National Security be included in the Constitution.

“National Security is the preservation of the people of Kenya, their property, freedoms, and other National interests against threats emanating from within and without”.

Debate arising.

Question put and **agreed to.**

Question of the first amendment that the TITLE as amended be part of the Bill proposed, put and **agreed to.**

Question of the second amendment that the definition of National Security as proposed be part of the Bill proposed, put and **agreed to.**

And the time being One O’clock, the Convenor adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

AFTERNOON SITTING

- (1) Committee assembled at 2.30 p.m.

PRESENT: The following Members of the Working Group were present:

(2)	<u>Name</u>	<u>Delegate No.</u>
1.	Abdikadir Guyo	262
2.	Bruno Kaimba	280
3.	Charles Lwanga Lwole	380
4.	D. Muraguri Nderi	305
5.	Daniel Njagi	486
6.	David Koros	076
7.	David Mwenje	135
8.	Elizabeth Mayieka	503
9.	Emmanuel Lomorukai	322
10.	Esther Lelei	445
11.	Francis Kilemi	592
12.	Galgallo Tuye Adano	266
13.	James John Mageria	528
14.	John Kinuthia Waitiki	317
15.	John P. Nyakundi	611
16.	K. N. Mamonda	596
17.	Kihara Njeri Jane	058
18.	Kingi Kahindi Joseph	064
19.	King'ori Mwangi	624
20.	Kiplagat arap Koech	373
21.	Maj. General (Rtd.) Nkaisserry	146
22.	Maj. (Rtd.) Marsden Madoka	086
23.	Mkawerweren Chebii	336
24.	Odhiambo Omamba	165
25.	Ogur Tobias O. Ochola	158
26.	Petkay Shen Miriti	104
27.	Robert Maithya Maluki	289
28.	Simon L. Alew	326
29.	Brig. T. K. Githiora	629
30.	Waithaka Mwangi	201
31.	William Boit	017
32.	Wycliffe Osundwa	172
33.	Julia Ojiambo	220
(3)	Deliberations resumed.	

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rappoteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rappoteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC

MIN. NO. 10/2003 CONSIDERATION OF CHAPTER 15 – DEFENCE AND NATIONAL SECURITY

NEW CLAUSE

Amendment proposed,

THAT, a new Clause 271(I), on the definition of internal security be introduced and that Clause 271 be renumbered 271(II).

Question put and **agreed to.**

Clause 271(II)

Definition of Defence Forces – amendment proposed, THAT, defence forces be amended to read “security organs”.

Debate arising.

Question put and **agreed to.**

Thus the National Security organs will comprise:-

Defence Forces.

The Kenya Police.

National Security Intelligence Service.

The Administration Police Service.

Question put and **agreed to.**

Clause 272(I)

Amendment proposed,

THAT, the subtitle be amended by deleting all the words appearing between “of” and “National”.

Question of the amendment proposed, put and **agreed to.**

Question of the subtitle as amended proposed, put and **agreed to.**

Clause 271(I)

Amendment proposed,

THAT, Clause 271(I) be amended by inserting the following words between the words “Kenya” and “the” on the third line, “its sovereignty”.

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

Clause 271(I) as amended – **agreed to.**

Clause 271(2)(a) – **agreed to.**

Clause 271(2)(b) – **agreed to.**

Clause 271(2)(c) – amendment proposed.
THAT, Subclause (c) be deleted.
Debate arising.

MIN. NO. 11/2003 ADJOURNMENT

And the time being Five O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on Wednesday, September 10, 2003 at 9.00 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 9, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Wednesday, 10th September, 2003 in Tent No. 9, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Matters Arising.
2. Consideration of Articles 272 - 274.
3. Any Other Business.
4. Date of next Meeting.
5. Prayers.
6. Confirmation of Minutes.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE THIRD MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON WEDNESDAY, SEPTEMBER 10, 2003 AT 2.30 P.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. Elizabeth Mayieka	503
7. Emmanuel Lomorukai	322
8. Esther Lelei	445
9. Francis Kilemi	592
10. Galgallo Tuye Adano	266
11. John Kinuthia Waitiki	317
12. K. N. Manonda	596
13. Kiplagat arap Koech	373
14. Maj. General (Rtd.) Nkaisserry	146
15. Maj. (Rtd.) Marsden Madoka	086
16. Odhiambo Omamba	165
17. Ogur Tobias O. Ochola	158
18. Petkay Shen Miriti	104
19. Robert Maithya Maluki	289
20. Simon L. Alew	326
21. Brig. T. K. Githiora	629
22. William Boit	017
23. Dr. Julia Ojiambo	220
24. Rukia Subow	504
25. Moses Akaranga	005

ABSENT:

1. David Koros	076
2. David Mwenje	135
3. John James Mageria	528
4. Kihara Njeri Jane	058
5. Kingi Kahindi Joseph	064
6. King'ori Mwangi	624
7. Mkawerweren Chebii	336
8. Morris Dzoro	024
9. Ogembo Masese	591
10. Raphael G. Mwai	485

11.	Titus Ngoyoni	144
12.	Tolla Koffa	071
13.	Waithaka Mwangi	201
14.	Wycliffe Osundwa	172

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 12/2003 PRAYERS

The proceedings were opened with prayer.

MIN. NO. 13/2003 CONFIRMATION OF MINUTES

Minutes of the previous meeting held on September 09, 2003, were confirmed by Members present and signed by the Convenor after they were unanimously agreed on by all the Members.

MIN. NO. 14/2003 MATTERS ARISING

- (i) Members agreed that those absent with apology be recorded as such, and that apologies will not constitute attendance to meetings.

MIN. NO. 15/2003 CONSIDERATION OF CHAPTER 15, ARTICLES 271 - 274

Clause 271(2)(c) – Amendment proposed,

THAT, Clause 271(2)(c) be amended to read as follows:-

“National Security Organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties”.

Question put and **agreed to.**

Clause 271(3) – **agreed to.**

Clause 271(4)(a)(b) and (c) – **agreed to.**

MIN. NO. 16/2003 ADJOURNMENT

And the time being Thirty Minutes past Four O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on Thursday, September 11, 2003 at 8.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 10, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Thursday, September 11, 2003 in Tent No. 9, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. General Debate.
3. Confirmation of Minutes.
4. Matters Arising.
5. Consideration of Articles 272 - 275.
6. Any other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FOURTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON THURSDAY, SEPTEMBER 11, 2003 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. David Koros	076
7. David Mwenje	135
8. Elizabeth Mayieka	503
9. Emmanuel Lomorukai	322
10. Esther Lelei	445
11. Francis Kilemi	592
12. Galgallo Tuye Adano	266
13. James John Mageria	528
14. John Kinuthia Waitiki	317
15. H. K. N. Manonda	596
16. Kiplagat arap Koech	373
17. Mkawerweren Chebii	336
18. Odhiambo Omamba	165
19. Ogur Tobias O. Ochola	158
20. Petkay Shen Miriti	104
21. Robert Maithya Maluki	289
22. Simon L. Alew	326
23. Brig. T. K. Githiora	629
24. William Boit	017
25. Wycliffe Osundwa	172
26. Dr. Julia Ojiambo	220
27. Samuel Moroto	110
28. Rukia Subow	504
29. Ekwee Ethuro	024
30. Moses Akaranga	005
31. Maj. (Rtd.) Marsden Madoka	086
32. G. G. Kariuki	042
33. Joel Sang	368
34. Maj. General (Rtd.) Nkaisserry	146

ABSENT:

1.	Kihara Njeri Jane	058
2.	Kingi Kahindi Joseph	064
3.	King'ori Mwangi	624
4.	Waithaka Mwangi	201
5.	Morris Dzoro	024
6.	Ogembo Masese	591
7.	Raphael G. Mwai	485
8.	Too Nondin Noah arap	197
9.	Tola Kofa	071

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 17/2003 PRAYERS

The proceedings were opened with prayer.

MIN. NO. 18/2003 ELECTION OF ACTING CONVENOR

In the absence of the Hon. Maj. (Rtd.) Marsden Madoka, Hon. (Dr.) Julia Ojiambo was elected to act as Convenor.

MIN. NO. 19/2003 CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Wednesday, September 10, 2003 were confirmed by Members present and signed by the Ag. Convenor after they were proposed by Delegate No. 629, Brig. T. K. Githiora and seconded by Delegate No. 165, Hon. Odhiambo Omamba respectively.

MIN. NO. 20/2003 MATTERS ARISING

It was noted that the Hon. Delegate No. 336 – Mkawerweren Chebii was recorded as absent during the meeting held on Wednesday, September 10, 2003. The anomaly was corrected. Delegates were urged to ensure they have signed the daily attendance list to avoid inconveniences.

MIN. NO. 21/2003 CONSIDERATION OF CHAPTER 15, ARTICLES 272

- 274

NEW CLAUSE

Motion proposed,

THAT, “the National Security Organs shall be subordinate to Civil Authority”.
(Brig. T. K. Githiora – Delegate No. 629, 11.09.2003).

Debate arising.

Question put and **agreed to**.

Clause 272(1) – Establishment of the National Security Council.

(i) Amendment proposed,

THAT, Clause 272(1) subsection (l) be deleted. (Hon. Wycliffe Osundwa, Delegate No. 172, 11.09.2003).

Debate arising.

Question put and **agreed to**.

(ii) Amendment proposed,

THAT, “the Minister responsible for Foreign Affairs be a Member of the National Council”. (Hon. J. K. Waitiki, Delegate No. 317, 11.09.2003).

Debate arising.

Question put and **negatived**.

Amendment proposed,

THAT, Clause 272(1) Sub-clause (j) be deleted. (Hon. Charles Lwanga, Delegate No. 380).

Question put and **agreed to**.

Amendment proposed,

THAT, Clause 272(1), Sub-clause (m) be deleted. (Hon. John Waitiki, Delegate 317, 11.09.2003).

Debate arising.

Question put and **agreed to**.

MIN. NO. 22/2003 ADJOURNMENT

And the time being Fourty Minutes past Eleven O’clock, the Ag. Convenor interrupted the proceedings and adjourned the sitting for tea break for 15 minutes.

MIN. NO. 23/2003 RESUMPTION OF PROCEEDINGS

The proceedings interrupted at 11.40 a.m. resumed. It was then decided that a minority Report be made on the vote taken before adjournment.

Amendment proposed,

THAT, Clause 271(1)(f) (g) and (h) be deleted. (Brig. (Rtd.) Waitiki, Delegate No. 317, 11.09.2003).

Debate arising.

Question put and **agreed to.**

Amendment proposed,

THAT, “the Administration Police Commandant be a member of the National Security Council”. (Hon. Charles Lwanga, Delegate No. 380, 11.09.2003).

Debate arising.

Question put and **negatived.**

MIN. NO. 24/2003 ADJOURNMENT

And the time being One O'clock, the Ag. Convenor interrupted the proceedings and adjourned the sitting without Question put pursuant to the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Thursday, September 11, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. The Committee assembled at 2.30 p.m.

2. **PRESENT**

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. David Koros	076
7. David Mwenje	135
8. Elizabeth Mayieka	503

9.	Emmanuel Lomorukai	322
10.	Esther Lelei	445
11.	Francis Kilemi	592
12.	Galgallo Tuye Adano	266
13.	James John Mageria	528
14.	John Kinuthia Waitiki	317
15.	H. K. N. Mamonda	596
16.	Kiplagat arap Koech	373
17.	Mkawerweren Chebii	336
18.	Odhiambo Omamba	165
19.	Ogur Tobias O. Ochola	158
20.	Petkay Shen Miriti	104
21.	Robert Maithya Maluki	289
22.	Simon L. Alew	326
23.	T. K. Githiora	629
24.	William Boit	017
25.	Wycliffe Osundwa	172
26.	Dr. Julia Ojiambo	220
27.	Samuel Moroto	110
28.	Rukia Subow	504
29.	Ekwee Ethuro	024
30.	Moses Akaranga	005
31.	Maj. (Rtd.) Marsden Madoka	086
32.	G. G. Kariuki	042
33.	Joel Sang	368

ABSENT

1.	Kihara Njeri Jane	058
2.	Kingi Kahindi Joseph	064
3.	King'ori Mwangi	624
4.	Maj. General (Rtd.) Nkaisserry	146
5.	Waithaka Mwangi	201
6.	Morris Dzoro	024
7.	Ogembo Masese	591
8.	Raphael G. Mwai	485
9.	Too Nondin Noah arap	197
10.	Tola Kofa	071

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC

6. Mary A. Babu - CKRC

3. Deliberations resumed.

MIN. NO. 25/2003 CONSIDERATION OF CHAPTER 15, ARTICLE 272
- 274

Clause 272(1) – (i) Amendment proposed,
THAT, “the Minister in charge of Internal Security be a member of the National Security Council”. (Brig. T. K. Githiora, Delegate No. 629, 11.09.2003).

Debate arising.

Question put and **agreed to.**

(ii) Amendment proposed,

THAT, “the Head of Civil Service and Secretary to the Cabinet be a Member of the National Security Council”. (Hon. Ekwee Ethuro, Delegate No. 024, 11.09.2003).

Debate arising.

Question put and **negatived.**

Clause 272(2) – **agreed to.**

Clause 272(3) – **agreed to.**

Clause 272(4) – Amendment proposed,

THAT, “the National Security Council shall elect the Director of National Intelligence Service its Secretary”. (Brig. (Rtd.). John K. Waitiki, Delegate No. 317, 11.09.2003).

Debate arising.

Question put and **negatived.**

Amendment proposed,

THAT, Sub-clause (4) be amended by deleting all the words appearing between the words “**shall**” and “**appoint**” and all the words appearing after the word “**secretary**”.

Question put and **agreed to.**

Sub-clause (4) as amended – **agreed to.**

Clause 273 – Functions of the National Security Council

Clause 273(1)(a) - **agreed to.**

Question proposed,

THAT, Sub-clauses (b) and (c) be redrafted and brought back to the Committee for deliberation.

Question put and **agreed to.**

Clause 273(2) – Amendment proposed,

THAT, Sub-clause 273(3) be deleted and replaced with the following Sub-clause; “**the National Security Council will keep Parliament informed on the state of the security of the Republic through the relevant Departmental Committee**”. (Hon. Moses Akaranga, Delegate No. 005, 11.09.2003).

Debate arising.

Question put and **agreed to.**

Sub-clause 273(2) as amended – **agreed to.**

Clause 273(3) – **agreed to.**

Clause 273(4) – motion proposed,

THAT, Clause 273(4) be considered under the National Security Organs (Clause 271(ii)).

Debate arising.

Question put and **agreed to.**

MIN. NO. 26/2003 ADJOURNMENT

And the time being Thirty Minutes past Four O'clock, the Ag. Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on Friday, September 12, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 11, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, September 12, 2003 in Tent No. 9, Bomas of Kenya at 8.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the meeting held on Thursday, September 11, 2003.
4. Matters Arising.
5. Consideration of Articles 274 -275.
6. Any other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FIFTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, SEPTEMBER 12, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. Elizabeth Mayieka	503
7. Emmanuel Lomorukai	322
8. Francis Kilemi	592
9. Galgallo Tuye Adano	266
10. James John Mageria	528
11. John Kinuthia Waitiki	317
12. H. K. N. Manonda	596
13. Kiplagat arap Koech	373
14. Mkawerweren Chebii	336
15. Odhiambo Omamba	165
16. Ogur Tobias O. Ochola	158
17. Petkay Shen Miriti	104
18. Robert Maithya Maluki	289
19. Simon L. Alew	326
20. Brig. T. K. Githiora	629
21. William Boit	017
22. Wycliffe Osundwa	172
23. Dr. Julia Ojiambo	220
24. Samuel Moroto	110
25. Rukia Subow	504
26. Maj. (Rtd.) Marsden Madoka	086
27. Joel Sang	368
28. Kihara Njeri Jane	058

ABSENT:

1. Maj. General (Rtd.) J. Nkaisserry	146
2. Kingi Kahindi Joseph	064
3. King'ori Mwangi	624
4. Waithaka Mwangi	201
5. Morris Dzoro	024

6.	Ogembo Masese	591
7.	Raphael G. Mwai	485
8.	Too Nondin Noah arap	197
9.	Tola Kofa	071
10.	Ekwee Ethuro	024
11.	Moses Akaranga	005
12.	David Koros	076
13.	David Mwenje	135
14.	Esther Lelei	445
15.	G. G. Kariuki	042

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 27/2003 CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Thursday, September 11, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Brig. T. K. Githiora, Delegate No. 629 and seconded by Hon. Charles Lwanga Lwole, Delegate No. 380 respectively.

MIN. NO. 28/2003 MATTERS ARISING

- (i) From Min. No. 25/2003, Sub-clause 273(3) was corrected to read as Clause 273(2).
- (ii) THAT, Clause 273(4) be considered under the National Security Organs (Clause 271(ii)) was amended to read as follows:-

THAT, Clause 273(4) be placed under the National Security Organs (Clause 271(ii)).

MIN. NO. 29/2003 CONSIDERATION OF CHAPTER 15, ARTICLES 274 **- 275**

Motion proposed,

THAT, “the National Security Council shall obtain Parliamentary approval for the deployment of security forces outside Kenya for UN peace support

operations as well as the deployment of foreign forces in Kenya for agreed operational purposes”, (Hon. M. H. Madoka, Delegate No. 086, 12.09.2003).
Question put and **agreed to.**

Amendment proposed,

THAT, “the Minister responsible for Foreign Affairs be a Member of the National Defence Council”, (Hon. M. H. Madoka, Delegate No. 086, 12.09.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 30/2003: ADJOURNMENT

And the time being Thirty minutes past Twelve O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Friday, September 12, 2003 at 2.00 p.m.

AFTERNOON SITTING

1. The Committee assembled at 2.00 p.m.
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. Elizabeth Mayieka	503
7. Emmanuel Lomorukai	322
8. Francis Kilemi	592
9. Galgallo Tuye Adano	266
10. James John Mageria	528
11. John Kinuthia Waitiki	317
12. H. K. N. Manonda	596
13. Kiplagat arap Koech	373
14. Mkawerweren Chebii	336
15. Odhiambo Omamba	165
16. Ogur Tobias O. Ochola	158

17.	Petkay Shen Miriti	104
18.	Robert Maithya Maluki	289
19.	Simon L. Alew	326
20.	Brig. T. K. Githiora	629
21.	William Boit	017
22.	Wycliffe Osundwa	172
23.	Dr. Julia Ojiambo	220
24.	Samuel Moroto	110
25.	Rukia Subow	504
26.	Maj. (Rtd.) Marsden Madoka	086
27.	G. G. Kariuki	042
28.	Joel Sang	368
29.	Kihara Njeri Jane	058

ABSENT:

1.	Maj. General (Rtd.) J. Nkaisserry	146
2.	Kingi Kahindi Joseph	064
3.	King'ori Mwangi	624
4.	Waithaka Mwangi	201
5.	Morris Dzoro	024
6.	Ogembo Masese	591
7.	Raphael G. Mwai	485
8.	Too Nondin Noah arap	197
9.	Tola Kofa	071
10.	Ekwee Ethuro	024
11.	Moses Akaranga	005
12.	David Koros	076
13.	David Mwenje	135
14.	Esther Lelei	445

IN ATTENDANCE

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 31/2003: CONSIDERATION OF CHAPTER 15, ARTICLES 274

- 275

Clause 274(1) – Amendment proposed,

THAT, Clause 274(1) be amended by deleting all the words appearing after the word “by” and substituting them with the words “**this Constitution**”, (Brig. T. K. Githiora, Delegate No. 629, 12.09.2003).

Debate arising.

Question put and **agreed to**.

Clause 274(1) as amended – **agreed to**.

Motion proposed,

THAT, the following new Clause 274(2) be included in the Draft Bill: “**There is hereby established the Kenya Defence Forces, consisting of the following:-**

The Kenya Army

The Kenya Airforce

The Kenya Navy”

(Brig. (Rtd.) John Waitiki, Delegate No. 317, 12.09.2003.)

Debate arising.

Question put and **agreed to**.

(i) Clause 274(2) – amendment proposed,

THAT, Clause 274(2) be amended by deleting the word “forces” appearing between the words “**Defence**” and “**Council**”.

Question put and **agreed to**.

(ii) Amendment proposed,

THAT, Clause 274(2)(d) be further amended by inserting the words “**who shall be Chairman**”, immediately after the word “**Defence**”.

Question put and **agreed to**.

(iii) Amendment proposed,

THAT, Clause 274(2)(a)(b) and (c) be deleted.

Debate arising.

Question put and **agreed to**.

(iv) Amendment proposed,

THAT, the words “**the Assistant Minister for Defence, who shall be Vice-Chairperson**”, be inserted immediately after Sub-clause (d).

Question put and **agreed to**.

(v) Amendment proposed,

THAT, “**the Permanent Secretary for Defence be a Member of the Defence Council**”, (Brig. (Rtd.) J. K. Waitiki, Delegate 317, 12.09.2003).
Question put and **agreed to**.

(vi) Amendment proposed,

THAT, “**the Defence Council shall appoint its Secretary**”, (Brig. T. K. Githiora, Delegate No. 629, 12.09.2003).

Question put and **agreed to**.

NEW CLAUSE

Amendment proposed,

THAT, “**the Defence Council shall be responsible for the overall policy, control and supervision of the Defence Forces and such other functions as may be given by Parliament**”, (Brig. T. K. Githiora, Delegate No. 629, 12.09.2003).

Debate arising.

Question put and **agreed to**.

Clause 274 as amended – **agreed to**.

Clause 275 – **Commanding Officers**.

Clause 275 – amendment proposed,

THAT, Clause 275(1)(2) and (3) be amended as follows:-

“**That the President, who is the Commander-in-Chief of the Armed Forces shall appoint the Chief of Defence Forces, the Army Commander, the Airforce Commander and the Navy Commander in consultation with the Defence Council**”, (Hon. Maj. (Rtd.) M. H. Madoka, Delegate No. 068, 12.09.2003).

Question put and **agreed to**.

NEW CLAUSE

Amendment proposed,

THAT, “**the Chief of Defence Forces and Service Commanders shall exercise command over the defence forces and perform such other functions as may be given by Parliament**”, (Brig. T. K. Githiora, Delegate No. 629, 12.09.2003).

Debate arising.

Question put and **agreed to**.

Clause 275(2) – (3) as amended – **agreed to.**

Amendment proposed,

THAT, Clause 275(4) – (7) be deleted, (Brig. (Rtd.) John Waitiki, Delegate 317, 1209.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 32/2003: ADJOURNMENT

And the time being Fifteen Minutes past Four O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on Monday, September 15, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 12, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Monday, September 15, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies
3. Confirmation of Minutes of the meeting held o Friday, September 12, 2003.
4. Matters Arising.
5. Review of Chapter 15 – Articles 271- 275.
6. Consideration of Chapter 14, Part II- The Kenya Police Service.
7. Any Other Business.
8. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SIXTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON MONDAY, SEPTEMBER 15, 2003 AT 12.00 NOON

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. Elizabeth Mayieka	503
7. Emmanuel Lomorukai	322
8. Esther Lelei	445
9. Francis Kilemi	592
10. Galgallo Tuye Adano	266
11. James John Mageria	528
12. John Kinuthia Waitiki	317
13. H. K. N. Manonda	596
14. Kihara Njeri Jane	058
15. Kiplagat arap Koech	373
16. Mkawerweren Chebii	336
17. Ogur Tobias O. Ochola	158
18. Petkay Shen Miriti	104
19. Robert Maithya Maluki	289
20. Simon L. Alew	326
21. Brig. T. K. Githiora	629
22. Waithaka Mwangi	201
23. William Boit	017
24. Dr. Julia Ojiambo	220
25. Titus Ngoyoni	144
26. Rukia Subow	504
27. Maj. (Rtd.) Marsden Madoka	086
28. Joel Sang	368
29. Ekwee Ethuro	024
30. Moses Akaranga	005

ABSENT WITH APOLOGY:

Maj. General (Rtd.) J. Nkaisserry 146

ABSENT:

1.	Kingi Kahindi Joseph	064
2.	King'ori Mwangi	624
3.	Morris Dzoro	024
4.	Ogembo Masese	591
5.	Raphael G. Mwai	485
6.	Too Nondin Noah arap	197
7.	Tola Kofa	071
8.	David Koros	076
9.	David Mwenje	135
10.	G. G. Kariuki	042
11.	Odhiambo Omamba	165
12.	Wycliffe Osundwa	172
13.	Samuel Moroto	110

OBSERVERS:

1.	Chris O. Oyucho	140
2.	Linda M. Murila	002
3.	G. N. Macgoye	187
4.	Lt. Gen. A. K. Arap Cheruiyot	205
5.	Dr. Kiprono Mitei	100
6.	Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Prof. Idha Salim	-	Commissioner (Rapporteur)
2.	Mr. D. M. Ratanya	-	Commissioner (Rapporteur)
3.	Ms. Christine Mwambua	-	National Assembly
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 33/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Friday, September 12, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No. 317, Brig. J. K. Waitiki and seconded by Delegate No. 380, Charles Lwanga Lwole respectively.

MIN. NO. 34/2003: MATTERS ARISING

- (i) It was noted that the name of the Hon. Titus Ngoyoni, Delegate No. 144 who was present on Friday, September 12, 2003 was omitted from the list of attendance. The anomaly was corrected.

(ii) From Min. No. 29/2003 – “National Defence Council” was amended to read “National Security Council”.

(iii) From Min. No. 29/2003 - Amendment proposed,

THAT, “the National Security Council shall obtain Parliamentary approval for the deployment of security forces outside Kenya for UN and other peace support operations as well as deployment of foreign forces in Kenya for agreed operational purposes”, (Hon. Dr. Julia Ojiambo, Delegate No. 220, 15.09.2003).

Debate arising.

Question put and **agreed to**.

(iv) From Min. No. 31/2003 – Amendment proposed,

THAT, Clause 274(1) be amended by deleting the words “**this Constitution**” and replacing therein with all the words appearing after the word “**by**”, (Hon. Petkay Shen Miriti, Delegate No. 104, 15.09.2003).

Debate arising.

Question put and **negatived**.

MIN. NO. 35/2003: ADJOURNMENT

And the time being Fifteen minutes past One O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Monday, September 15, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. The Committee assembled at 2.30 p.m.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Abdikadir Guyo	262
2. Bruno Kaimba	280
3. Charles Lwanga Lwole	380
4. D. Muraguri Nderi	305
5. Daniel Njagi	486
6. Elizabeth Mayieka	503

7.	Emmanuel Lomorukai	322
8.	Esther Lelei	445
9.	Francis Kilemi	592
10.	Galgallo Tuye Adano	266
11.	James John Mageria	528
12.	John Kinuthia Waitiki	317
13.	H. K. N. Manonda	596
14.	Kihara Njeri Jane	058
15.	Kiplagat arap Koech	373
16.	Mkawerweren Chebii	336
17.	Ogur Tobias O. Ochola	158
18.	Petkay Shen Miriti	104
19.	Robert Maithya Maluki	289
20.	Simon L. Alew	326
21.	Brig. T. K. Githiora	629
22.	Waithaka Mwangi	201
23.	William Boit	017
24.	Dr. Julia Ojiambo	220
25.	Titus Ngoyoni	144
26.	Rukia Subow	504
27.	Maj. (Rtd.) Marsden Madoka	086
28.	Joel Sang	368
29.	Ekwee Ethuro	024
30.	Moses Akaranga	005
31.	Maj. General (Rtd.) J. Nkaisserry	146
32.	Wycliffe Osundwa	172
33.	Prof. Idha Salim	-Commissioner (Rapporteur)
34.	Mr. D. M. Ratanya	-Commissioner (Rapporteur)

ABSENT:

1.	Kingi Kahindi Joseph	064
2.	King'ori Mwangi	624
3.	Morris Dzoro	024
4.	Ogembo Masese	591
5.	Raphael G. Mwai	485
6.	Too Nondin Noah arap	197
7.	Tola Kofa	071
8.	David Koros	076
9.	David Mwenje	135
10.	G. G. Kariuki	042
11.	Odhiambo Omamba	165
12.	Samuel Moroto	110

OBSERVERS:

1.	Chris O. Oyucho	140
2.	Linda M. Murila	002
3.	G. N. Macgoye	187
4.	Lt. Gen. A. K. Arap Cheruiyot	205
5.	Dr. Kiprono Mitei	100
6.	Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Leah Symekher	-	CKRC
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

2. Deliberations resumed.

**MIN. NO. 36/2003: CONSIDERATION OF CHAPTER 14, PART II –
ARTICLES 264 – 266**
SUB-TITLE – KENYA POLICE SERVICE

The Convenor clarified to Delegates the fact that Part II of Chapter 14 – **The Kenya Police Service** has been lifted and included in Chapter 15.

Motion made and Question proposed;

THAT, “the Committee do adjourn its proceedings until tomorrow, Tuesday, September 16, 2003 in honour of the late Delegate No. 412 – Hon. (Prof.) Crispin Odhiambo Mbai, who was the Convenor for the Technical Committee on Devolution”, (Hon. Maj. General J. Nkaissery, Delegate No. 146, 15.09.2003).

Question put and **agreed to.**

MIN. NO. 37/2003: ADJOURNMENT

And the time being Fifteen minutes past Three O’clock, the Convenor adjourned the sitting after Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Tuesday, September 16, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 15, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, September 16, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Monday, September 15, 2003.
4. Matters Arising.
5. Consideration of Chapter 14, Part II- The Kenya Police Service.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SEVENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON WEDNESDAY, SEPTEMBER 17, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Esther Lelei	445	
12. Francis Kilemi	592	
13. Galgallo Tuye Adano	266	
14. James John Mageria	528	
15. John Kinuthia Waitiki	317	
16. H. K. N. Manonda	596	
17. Kihara Njeri Jane	058	
18. Kingi Kahindi Joseph	064	
19. Kiplagat arap Koech	373	
20. Mkawerweren Chebii	336	
21. Odhiambo Omamba	165	
22. Ogur Tobias O. Ochola	158	
23. Petkay Shen Miriti	104	
24. Robert Maithya Maluki	289	
25. Simon L. Alew	326	
26. Brig. T. K. Githiora	629	
27. William Boit	017	
28. Wycliffe Osundwa	172	
29. Dr. Julia Ojiambo	220	
30. Morris Dzoro	024	
31. Titus Ngoyoni	144	
32. Samuel Moroto	110	
33. Rukia Subow	504	
34. Joel Sang	368	
35. Moses Akaranga	005	
36. David Koros	076	

ABSENT WITH APOLOGY:

1. Maj. General (Rtd.) J. Nkaisserry 146
2. Raphael G. Mwai 485

ABSENT:

1. King'ori Mwangi 624
2. Waithaka Mwangi 201
3. Ekwee Ethuro 024
4. Ogembo Masese 591
5. Too Nondin Noah arap 197
6. Tola Kofa 071
7. David Mwenje 135
8. G. G. Kariuki 042

OBSERVERS:

1. Dr. Kiprono Mitei 100
2. Chris O. Oyucho 140
3. G. N. Macgoye 187
4. Lt. Gen. (Rtd.) A. K. Arap Cheruiyot 205
5. Lt. Col. (Rtd.) Ben Muema 023

IN ATTENDANCE:

1. Ms. Christine Mwambua - National Assembly
2. Linda M. Murila - CKRC (Draft person)
3. Ms. Leah Symekher - CKRC
4. Ms. Grace Kamau - CKRC
5. Mary A. Babu - CKRC

MIN. NO. 38/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Tuesday, September 16, 2003 were confirmed by Members present and signed by the Convenor.

MIN. NO. 39/2003: MATTERS ARISING

- (i) It was noted that Commissioner D. M. Ratanya and Prof. Idha Salim should be recorded among those present and not in attendance.
- (ii) It was agreed that Chapter 14 Part II – **Kenya Police Force** be left to the Committee on Public Service which has already begun deliberations on the Chapter, and that their views will be shared by this Committee.

- (iii) It was agreed that those Members of the Technical Committee that have consistently been absent from Committee meetings be reminded in writing to attend.
- (iv) It was noted that the Hon. David Koros, who had been listed as absent was actually present on Monday, September 15, 2003. The anomaly was corrected.

MIN. NO. 40/2003: CONSIDERATION OF CHAPTER 15 – ARTICLE 273
– FUNCTIONS OF THE NATIONAL SECURITY
COUNCIL

Amendment proposed,
THAT, Clause 273(b) be amended to read as follows:-

“to assess and appraise the objectives and commitments of, and risks to, the Republic in relation to actual and potential national and security capabilities”, (Hon. William Boit, Delegate 017, 17.09.2003).

Question put and **agreed to.**

MIN. NO. 41/2003: ADJOURNMENT

And the time being Forty-Five minutes past Ten O’clock, the Convenor interrupted the proceedings and adjourned the sitting for tea break without Question put in accordance with the National Constitutional Conference Regulations.

RESUMPTION OF PROCEEDINGS

Clause 273(1)(c) - Amendment proposed,

THAT, Clause 273(1)(c) be amended by deleting the words **“of environment”** appearing between **“and”** and **“concerned”** in the second and third lines as well as the word **“department”** so that the sub-clause reads as follows:-

“to consider policies on matters of common interests to the organs and agencies concerned with national security and to exercise supervisory control over them”, (Hon. Petkay Shen Miriti, Delegate No. 104, 17.09.2003).

Question put and **agreed to.**

MIN. NO. 42/2003: ADJOURNMENT

And the time being Twelve Noon, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Wednesday, September 17, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. Committee assembled at 2.30 p.m.
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. Maj. (Rtd.) Marsden Madoka	086 (Convenor)
2. Prof. Idha Salim	549 Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573 Commissioner (Rapporteur)
4. Abdikadir Guyo	262
5. Bruno Kaimba	280
6. Charles Lwanga Lwole	380
7. D. Muraguri Nderi	305
8. Daniel Njagi	486
9. Elizabeth Mayieka	503
10. Emmanuel Lomorukai	322
11. Esther Lelei	445
12. Francis Kilemi	592
13. Galgallo Tuye Adano	266
14. James John Mageria	528
15. John Kinuthia Waitiki	317
16. H. K. N. Manonda	596
17. Kihara Njeri Jane	058
18. Kingi Kahindi Joseph	064
19. Kiplagat arap Koech	373
20. Maj. General (Rtd.) J. Nkaisserry	146
21. Mkawerweren Chebii	336
22. Ogur Tobias O. Ochola	158
23. Petkay Shen Miriti	104
24. Robert Maithya Maluki	289
25. Simon L. Alew	326
26. Brig. T. K. Githiora	629
27. William Boit	017
28. Wycliffe Osundwa	172
29. Dr. Julia Ojiambo	220
30. Morris Dzoro	024
31. Titus Ngoyoni	144
32. Samuel Moroto	110
33. Rukia Subow	504
34. Joel Sang	368

- | | | |
|-----|----------------|-----|
| 35. | Moses Akaranga | 005 |
| 36. | David Koros | 076 |

ABSENT:

- | | | |
|-----|----------------------|-----|
| 1. | King'ori Mwangi | 624 |
| 2. | Waithaka Mwangi | 201 |
| 3. | Ekwee Ethuro | 024 |
| 4. | Ogembo Masese | 591 |
| 5. | Raphael G. Mwai | 485 |
| 6. | Too Nondin Noah arap | 197 |
| 7. | Tola Kofa | 071 |
| 8. | David Mwenje | 135 |
| 9. | G. G. Kariuki | 042 |
| 10. | Odhiambo Omamba | 165 |

OBSERVERS:

- | | | |
|----|--------------------------------------|-----|
| 1. | Dr. Kiprono Mitei | 100 |
| 2. | Chris O. Oyucho | 140 |
| 3. | G. N. Macgoye | 187 |
| 4. | Lt. Gen. (Rtd.) A. K. Arap Cheruiyot | 205 |
| 5. | Lt. Col. (Rtd.) Ben Muema | 023 |

IN ATTENDANCE:

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Ms. Christine Mwambua | - | National Assembly |
| 2. | Linda M. Murila | - | CKRC (Draft person) |
| 3. | Ms. Leah Symekher | - | CKRC |
| 4. | Ms. Grace Kamau | - | CKRC |
| 5. | Mary A. Babu | - | CKRC |

3. Deliberations resumed.

MIN. NO. 43/2003: DELIBERATIONS ON THE NATIONAL SECURITY INTELLIGENCE SERVICE

ESTABLISHMENT OF THE NATIONAL SECURITY INTELLIGENCE SERVICE (ANNOTATED VERSION OF THE DRAFT BILL)

The Convenor referred Members to two documents in connection with this Sub-heading:-

The Annotated version of the Draft Bill and,
The Document presented by the National Security Intelligence Service.

Thus the Convenor read out the provisions establishing the Service and the appointment of the Director-General of the National Security Intelligence Service, which were agreed to as follows:-

Clause 274(1) –

Motion made and Question proposed,

THAT, “there is established a service to be known as the National Security Intelligence Service”.

Question put and **agreed to**.

2. APPOINTMENT OF THE DIRECTOR-GENERAL

Motion made and Question proposed,

THAT, “the service shall be headed by a Director-General appointed by the President with the approval of Parliament”.

Debate arising.

Question put and **agreed to**.

Clause 274(3)(a) and (b) – Amendment proposed,

THAT, Clause 274(3) (a) and (b) be deleted.

Debate arising.

Question put and **agreed to**.

3. FUNCTIONS OF THE NATIONAL INTELLIGENCE SERVICE

Clause 274(4)(a) and (b) – to be replaced by the following NEW CLAUSE:

1. 275A(2)

THAT, “the Service shall be responsible for security intelligence, counter intelligence to enhance national security, defend the Constitution, the interests of the state and the well being of the people of Kenya”, (Brig. T. K. Githiora, Delegate No. 629, 17.09.2003).

Question put and **agreed to**.

NEW CLAUSE

2. 275B(4)

THAT, “the Service shall in its functions observe respect for human rights and fundamental freedoms, and the rule of law”, (Charles Lwanga Lwole, Delegate No. 380, 17.09.2003).

Question put and **agreed to**.

3. **275B(2) NEW CLAUSE**

THAT, “The Service shall be organized and administered in such manner and shall exercise such other functions as Parliament may by law prescribe”, (Brig. T. K. Githiora, Delegate 629, 17.09.2003).

Debate arising.

Question put and **agreed to**.

4. **NEW CLAUSE**

275A(2)

THAT, “No Intelligence Service, other than any intelligence division of the Defence Force or the Police Force, shall be established except by or under an Act of Parliament”. (Hon. Petkay Shen Miriti, Delegate No. 104, 17.09.2003).

Debate arising.

Question put and **agreed to**.

MIN. NO. 44/2003: ADJOURNMENT

And the time being Thirty-Five minutes past Four O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question out in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Thursday, September 18, 2003 at 9.30. a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 17, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Thursday, September 18, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Wednesday, September 17, 2003.
4. Matters Arising.
5. Consideration of Chapter 14, Part II- The Kenya Police Service.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE EIGHTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON THURSDAY, SEPTEMBER 18, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Esther Lelei	445	
12. Francis Kilemi	592	
13. Galgallo Tuye Adano	266	
14. John Kinuthia Waitiki	317	
15. H. K. N. Manonda	596	
16. Kihara Njeri Jane	058	
17. Kingi Kahindi Joseph	064	
18. Kiplagat arap Koech	373	
19. Maj. General (Rtd.) J. Nkaisserry	146	
20. Mkawerweren Chebii	336	
21. Odhiambo Omamba	165	
22. Petkay Shen Miriti	104	
23. Robert Maithya Maluki	289	
24. Brig. T. K. Githiora	629	
25. William Boit	017	
26. Wycliffe Osundwa	172	
27. Dr. Julia Ojiambo	220	
28. Morris Dzoro	024	
29. Titus Ngoyoni	144	
30. Samuel Moroto	110	
31. Rukia Subow	504	
32. Joel Sang	368	
33. Moses Akaranga	005	
34. David Koros	076	

ABSENT WITH APOLOGY:

- | | | |
|----|-----------------------|-----|
| 1. | Raphael G. Mwai | 485 |
| 2. | Ogur Tobias O. Ochola | 158 |

ABSENT:

- | | | |
|-----|----------------------|-----|
| 1. | King'ori Mwangi | 624 |
| 2. | Waithaka Mwangi | 201 |
| 3. | Ekwee Ethuro | 024 |
| 4. | Ogembo Masese | 591 |
| 5. | Too Nondin Noah arap | 197 |
| 6. | Tola Kofa | 071 |
| 7. | David Mwenje | 135 |
| 8. | G. G. Kariuki | 042 |
| 9. | James John Mageria | 528 |
| 10. | Simon L. Alew | 326 |

OBSERVERS:

- | | | |
|----|---------------------------|-----|
| 1. | Chris O. Oyucho | 140 |
| 2. | G. N. Macgoye | 187 |
| 3. | Lt. Col. (Rtd.) Ben Muema | 023 |

ABSENT:

- | | | |
|----|--------------------------------------|-----|
| 1. | Dr. Kiprono Mitei | 100 |
| 2. | Lt. Gen. (Rtd.) A. K. Arap Cheruiyot | 205 |

IN ATTENDANCE:

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Ms. Christine Mwambua | - | National Assembly |
| 2. | Linda M. Murila | - | CKRC (Draft person) |
| 3. | Ms. Leah Symekher | - | CKRC |
| 4. | Ms. Grace Kamau | - | CKRC |
| 5. | Mary A. Babu | - | CKRC |

MIN. NO. 45/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 46/2003: ADJOURNMENT

And the time being Ten O'clock, the Convenor interrupted the proceedings and adjourned the sitting for tea break and to await circulation of daily summaries on the Police Force from the "Committee on Public Finance, Public Service and Leadership and Integrity".

MIN. NO. 47/2003: RESUMPTION OF PROCEEDINGS

The Committee proceedings resumed at 11.00 a.m.

MIN. NO. 48/2003: ELECTION OF ACTING CONVENOR

In the absence of Hon. Maj. (Rtd.) Marsden Madoka, the Hon. (Dr.) Julia Ojiambo was elected Acting Convenor.

MIN. NO. 49/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Wednesday, September 17, 2003 were confirmed by Members present and signed by the Convenor, (The Convenor had resumed his seat) after they were proposed by, Delegate No. 017 – William Boit and seconded by Delegate No. 504 – Rukia Subow respectively.

MIN. NO. 50/2003: MATTERS ARISING

Amendment proposed,

THAT, “**the Director General of the National Security Intelligence Service shall be appointed by the President but without the authority of Parliament** (Petkay Shen Miriti, Delegate No. 104, 18.09.2003).

Debate arising.

Question put and **negatived**.

MIN. NO. 51/2003: DELIBERATIONS ON THE NATIONAL SECURITY INTELLIGENCE SERVICE

Motion made and Question proposed,

THAT, “**a National Security Intelligence Council be established**”, (Petkay Shen Miriti, Delegate No. 104, 18.09.2003).

Debate arising.

MIN. NO. 52/2003: ADJOURNMENT

And the time being Thirty minutes after Noon, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Thursday, September 18, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. The Committee assembled at 2.30 p.m.
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Esther Lelei	445	
12. Francis Kilemi	592	
13. Galgallo Tuye Adano	266	
14. John Kinuthia Waitiki	317	
15. H. K. N. Manonda	596	
16. Kihara Njeri Jane	058	
17. Kingi Kahindi Joseph	064	
18. Kiplagat arap Koech	373	
19. Maj. General (Rtd.) J. Nkaiserry	146	
20. Mkawerweren Chebii	336	
21. Odhiambo Omamba	165	
22. Petkay Shen Miriti	104	
23. Robert Maithya Maluki	289	
24. Brig. T. K. Githiora	629	
25. William Boit	017	
26. Wycliffe Osundwa	172	
27. Dr. Julia Ojiambo	220	
28. Morris Dzoro	024	
29. Titus Ngoyoni	144	
30. Samuel Moroto	110	
31. Ruki a Subow	504	
32. Joel Sang	368	
33. Moses Akaranga	005	
34. David Koros	076	
35. Ekwee Ethuro	024	

ABSENT WITH APOLOGY:

- | | | |
|----|-----------------------|-----|
| 1. | Raphael G. Mwai | 485 |
| 2. | Ogur Tobias O. Ochola | 158 |

ABSENT:

- | | | |
|----|----------------------|-----|
| 1. | King'ori Mwangi | 624 |
| 2. | Waithaka Mwangi | 201 |
| 3. | Ogembo Masese | 591 |
| 4. | Too Nondin Noah arap | 197 |
| 5. | Tola Kofa | 071 |
| 6. | David Mwenje | 135 |
| 7. | G. G. Kariuki | 042 |
| 8. | James John Mageria | 528 |
| 9. | Simon L. Alew | 326 |

OBSERVERS:

- | | | |
|----|---------------------------|-----|
| 1. | Chris O. Oyucho | 140 |
| 2. | G. N. Macgoye | 187 |
| 3. | Lt. Col. (Rtd.) Ben Muema | 023 |

ABSENT:

- | | | |
|----|--------------------------------------|-----|
| 1. | Dr. Kiprono Mitei | 100 |
| 2. | Lt. Gen. (Rtd.) A. K. Arap Cheruiyot | 205 |

IN ATTENDANCE:

- | | | | |
|----|-------------------------------|---|---------------------|
| 1. | Ms. Christine Mwambua | - | National Assembly |
| 2. | Linda M. Murila | - | CKRC (Draft person) |
| 3. | Ms. Leah Symekher | - | CKRC |
| 4. | Ms. Grace Kamau | - | CKRC |
| 5. | Mary A. Babu | - | CKRC |
| 3. | Deliberations resumed. | | |

MIN. NO. 53/2003: DELIBERATIONS ON CHAPTER 14 – PART II – THE KENYA POLICE SERVICE PRINCIPLES AND OBJECTS

It was agreed that the Committee deliberates on this Chapter independently and then compare its views to those of the Committee on Public Service at the end of the Chapter.

Deliberations were made and resolutions arrived at as follows:-

Clause 264(1)(a) – **agreed to.**

Clause 264(1)(b) – **agreed to**.

Clause 264(1)(c) – **agreed to**.

Clause 264(1)(d) – **agreed to**.

Clause 264(1)(e) – **agreed to**.

Clause 264(1)(f) – amendment proposed,

THAT, Subclass (f) be amended by inserting the word “**life**” between “**of**” and “**property**”, (Kiplagat Koech, Delegate No. 373, 18.09.2003).

Clause 264(2)(a) – **agreed to**.

Clause 264(2)(b) – **agreed to**.

Clause 264(2)(c) – Amendment proposed,

THAT, Clause 264(2)(c) be deleted and replaced with the following **NEW CLAUSE**:

THAT, “**in furtherance of these objects, the Service shall observe the principles spelt out in Article 271(4)**”.

Question put and **agreed to**.

Clause 264(2)(d) – **agreed to**.

Clause 264(2)(e) – **agreed to**.

Clause 264(2)(g) – **agreed to**.

Clause 264(2)(f) - amendment proposed,

THAT, Clause 264(2)(f) be amended to read as follows:-

“**abide by the principles of transparency and accountability to society and democratic institutions**”, (Prof. Idha Salim, Delegate No. 549, 1809.2003).

Question put and **agreed to**.

Clause 264(2)(g) – amendment proposed,

THAT, the Subclass be amended to read as follows:-

“**foster and promote relationships with the broader society**”.

Question put and **agreed to**.

Clause 264(2)(h) – amendment proposed,

THAT, “**Clause 264(2)(h) be deleted**”, (Joel Sang, Delegate No. 368, 18.09.2003).

Debate arising.

MIN. NO. 54/2003: ADJOURNMENT

And the time being Five O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Friday, September 19, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 18, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, September 19, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Monday, September 18, 2003.
4. Matters Arising.
5. Consideration of Chapter 14, Part II- The Kenya Police Service.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE NINTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, SEPTEMBER 19, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Esther Lelei	445	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Kingi Kahindi Joseph	064	
15. Kiplagat arap Koech	373	
16. Maj. General (Rtd.) J. Nkaisserry	146	
17. Mkawerweren Chebii	336	
18. Odhiambo Omamba	165	
19. Robert Maithya Maluki	289	
20. Brig. T. K. Githiora	629	
21. William Boit	017	
22. Morris Dzoro	024	
23. Rukia Subow	504	
24. Joel Sang	368	
25. Ogur Tobias O. Ochola	158	
26. Simon L. Alew	326	

ABSENT WITH APOLOGY:

1. Raphael G. Mwai	485
2. Wycliffe Osundwa	172

ABSENT:

1. King'ori Mwangi	624
2. Waithaka Mwangi	201

3.	Ekwee Ethuro	024
4.	Ogembo Masese	591
5.	Too Nondin Noah arap	197
6.	Tola Kofa	071
7.	David Mwenje	135
8.	G. G. Kariuki	042
9.	James John Mageria	528
10.	Emmanuel Lomorukai	322
11.	H. K. N. Manonda	596
12.	Kihara Njeri Jane	058
13.	Petkay Shen Miriti	104
14.	Dr. Julia Ojiambo	220
15.	Titus Ngoyoni	144
16.	Samuel Moroto	110
17.	Moses Akaranga	005
18.	David Koros	076

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyicho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

ABSENT:

Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205
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IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

MIN. NO. 55/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 56/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Thursday, September 18, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by, Delegate No. 165 – Odhiambo Omamba and seconded by Delegate No. 373 – Kiplagat Koech respectively.

MIN. NO. 57/2003: DELIBERATIONS ON THE NATIONAL SECURITY INTELLIGENCE SERVICE

1) **ESTABLISHMENT OF THE NATIONAL SECURITY INTELLIGENCE COUNCIL**

Motion made and Question proposed,

THAT, “a National Security Intelligence Council be established”, (Petkay Shen Miriti, Delegate No. 104, 18.09.2003).

Debate interrupted on 18.09.2003 resumed.
Question put and **agreed to**.

2) **MEMBERSHIP OF THE COUNCIL**

Motion made and Question proposed,

THAT, the following shall be Members of the National Security Intelligence Council:

- (a) The Minister of state for the time being responsible for matters of National Security Intelligence and Security, who shall be Chairperson.
- (b) The Minister responsible for Foreign Affairs.
- (c) The Minister responsible for Finance.
- (d) The Attorney General.
- (e) Head of Public Service and Secretary to the Cabinet.

Question put and **agreed to**.

3) The Director General of National Security Intelligence Service shall be Secretary.

Question put and **agreed to**.

FUNCTIONS OF THE NATIONAL SECURITY INTELLIGENCE SERVICE

Motion made and Question proposed,

THAT, the functions of the National Security Intelligence Council shall be:-

- (a) to advise the Service generally on all matters pertaining to:-
 - (i) National Security and intelligence policies;

- (ii) expenditure of the Service;
- (iii) to perform such other functions as are conferred on it by an Act of Parliament.

Question put and **agreed to**.

MIN. NO. 58/2003: DELIBERATIONS ON CHAPTER 14 PART II – THE KENYA POLICE SERVICE

Clause 264(2)(h) – Amendment proposed,

THAT, Clause 264(2)(h) be deleted.
(Joel Sang, Delegate No. 368, 18.09.2003).

Debate interrupted on 18.09.2003 resumed.

Question put and **agreed to**.

ESTABLISHMENT OF THE KENYA POLICE SERVICE

- Clause 265(1) – **agreed to**.
- Clause 265(2) – **agreed to**.
- Clause 265(3) – **agreed to**.
- Clause 265(4) – **agreed to**.
- Clause 265(5) – **agreed to**.

MIN. NO. 59/2003: ADJOURNMENT

And the time being Thirty minutes past Noon, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Friday, September 19, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. **The Committee assembled at 2.30 p.m.**
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
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1.	Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2.	Prof. Idha Salim	549	Commissioner (Rapporteur)
3.	Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4.	Abdikadir Guyo	262	
5.	Bruno Kaimba	280	
6.	Charles Lwanga Lwole	380	
7.	D. Muraguri Nderi	305	
8.	Daniel Njagi	486	
9.	Elizabeth Mayieka	503	
10.	Francis Kilemi	592	
11.	Galgallo Tuye Adano	266	
12.	John Kinuthia Waitiki	317	
13.	Kiplagat arap Koech	373	
14.	Maj. General (Rtd.) J. Nkaisserry	146	
15.	Mkawerweren Chebii	336	
16.	Odhiambo Omamba	165	
17.	Robert Maithya Maluki	289	
18.	Brig. T. K. Githiora	629	
19.	Esther Lelei	445	
20.	Rukia Subow	504	
21.	Joel Sang	368	
22.	Ogur Tobias O. Ochola	158	
23.	Simon L. Alew	326	
24.	King'ori Mwangi	624	
25.	James John Mageria	528	
26.	Moses Akaranga	005	
27.	Ekwee Ethuro	024	
28.	David Koros	076	
29.	Dr. Julia Ojiambo	220	

ABSENT WITH APOLOGY:

1.	Raphael G. Mwai	485
2.	Wycliffe Osundwa	172

ABSENT:

1.	Waithaka Mwangi	201
2.	Ogembo Masese	591
3.	Too Nondin Noah arap	197
4.	Tola Kofa	071
5.	David Mwenje	135
6.	G. G. Kariuki	042
7.	Emmanuel Lomorukai	322
8.	H. K. N. Manonda	596
9.	Kihara Njeri Jane	058
10.	Petkay Shen Miriti	104

11.	Titus Ngoyoni	144
12.	Samuel Moroto	110
13.	Kingi Kahindi Joseph	064
14.	William Boit	017

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

ABSENT:

Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205
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IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

2. Deliberations resumed.
Article 265(5) – amendment proposed,

THAT, Clause 265(5) be amended to read as follows:

“The Police Service shall work closely with communities to ensure security and safety for all citizens”, (King’ori Mwangi, Delegate No. 624, 19.09.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 60/2003: APPOINTMENT OF THE COMMISSIONER OF THE KENYA POLICE SERVICE

Clause 266(1) – amendment proposed,

THAT, Clause 266(1) be amended by deleting the word **“Commissioner”** appearing between the words **“a”** and **“of”** and replacing therewith the words **“Inspector General”**, (King’ori Mwangi, Delegate No. 624, 18.09.2003).

Debate arising.

Question put and **agreed to.**

Clause 266(1) as amended – **agreed to.**

Amendment proposed that Clause 266(1) be further amended to read as follows:-

“There shall be an Inspector General who shall be the head of the Kenya Police Service”, (Ekwee Ethuro, Delegate No. 024, 19.09.2003).

Question put and **agreed to.**

Clause 266(2) – Amendment proposed,

THAT, Clause 266(2) be amended to read as follows:-

“The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years”.

Debate arising.

Question put and **agreed to.**

Clause 266(3)(a) and (b) – amendment proposed,

THAT, Clause 266(3)(a) and (b) be deleted.

(Brig. T. K. Githiora, Delegate No. 629, 19.09.2003).

Debate arising.

MIN. NO. 61/2003: ADJOURNMENT

And the time being Thirty minutes past Four O'clock, the Convenor interrupted the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on Monday, September 22, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 19, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Monday, September 22, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Monday, September 19, 2003.
4. Matters Arising.
5. Consideration of Chapter 14, Article 266 Part II- The Kenya Police Service.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON MONDAY, SEPTEMBER 22, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Emmanuel Lomorukai	322	
10. Elizabeth Mayieka	503	
11. Esther Lelei	445	
12. Francis Kilemi	592	
13. Galgallo Tuye Adano	266	
14. James John Mageria	528	
15. H. K. N. Manonda	596	
16. Kihara Njeri Jane	058	
17. King'ori Mwangi	624	
18. Maj. General (Rtd.) J. Nkaisserry	146	
19. John Kinuthia Waitiki	317	
20. Kiplangat arap Koech	373	
21. Mkawerweren Chebii	336	
22. Ogur Tobias O. Ochola	158	
23. Petkay Shen Miriti	104	
24. Robert Maithya Maluki	289	
25. Simon L. Alew	326	
26. Brig. T. K. Githiora	629	
27. Samuel Moroto	110	
28. Rukia Subow	504	
29. Joel Sang	368	
30. Ekwee Ethuro	024	
31. Dr. Julia Ojiambo	220	
32. Moses Akaranga	005	

ABSENT WITH APOLOGY:

1. Raphael G. Mwai	485
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ABSENT:

1.	Waithaka Mwangi	201
2.	Wycliffe Osundwa	172
3.	Tola Kofa	071
4.	David Mwenje	135
5.	Titus Ngoyoni	144
6.	David Koros	076
7.	Kingi Kahindi Joseph	064
8.	Odhiambo Omamba	165
9.	William Boit	017
10.	Morris Dzoro	023

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 62/2003 : PRAYERS

The proceedings were opened with prayer.

MIN. NO. 63/2003 : CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Friday, September 19, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No. 305, D. Muraguri Nderi and seconded by Delegate No. 317, J. K. Waitiki respectively.

MIN. NO. 64/2003: MATTERS ARISING

Min. No. 57/2003 – (a) was amended to read as follows:

“The Minister for the time being responsible for matters of National Security Intelligence and Security”.

MIN. NO. 65/2003: DELIBERATIONS ON CHAPTER 14 PART II – THE KENYA POLICE SERVICE

Clause 266(3)(a) and (b) – amendment proposed,

THAT, Clause 266 (3)(a) and (b) be deleted (Brig. T. K. Githiora, Delegate No. 269, 22.09.2003).

Debate interrupted on 19.09.2003 resumed.

Question put and **agreed to.**

Clause 266(4) – amendment proposed,

THAT, Clause 266(4) be deleted (Charles Lwanga Lwole, Delegate No. 380, 22.09.2003).

Debate arising.

Question put and **agreed to.**

Clause 266(5) – amendment proposed,

THAT, Clause 266(5) be amended by deleting the entire Sub-section and replacing it with the following NEW CLAUSE.

“In the performance of his/her functions, the Inspector General shall not be under the direction or control of any person or authority, except where the Constitution so specifies.” (King’ori Mwangi, Delegate No. 624, 22.09.2003).

Debate arising.

Question put and **agreed to.**

Clause 266(6) – amendment proposed,

THAT, Clause 266(b) be amended to read as follows:

The Inspector General may be removed from office by the President for inability to exercise the functions of his/her office whether arising from infirmity of body or mind or any other cause or for misconduct, and shall not be so removed except on the recommendation of a tribunal appointed by the President comprising the following:-

1. **Chairperson of Police Service Commission**
2. **A High Court Judge**
3. **One other person**

(Brig. T. K. Githiora, Delegate No. 629, 22.09.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 66/2003: ADJOURNMENT

And the time being One O'clock the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Monday, September 22, 2003 at 2.30 p.m.

AFTERNOON SITTING

2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Esther Lelei	445	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Kiplangat arap Koech	373	
15. Maj. General (Rtd.) J. Nkaisserry	146	
16. Mkawerweren Chebii	336	
17. Robert Maithya Maluki	289	
18. Brig. T. K. Githiora	629	
19. Rukia Subow	504	
20. Joel Sang	368	
21. Ogur Tobias O. Ochola	158	
22. Simon L. Alew	326	
23. King'ori Mwangi	624	
24. Ekwee Ethuro	024	
25. James John Mageria	528	
26. Emmanuel Lomorukai	322	

27.	H. K. N. Manonda	596
28.	Petkay Shen Miriti	104
29.	Samuel Moroto	110
30.	Moses Akaranga	005
31.	Kihara Njeri Jane	058

ABSENT WITH APOLOGY:

1.	Raphael G. Mwai	485
2.	Dr. Julia Ojiambo	220

ABSENT:

1.	Waithaka Mwangi	201
2.	Wycliffe Osundwa	172
3.	Tola Kofa	071
4.	Titus Ngoyoni	144
5.	David Koros	076
6.	Kingi Kahindi Joseph	064
7.	Odhiambo Omamba	165
8.	William Boit	017
9.	Morris Dzoro	023

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

3. Deliberations resumed.

MIN. NO. 67/2003: DELIBERATIONS ON THE ESTABLISHMENT OF THE POLICE SERVICE COMMISSION

Clause 267(1) “**There is established a Service to be known as the Police Service Commission**” (King’ori Mwangi, Delegate No. 624, 22.09.2003).

Debate arising.

Question put and **agreed to.**

COMPOSITION OF THE POLICE SERVICE COMMISSION

Clause 267(2) – amendment proposed,

THAT, “**the Chairperson of the Public Service Commission be a Member of the Police Service Commission**” (John J. Mageria, Delegate No. 528, 22.09.2003).

Debate arising.

Question put and **negatived.**

Motion made and Question proposed,

THAT, The Police Service Commission shall consist of:-

- (a) **the Inspector General;**
- (b) **a person who holds qualifications of a judge of the High Court**
- (c) **seven other Members, two of whom shall be retired Police Officers, appointed by the President from among persons who have held high public offices”** (John James Mageria, Delegate No. 528, 22.09.2003).

Question put and agreed to.

Motion made and Question proposed,

THAT, “**the President shall appoint the Chairperson from amongst the Members**” (James J. Mageria, Delegate No. 528, 22.09.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 68/2003: ADJOURNMENT

And the time being Forty-Five minutes past Four O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Tuesday, September 23, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 22, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, September 23, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Monday, September 22, 2003.
4. Matters Arising.
5. Consideration of Chapter 14, Article 266 Part II- The Kenya Police Service.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE ELEVENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON TUESDAY, SEPTEMBER 23, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Emmanuel Lomorukai	322	
10. Elizabeth Mayieka	503	
11. Esther Lelei	445	
12. Galgallo Tuye Adano	266	
13. James John Mageria	528	
14. H. K. N. Manonda	596	
15. Kihara Njeri Jane	058	
16. King'ori Mwangi	624	
17. John Kinuthia Waitiki	317	
18. Kiplangat arap Koech	373	
19. Mkawerwen Chebii	336	
20. Robert Maithya Maluki	289	
21. Simon L. Alew	326	
22. Brig. T. K. Githiora	629	
23. Rukia Subow	504	
24. Joel Sang	368	
25. Ekwee Ethuro	024	
26. Dr. Julia Ojiambo	220	
27. David Koros	076	
28. Kingi Kahindi Joseph	064	
29. William Boit	017	

ABSENT WITH APOLOGY:

Raphael G. Mwai 485

ABSENT:

1.	Waithaka Mwangi	201
2.	Wycliffe Osundwa	172
3.	Tola Kofa	071
4.	David Mwenje	135
5.	Titus Ngoyoni	144
6.	Odhiambo Omamba	165
7.	Morris Dzero	023
8.	Francis Kilemi	592
9.	Maj. General (Rtd.) J. Nkaisserry	146
10.	Ogur Tobias O. Ochola	158
11.	Petkay Shen Miriti	104
12.	Samuel Moroto	110
13.	Moses Akaranga	005

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 69/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 70/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Monday, September 22, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No. 528, James J. Mageria and seconded by Delegate No. 596, H. K. N. Manonda respectively.

MIN. NO. 71/2003 MATTERS ARISING

(i) Min. No. 64/2003(a) was amended to read as follows:

“The Minister for the time being responsible for matters of National Security and Intelligence”.

- (ii) Min. No. 67/2003(c) amendment proposed,

THAT, Clause (c) be amended to read as follows:

“Seven other Members appointed by the President, two of whom shall be retired Senior Police Officers and five from among persons with integrity, who have served the public with distinction”, (James J. Mageria, Delegate No. 528, 23.09.2003).

Question put and **agreed to.**

- (iii) Motion made and Question proposed,

THAT, **“The Commissioners appointed shall serve for a term of five years and may be renewed for a period not exceeding two terms”,** (James J. Mageria, Delegate No. 624, 23.09.2003).

Question put and **agreed to.**

MIN. NO. 72/2003: DELIBERATIONS ON CHAPTER 14 – PART II – FUNCTIONS OF THE POLICE SERVICE COMMISSION

Motion made and Question proposed,

THAT, The Police Service Commission shall:

- (a) **“Recruit and appoint persons to hold or act in an office, determine promotions in the Kenya Police Service and exercise disciplinary control over such persons”** (Charles Lwanga Lwole, Delegate No. 380, 23.09.2003).

Debate arising.

Question put and **agreed to.**

- (b) **“keep under review all matters relating to the standards or qualifications required of Members of the Kenya Police Service”,** (D. Njagi, Delegate No. 486, 23.09.2003).

Question put and **agreed to.**

- (c) **“keep under review all matters relating to salaries, allowances and all other terms and conditions of service”,** (Kingi J. Kahindi, Delegate No. 064, 23.09.2003).

Debate arising.

Question put and **agreed to.**

- (d) “exercise such powers and discharge such other functions as are provided for by this Constitution or by or under an Act of Parliament”, (Brig. T. K. Githiora, Delegate No. 629, 23.09.2003).

Debate arising.

Question put and **agreed to.**

MIN. NO. 73/2003: ADJOURNMENT

And the time being One O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Tuesday, September 23, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. Committee assembled at 2.30 p.m.
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Emmanuel Lomorukai	322	
10. Esther Lelei	445	
11. Galgallo Tuye Adano	266	
12. James John Mageria	528	
13. H. K. N. Manonda	596	
14. Kihara Njeri Jane	058	
15. King'ori Mwangi	624	
16. John Kinuthia Waitiki	317	
17. Kiplangat arap Koech	373	
18. Mkawerweren Chebii	336	
19. Robert Maithya Maluki	289	

20.	Simon L. Alew	326
21.	Brig. T. K. Githiora	629
22.	Rukia Subow	504
23.	Joel Sang	368
24.	Ekwee Ethuro	024
25.	Dr. Julia Ojiambo	220
26.	David Koros	076
27.	Kingi Kahindi Joseph	064
28.	Odhiambo Omamba	165
29.	William Boit	017
30.	Ogur Tobias O. Ochola	158
31.	Samuel Moroto	110
32.	Moses Akaranga	005

ABSENT WITH APOLOGY:

Raphael G. Mwai	485
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ABSENT:

1.	Waithaka Mwangi	201
2.	Wycliffe Osundwa	172
3.	Tola Kofa	071
4.	David Mwenje	135
5.	Titus Ngoyoni	144
6.	Francis Kilemi	592
7.	Maj. General (Rtd.) J. Nkaisserry	146
8.	Petkay Shen Miriti	104
9.	Elizabeth Mayieka	503
10.	Morris Dzoro	023

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

3. Deliberations resumed.

MIN. NO. 74/2003: DELIBERATIONS ON THE FUNCTIONS OF THE POLICE SERVICE COMMISSION

- (e) “ensure adequate budgetary provisions for the Police Service”, (Charles Lwanga Lwole, Delegate No. 380, 23.09.2003).

Debate arising.

Question put and **agreed to**.

- (f) “Subject to the provisions of this Constitution, the Commission shall, in the exercise of its functions, not be subject to the direction or control of any person or authority”, (James J. Mageria, Delegate No. 528, 23.09.2003).

Question put and **agreed to**.

- (g) “Promote and exercise disciplinary control, hearing and disposal of appeals over such persons”.

Question put and **agreed to**.

- (h) “The Inspector General shall be an ex-officio Member of the Police Service Commission”, (James J. Mageria, Delegate No. 528, 23.09.2003).

Question put and **agreed to**.

MIN. NO. 75/2003: ADJOURNMENT

And the time being Four O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Wednesday, September 24, 2003 at 9.00 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 23, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Wednesday, September 24, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Tuesday, September 23, 2003.
4. Matters Arising.
5. Consideration of the Motion on the Administration Police.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWELFTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON WEDNESDAY, SEPTEMBER 24, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Emmanuel Lomorukai	322	
10. Elizabeth Mayieka	503	
11. Esther Lelei	445	
12. Galgallo Tuye Adano	266	
13. James John Mageria	528	
14. H. K. N. Manonda	596	
15. Kihara Njeri Jane	058	
16. King'ori Mwangi	624	
17. John Kinuthia Waitiki	317	
18. Kiplangat arap Koech	373	
19. Mkawerwen Chebii	336	
20. Robert Maithya Maluki	289	
21. Simon L. Alew	326	
22. Brig. T. K. Githiora	629	
23. Rukia Subow	504	
24. Joel Sang	368	
25. Ekwee Ethuro	024	
26. Dr. Julia Ojiambo	220	
27. David Koros	076	
28. Wycliffe Osundwa	172	
29. William Boit	017	
30. David Mwenje	135	
31. Odhiambo Omamba	165	
32. Morris Dzoro	023	
33. Francis Kilemi	592	
34. Ogur Tobias O. Ochola	158	
35. Samuel Moroto	110	
36. Moses Akaranga	005	

ABSENT WITH APOLOGY:

- | | | |
|----|-----------------|-----|
| 1. | Raphael G. Mwai | 485 |
|----|-----------------|-----|

ABSENT:

- | | | |
|----|-----------------------------------|-----|
| 1. | Waithaka Mwangi | 201 |
| 2. | Tola Kofa | 071 |
| 3. | Titus Ngoyoni | 144 |
| 4. | Maj. General (Rtd.) J. Nkaisserry | 146 |
| 5. | Petkay Shen Miriti | 104 |
| 6. | Kingi Kahindi Joseph | 064 |

OBSERVERS:

- | | | |
|----|---------------------------|-----|
| 1. | Dr. Kiprono Mitei | 100 |
| 2. | Chris O. Oyucho | 140 |
| 3. | G. N. Macgoye | 187 |
| 4. | Lt. Col. (Rtd.) Ben Muema | 023 |

IN ATTENDANCE:

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Ms. Christine Mwambua | - | National Assembly |
| 2. | Linda M. Murila | - | CKRC (Draft person) |
| 3. | Ms. Leah Symekher | - | CKRC |
| 4. | Ms. Grace Kamau | - | CKRC |
| 5. | Mary A. Babu | - | CKRC |

MIN. NO. 75/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 76/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Tuesday, September 23, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No. 504 – Rukia Subow and seconded by Delegate No. 596 – H. K. N. Manonda respectively.

MIN. NO. 77/2003: MATTERS ARISING

- (i) Min. No. 71/2003 (iii) was amended to read as follows:-

“The Commissioners appointed shall serve for a term of five years and may be renewed for a period of one term”.

(ii) Min. No. 72/2003(a) was amended to read as follows:-

“Recruit and appoint persons to hold or act in an office, determine promotions, exercise disciplinary control over such persons, in the Kenya Police Service”.

(iii) Min. No. 74/2003(f) was deleted.

(iv) Min. No. 74/2003(g) was amended to read as follows:-

“Promote and exercise disciplinary control including the hearing and disposal of appeals by such persons”.

(v) A new Clause (d) was created to read as follows:-

“To exercise such powers including the power to delegate and to discharge such other functions as are provided for by this Constitution or by or under an Act of Parliament”.

MIN. NO. 78/2003: DELIBERATIONS ON THE ADMINISTRATION POLICE SERVICE

The Committee invited presentations from the Administration Police Commandant, Mr. Kinuthia Mbugua and the following delegates from other Committees:-

Hon. Mohamed Yusuf Haji	-	Delegate No. 031
Dr. Simeon Shitemi	-	Delegate No. 545
Mr. J. S. Mathenge	-	Delegate No. 308

After lengthy deliberations, it was proposed,

THAT, “The Administration Police Service, be a service separate from the Kenya Police Service” (William Boit, Delegate No. 017, 24.09.2003).

Debate arising,

MIN. NO. 79/2003: ADJOURNMENT

And the time being One O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Thursday, September 25, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 24, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Thursday, September 25, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Tuesday, September 24, 2003.
4. Matters Arising.
5. Consideration of the Motion on the Administration Police.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE THIRTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON THURSDAY, SEPTEMBER 25, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Bruno Kaimba	280	
5. Charles Lwanga Lwole	380	
6. D. Muraguri Nderi	305	
7. Daniel Njagi	486	
8. Emmanuel Lomorukai	322	
9. Elizabeth Mayieka	503	
10. Galgallo Tuye Adano	266	
11. James John Mageria	528	
12. King'ori Mwangi	624	
13. John Kinuthia Waitiki	317	
14. Kiplangat arap Koech	373	
15. Mkawerweren Chebii	336	
16. Robert Maithya Maluki	289	
17. Brig. T. K. Githiora	629	
18. Rukia Subow	504	
19. Joel Sang	368	
20. Ekwee Ethuro	024	
21. Dr. Julia Ojiambo	220	
22. William Boit	017	
23. Odhiambo Omamba	165	
24. Morris Dzoro	023	
25. Francis Kilemi	592	
26. Ogur Tobias O. Ochola	158	
27. Moses Akaranga	005	
28. Titus Ngoyoni	144	
29. Maj. General (Rtd.) J. Nkaisserry	146	
30. Petkay Shen Miriti	104	
31. Kingi Kahindi Joseph	064	

ABSENT WITH APOLOGY:

1. Raphael G. Mwai	485
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ABSENT:

1.	Waithaka Mwangi	201
2.	Tola Kofa	071
3.	Abdikadir Guyo	262
4.	Esther Lelei	445
5.	H. K. N. Manonda	596
6.	Kihara Njeri Jane	058
7.	Simon L. Alew	326
8.	David Koros	076
9.	Wycliffe Osundwa	172
10.	David Mwenje	135
11.	Samuel Moroto	110

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205
5.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Lt. Gen. (Rtd.) John M. Sawe	-	CKRC expert
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

MIN. NO. 80/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 81/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Wednesday, September 24, 2003 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No. 023, Morris Dzoro and seconded by Delegate No. 289 – Robert M. Maluki respectively.

MIN. NO. 82/2003: MATTERS ARISING

Min. No. 74/2003(I) was amended to read as follows:

“The Commissioners appointed shall serve for a term of five years and are eligible for re-appointment for only one further term”.

Min. No. 77/2003(v) was amended to read as follows:

“To exercise such powers including the power to delegate and to discharge such other functions as are provided for by this Constitution or by an Act of Parliament”.

Min. No. 78/2003, the proposal was amended to read as follows:-

“THAT, the Administration Police Service be a separate service from the Kenya Police Service”.

MIN. NO. 83/2003: DELIBERATIONS ON THE ADMINISTRATION POLICE SERVICE

Motion made and Question proposed,

THAT, “The Administration Police Service be maintained as a separate service from the Kenya Police Service” (Hon. William Boit, Delegate No. 017, 24.09.2003).

Debate interrupted on 24.09.2003 resumed.

Question put and **agreed to**.

MIN. NO. 84/2003: THE ADMINISTRATION POLICE SERVICE PRINCIPLES AND OBJECTS

Clause 266A(1) The primary object of the Administration Police Service is to work with and for the people to:-

- (a) **“Preserve and maintain public peace”**

Question put and **agreed to**.

- (b) **“Prevent Commission of offences”**

Question put and **agreed to**.

MIN. NO. 85/2003: ADJOURNMENT

And the time being One O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Thursday, September 25, 2003 at 2.30 p.m.

AFTERNOON SITTING

1. The Committee assembled at 2.30 p.m.
2. **PRESENT:** The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner Rapporteur)
4. Bruno Kaimba	280	
5. Charles Lwanga Lwole	380	
6. D. Muraguri Nderi	305	
7. Daniel Njagi	486	
8. Elizabeth Mayieka	503	
9. Esther Lelei	445	
10. Galgallo Tuye Adano	266	
11. James John Mageria	528	
12. John Kinuthia Waitiki	317	
13. H. K. N. Manonda	596	
14. Kingi Kahindi Joseph	64	
15. Kiplagat arap Koech	373	
16. Maj. General (Rtd.) J. Nkaisserry	146	
17. Mkawerweren Chebii	336	
18. Petkay Shen Miriti	104	
19. Robert Maithya Maluki	289	
20. Simon L. Alew	326	
21. Brig. T. K. Githiora	629	
22. Dr. Julia Ojiambo	220	
23. Morris Dzoro	024	
24. Samuel Moroto	110	
25. Rukia Subow	504	
26. Moses Akaranga	005	
27. King'ori Mwangi	624	
28. Ekwee Ethuro	24	
29. Odhiambo Omamba	165	
30. Francis Kilemi	592	
31. Emmanuel Lomorukai	322	
32. Ogur Tobias O. Ochola	158	

ABSENT WITH APOLIGY:

1. Raphael G. Mwai 485

ABSENT:

1.	Waithaka Mwangi	201
2.	Tola Kofa	71
3.	David Mwenje	35
4.	Abdikadir Guyo	262
5.	Kihara Njeri Jane	58
6.	William Boit	17
7.	Wycliffe Osundwa	172
8.	Joel Sang	368
9.	David Koros	076
10.	Titus Ngoyoni	144

OBSERVERS:

1.	Dr. Kiprono Mitei	100
2.	Chris O. Oyucho	140
3.	G. N. Macgoye	187
4.	Lt. Gen. (Rtd.) K. Arap Cheruiyot	205
5.	Lt. Col. (Rtd.) Ben Muema	023

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Linda M. Murila	-	CKRC (Draft person)
3.	Lt. Gen. (Rtd.) John M. Sawe	-	CKRC expert
4.	Ms. Leah Symekher	-	CKRC
5.	Ms. Grace Kamau	-	CKRC
6.	Mary A. Babu	-	CKRC

3. Deliberations resumed.

**MIN. NO. 86/2003: DELIBERATIONS ON THE ADMINISTRATION
POLICE SERVICE PRINCIPLES AND OBJECTS**

Clause 266A

Motion made and Question proposed,

THAT,

1. **“The Administration Police Service is established to work with and for the people supporting and assisting within existing law with Administration in the Public Service”.**

2. **“In the discharge of those functions the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms”** (Brig. T. K. Githiora, Delegate No. 629, 25.09.2003).

ESTABLISHMENT OF THE ADMINISTRATION POLICE SERVICE

Clause 266(B)(1)

“There is established a service to be known as Administration Police Service”, (James J. Mageria, Delegate No. 528, 25.09.2003).

Clause 266(b)(2).

Question put and **agreed to**.

Motion made and Question proposed,
THAT,

266(B)(2)

“Parliament may enact legislation for the organisation, administration and discipline of the Administration Police Service including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service”, (Brit. T. K. Githiora, Delegate No. 629, 25.09.2003).

Debate arising,

Question put and **agreed to**.

Clause 266(B)(3)

“The Administration Police Service shall be a national service and the division of its functions shall be organized to take into account the structure of devolution”.

Question put and **agreed to**.

APPOINTMENT OF THE COMMANDANT OF THE ADMINISTRATION POLICE SERVICE

Clause 266(c)(1)

“There shall be a Commandant of the Administration Police Service”.

Question put and agreed to.

MIN. NO. 87/2003: ADJOURNMENT

And the time being Five O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Friday, September 26, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

September 25, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, September 26, 2003 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Tuesday, September 25, 2003.
4. Matters Arising.
5. Consideration of the Motion on the Administration Police.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FOURTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, SEPTEMBER 26, 2003 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Emmanuel Lomorukai	322	
10. Elizabeth Mayieka	503	
11. Galgallo Tuye Adano	266	
12. James John Mageria	528	
13. King'ori Mwangi	624	
14. John Kinuthia Waitiki	317	
15. Kiplangat arap Koech	373	
16. Mkawerweren Chebii	336	
17. Robert Maithya Maluki	289	
19. Brig. T. K. Githiora	629	
20. Rukia Subow	504	
21. Joel Sang	368	
23. Ekwee Ethuro	024	
24. Dr. Julia Ojiambo	220	
25. William Boit	017	
26. Odhiambo Omamba	165	
27. Morris Dzero	023	
28. Francis Kilemi	592	
29. Moses Akaranga	005	
30. Titus Ngoyoni	144	
31. Maj. General (Rtd.) J. Nkaisserry	146	
32. Kingi Kahindi Joseph	064	
33. Esther Lelei	445	
34. H. K. N. Manonda	596	
35. Kihara Njeri Jane	058	
36. Simon L. Alew	326	
37. David Koros	076	

ABSENT WITH APOLOGY:

- | | | |
|----|-----------------|-----|
| 1. | Raphael G. Mwai | 485 |
|----|-----------------|-----|

ABSENT:

- | | | |
|----|-----------------------|-----|
| 1. | Waithaka Mwangi | 201 |
| 2. | Tola Kofa | 071 |
| 3. | Wycliffe Osundwa | 172 |
| 4. | David Mwenje | 135 |
| 5. | Samuel Moroto | 110 |
| 6. | Ogur Tobias O. Ochola | 158 |
| 7. | Petkay Shen Miriti | 104 |

OBSERVERS:

- | | | |
|----|--------------------------------------|-----|
| 1. | Dr. Kiprono Mitei | 100 |
| 2. | Chris O. Oyucho | 140 |
| 3. | G. N. Macgoye | 187 |
| 4. | Lt. Gen. (Rtd.) A. K. Arap Cheruiyot | 205 |
| 5. | Lt. Col. (Rtd.) Ben Muema | 023 |

IN ATTENDANCE:

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Ms. Christine Mwambua | - | National Assembly |
| 2. | Linda M. Murila | - | CKRC (Draft person) |
| 3. | Lt. Gen. (Rtd.) John M. Sawe | - | CKRC expert |
| 4. | Ms. Leah Symekher | - | CKRC |
| 5. | Ms. Grace Kamau | - | CKRC |
| 6. | Mary A. Babu | - | CKRC |

MIN. NO. 88/2003: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 89/2003: COMMUNICATION FROM THE CHAIR

**The Convenor moved, “THAT, the thanks of this Committee to H.E. the President be recorded for the Appointment of the new Vice-President, the Hon. Moody Awori, MP”.
The Motion was agreed on consensus.**

MIN. NO. 90/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Thursday, September 25, 2033 were confirmed by Members present and signed by the Convenor after they were proposed by Delegate No.

503 – Elizabeth Mayieka and seconded by Delegate No. 220 – Dr. Julia Ojiambo respectively.

MIN. NO. 91/2003: MATTERS ARISING

- (i) **From Min. No. 83/2003, it was noted that a Minority View was recorded from the following Delegates:-**

King'ori Mwangi	-	Delegate No. 624
John James Mageria	-	Delegate No. 528
Daniel Njagi	-	Delegate No. 486
Petkay Shen Miriti	-	Delegate No. 104
John Kinuthia Waitiki	-	Delegate No. 317

- (ii) Clause 266(B)(2) was amended by deleting the word “**determining**” and replacing therewith the word “**determine**”.

- (iii) Clause 266(B)(3) was amended to read as follows:-

“The Administration Police Service shall be organized to take into account the structure of devolution”.

- (iv) Min. No. 83/2003 was amended to read as follows:-

“The Administration Police Service shall be maintained as a separate service from the Kenya Police Service”.

MIN. NO. 92/2003: DELIBERATIONS ON THE ADMINISTRATION POLICE SERVICE

Motion made and Question proposed,

THAT,

“The Administration Police Service shall remain under the Public Service Commission”, (J. K. Kingi, Delegate No. 064, 26.09.2003).

Debate arising.

MIN. NO. 93/2003: ADJOURNMENT

And the time being Eleven O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair on November 17, 2003 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

January 13, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, January 13, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Friday, September 26, 2003.
4. Consideration of Main report of the Commission.
5. Review of the Committee's Interim Report.
6. Any Other Business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE FIFTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON TUESDAY, JANUARY 13, 2004 AT 11.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	<i>(Convenor)</i>
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. H. K. N. Manonda	596	
15. Kingi Kahindi Joseph	064	
16. Kiplagat arap Koech	373	
17. Maj. General (Rtd.) J. Nkaisserry	146	
18. Mkawerweren Chebii	336	
19. Odhiambo Omamba	165	
20. Petkay Shen Miriti	104	
21. Robert Maithya Maluki	289	
22. Brig. T. K. Githiora	629	
23. William Boit	017	
24. Wycliffe Osundwa	172	
25. Dr. Julia Ojiambo	220	
26. Rukia Subow	504	
27. Moses Akaranga	005	
28. Ogur Tobias O. Ochola	158	
29. King'ori Mwangi	624	
30. Ekwee Ethuro	024	
31. David Mwenje	135	
32. Simon L. Alew	326	

ABSENT:

1. Kihara Njeri Jane	058
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2.	Morris Dzoro	023
3.	Titus Ngoyoni	144
4.	Samuel Moroto	110
5.	David Koros	076
6.	Waithaka Mwangi	201
7.	Tola Kofa	071
8.	Raphael G. Mwai	485
9.	James John Mageria	528
10.	Esther Lelei	445

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	Clerk
2.	Ms. Leah Symekher	-	CKRC
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

MIN. NO. 01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Friday, September 26, 2003 were confirmed by Members present and signed by the Convenor. The Minutes were confirmed by general consensus.

MIN. NO. 02/2004: DELIBERATIONS ON THE ADMINISTRATION POLICE SERVICE

Motion made and Question proposed;

THAT,

“The Administration Police Service shall remain under the Public Service Commission”, (J. K. Kingi, Del. No. 064, 26.09.2003).

Debate interrupted on September 26, 2003 resumed;
Question put and **agreed to.**

MIN. NO. 03/2004: ADJOURNMENT

And the time being ten Minutes past One O'clock , the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Tuesday, January 13, 2004 at 2.30 p.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

January 13, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Wednesday, January 14, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Tuesday, January 13, 2004.
4. Consideration of the Main Report of the Commission.
5. Review of the Committee's Interim Report.
6. Any other business.
7. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SIXTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON WEDNESDAY, JANUARY 14, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Kingi Kahindi Joseph	064	
15. Kiplagat arap Koech	373	
16. Mkawerweren Chebii	336	
17. Odhiambo Omamba	165	
18. Petkay Shen Miriti	104	
19. Robert Maithya Maluki	289	
20. Brig. T. K. Githiora	629	
21. William Boit	017	
22. Wycliffe Osundwa	172	
23. Dr. Julia Ojiambo	220	
24. Moses Akaranga	005	
25. Ogur Tobias O. Ochola	158	
26. King'ori Mwangi	624	
27. Simon L. Alew	326	
28. Kihara Njeri Jane	058	
29. Morris Dzoro	023	
30. Samuel Moroto	110	
31. David Koros	076	
32. Tola Kofa	071	
33. Esther Lelei	445	

ABSENT:

1.	Titus Ngoyoni	144
2.	Waithaka Mwangi	201
3.	James John Mageria	528
4.	H. K. N. Manonda	596
5.	Maj. General (Rtd.) J. Nkaisserry	146
6.	Rukia Subow	504
7.	Ekwee Ethuro	024
8.	David Mwenje	135
9.	Raphael G. Mwai	485

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Leah Symekher	-	CKRC
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

MIN. NO. 04/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 05/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Tuesday, January 13, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. J. K. Waitiki, Del. No. 317 and seconded by Hon. Charles Lwanga Lwole, Del. No. 380 respectively.

MIN. NO. 06/2004: CONSIDERATION OF THE MAIN REPORT OF THE COMMISSION

Motion made and Question proposed;

THAT,

“The Committee on Defence and National Security does note the proposals contained in the Volume One of the Main Report of the Commission”, (Hon. Marsden Madoka, Del. No. 086, 14.01.2004).

Debate arising.
Question put and **agreed to.**

MIN. NO. 07/2004: ADJOURNMENT

And the time being Eleven O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Wednesday, January 14, 2004 at 2.00 p.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

January 14, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Thursday, January 15, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Wednesday, January 14, 2004.
4. Review of the Committee's Interim Report.
5. Any other business.
6. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE SEVENTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON THURSDAY, JANUARY 15, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Kingi Kahindi Joseph	064	
15. Mkawerweren Chebii	336	
16. Odhiambo Omamba	165	
17. Robert Maithya Maluki	289	
18. Brig. T. K. Githiora	629	
19. William Boit	017	
20. Wycliffe Osundwa	172	
21. Moses Akaranga	005	
22. Ogur Tobias O. Ochola	158	
23. King'ori Mwangi	624	
24. Simon L. Alew	326	
25. Kihara Njeri Jane	058	
26. Morris Dzoro	023	
27. Samuel Moroto	110	
28. David Koros	076	
29. Tola Kofa	071	
30. Esther Lelei	445	
31. Titus Ngoyoni	144	
32. Waithaka Mwangi	201	
33. H. K. N. Manonda	596	
34. Maj. General (Rtd.) J. Nkaisserry	146	
35. Ekwee Ethuro	024	
36. David Mwenje	135	

ABSENT WITH APOLOGY:

1.	Dr. Julia Ojiambo	220
2.	Rukia Subow	504

ABSENT:

1.	James John Mageria	528
2.	Raphael G. Mwai	485
3.	Petkay Shen Miriti	104
4.	Kiplagat arap Koech	373

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 08/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 09/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Wednesday, January 14, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Gen. (Rtd.) J. Nkaissery, Del. No. 146 and seconded by Hon. Galgalo Tuye Adano, Del. No. 266 respectively.

MIN. NO. 10/2004: REVIEW OF THE COMMITTEE'S INTERIM REPORT

The Committee considered its Interim Report on Chapter 15 – **Defence and National Security**, and made amendments as follows:

Article 271(I) - Amendment proposed,

THAT,

Article 271(I) be amended by inserting the word “**territorial**” between the words “**and**” and “**integrity**” in the fourth line,” (Gen. (Rtd.) J. Nkaissery, Del. No. 146, 15.01.2004).

Debate arising,

Question put and **agreed to.**

Article 273(I) - Amendment proposed,

THAT,

Article 273(I)(a) be amended to read as follows:

- (a) “**to ensure the integration of the domestic, foreign and military policies relating to the national security in order to enable the National Security Organs to co-operate effectively**”, (Hon. Ekwee Ethuro, Del. No. 024).

Debate arising,

Question put and **agreed to.**

Article 273(I)(c)- Amendment proposed,

THAT,

Article 273(I)(c) be amended by deleting all the words appearing after the words “**and**” in the second line and “**to**” in the fourth line, and all the words appearing after the word “**organs**” in the fourth line, (Hon. Ekwee Ethuro, Del. No. 024, 15.01.2004).

The Article as amended to read as follows:

“**to consider policies on matters of common interests to the National Security Organs and to exercise supervisory control over the National Security Organs**”.

Article 275 - Amendment proposed,

THAT,

The Title “**Chief of General Staff**” be amended to read “**Chief of Defence Forces**”, (Brig. (Rtd) J. K. Waitiki, Del. No. 317).

Debate arising,

Question put and **agreed to.**

Article 275(e) - Amendment proposed,

THAT,

“There shall be a Commandant of the Administration Police Service, who shall be appointed by the President with the approval of Parliament”, (Hon. Esther Lelei, Del. No. 445, 15.01.2004).

Debate arising,

Question put and **agreed to**.

MIN. NO. 11/2004: ADJOURNMENT

And the time being One O'clock the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Thursday, January 15, 2004 at 2.30 p.m.

AFTERNOON SITTING

The Committee assembled at 2.30 p.m.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. Maj. (Rtd.) Marsden Madoka	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Mkawerweren Chebii	336	
15. Odhiambo Omamba	165	
16. Robert Maithya Maluki	289	
17. Brig. T. K. Githiora	629	

18.	William Boit	017
19.	Moses Akaranga	005
20.	King'ori Mwangi	624
21.	Simon L. Alew	326
22.	Morris Dzero	023
23.	Samuel Moroto	110
24.	Esther Lelei	445
25.	H. K. N. Manonda	596
26.	Maj. General (Rtd.) J. Nkaisserry	146

ABSENT WITH APOLOGY:

1.	Dr. Julia Ojiambo	220
2.	Rukia Subow	504

ABSENT:

1.	Titus Ngoyoni	144
2.	Waithaka Mwangi	201
3.	James John Mageria	528
4.	Ekwee Ethuro	024
5.	David Mwenje	135
6.	Raphael G. Mwai	485
7.	Kingi Kahindi Joseph	064
8.	Kiplagat arap Koech	373
9.	Petkay Shen Miriti	104
10.	Wycliffe Osundwa	172
11.	Ogur Tobias O. Ochola	158
12.	Kihara Njeri Jane	058
13.	David Koros	076
14.	Tola Kofa	071

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC

5. Ms. Mary A. Babu - CKRC

MIN. NO. 12/2004: REVIEW OF THE COMMITTEE'S INTERIM REPORT

Motion made and Question proposed;

THAT,

“The Administration Police Service Commandant who will be appointed by the President with the approval of Parliament, will serve for one term of five (5) years,”
(Hon. Mkawerweren Chebii, Del. No. 336, 15.01.2004).

Debate arising,

Question put and **agreed to.**

Article 274(IA)- Amendment proposed,

THAT, Article 274(IA) be amended to read as follows:

“There is established the Kenya Defence Forces consisting of:

- (a) **the Kenya Army and its reserve;**
 - (b) **the Kenya Airforce and its reserve;**
 - (c) **the Kenya Navy and its reserve;**
- (Hon. J. Nkaissery, Del. No. 146, 15.01.2004).

Motion made and Question proposed;

THAT, Article 275(I) be amended by deleting the Title, **“Commanding Officers”** and substituting therewith the Title **“Command of Defence Forces”**, (Maj. General (Rtd.) J. Nkaissery, Del. No. 146, 15.01.2004).

Debate arising,

Question put and **agreed to.**

MIN. NO. 13/2004: ADJOURNMENT

And the time being Four O'clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Friday, January 16, 2004 at 9.00 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

January 15, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, January 16, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Thursday, January 15, 2004.
4. Review of the Committee's Final Report.
5. Any other business.
6. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE EIGHTEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, JANUARY 16, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Emmanuel Lomorukai	322	
11. Francis Kilemi	592	
12. Galgallo Tuye Adano	266	
13. John Kinuthia Waitiki	317	
14. Kingi Kahindi Joseph	064	
15. Mkawerweren Chebii	336	
16. Odhiambo Omamba	165	
17. Robert Maithya Maluki	289	
18. Brig. T. K. Githiora	629	
19. William Boit	017	
20. Wycliffe Osundwa	172	
21. King'ori Mwangi	624	
22. Simon L. Alew	326	
23. Kihara Njeri Jane	058	
24. Morris Dzoro	023	
25. Samuel Moroto	110	
26. David Koros	076	
27. Tola Kofa	071	
28. H. K. N. Manonda	596	
29. Maj. General (Rtd.) J. Nkaisserry	146	
30. Ekwee Ethuro	024	
31. Rukia Subow	504	

ABSENT WITH APOLOGY:

1. Dr. Julia Ojiambo	220
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ABSENT:

1.	James John Mageria	528
2.	Raphael G. Mwai	485
3.	Petkay Shen Miriti	104
4.	Kiplagat arap Koech	373
5.	Moses Akaranga	005
6.	Ogur Tobias O. Ochola	158
7.	Esther Lelei	445
8.	Titus Ngoyoni	144
9.	Waithaka Mwangi	201
10.	David Mwenje	135

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC (Draft person)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 14/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 15/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Thursday, January 15, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. M. Nderi, Del. No. 305 and seconded by Hon. Elizabeth Mayieka, Del. No. 503 respectively.

MIN. NO. 16/2004: MATTERS ARISING

It was noted that the Hon. Ekwee Ethuro, Del. No. 024 was absent with apology during the sitting held on Thursday, January 16, 2004 in the afternoon.

MIN. NO. 17/2004: REVIEW OF THE COMMITTEE'S FINAL REPORT

Motion made and Question proposed,

THAT,

“The Committee adopts its final Report without Amendments”, (Hon. Elizabeth Mayieka, Del. No. 503, 16.01.2004).

Question put and **agreed to.**

Motion made and Question proposed,

THAT,

“The thanks of this Committee to the Convenor be recorded for having ably steered the proceedings of the Committee to successful conclusion”, (Hon. Ekwee Ethuro, Del. No. 024, 16.01.2004).

The Motion was agreed on consensus.

MIN. NO. 18/2004: COMMUNICATION FROM THE CHAIR

The Convenor thanked the Hon. Delegates and the Secretariat of the Committee on Defence and National Security for their co-operation and active participation in the Committee’s deliberations, which made the Committee the first one to conclude its business.

MIN. NO. 19/2004: ADJOURNMENT

And the time being Forty Five Minutes past Eleven O’clock , and the Committee having concluded its deliberations, the Convenor adjourned the sitting *sine die*.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

January 28, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, January 30, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Thursday, January 15, 2004.
4. Review of the Committee's Final Report.
5. Any other business.
6. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE NINETEENTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, JANUARY 30, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086 (<i>Convenor</i>)
2. Prof. Idha Salim	549 Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573 Commissioner (Rapporteur)
4. Abdikadir Guyo	262
5. Bruno Kaimba	280
6. Charles Lwanga Lwole	380
7. D. Muraguri Nderi	305
8. Daniel Njagi	486
9. Elizabeth Mayieka	503
10. Francis Kilemi	592
11. Galgallo Tuye Adano	266
12. John Kinuthia Waitiki	317
13. Kingi Kahindi Joseph	064
14. Mkawerweren Chebii	336
15. Robert Maithya Maluki	289
16. King'ori Mwangi	624
17. Simon L. Alew	326
18. Samuel Moroto	110
19. David Koros	076
20. Tola Kofa	071
21. H. K. N. Manonda	596
22. Maj. General (Rtd.) J. Nkaisserry	146
23. Rukia Subow	504
24. James John Mageria	528
25. Kiplagat arap Koech	373
26. Moses Akaranga	005
27. Ogur Tobias O. Ochola	158
28. Esther Lelei	445
29. Dr. Julia Ojiambo	220

ABSENT WITH APOLOGY:

1. Emmanuel Lomorukai	322
2. Morris Dzoro	023
3. Kihara Njeri Jane	058

ABSENT:

1.	Raphael G. Mwai	485
2.	Petkay Shen Miriti	104
3.	Titus Ngoyoni	144
4.	Waithaka Mwangi	201
5.	David Mwenje	135
6.	Odhiambo Omamba	165
7.	Brig. T. K. Githiora	629
8.	William Boit	017
9.	Wycliffe Osundwa	172
10.	Ekwere Ethuro	024

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC(Draftperson)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 20/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 21/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Friday, January 16, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. J. K. Kingi, Delegate No. 064 and seconded by Hon. R. Maithya Maluki, Delegate No. 289 respectively.

MIN. NO. 22/2004: MATTERS ARISING

It was noted that the Hon. Tobias O. Ochola Ogur, MP was absent with apology during the meeting held on Friday, January 16, 2004.

MIN. NO. 23/2004: CONSIDERATION OF THE COMMITTEE'S FINAL REPORT

Clause 271(2)(d) – Amendment proposed,

THAT, Clause 271(2)(d) be amended by inserting the following new Sub-clause:

“The recruitment by the National Security Organs shall reflect the diversity of the Kenyan people in equitable proportions”, (Hon. Rukia Subow, Delegate No. 504, 30,01,2003).

Debate arising,

Question put and **agreed to**.

It was then agreed that a minority view be recorded.

The following Delegates therefore had their views recorded:

Hon. J. J. Mageria, Delegate No. 528
Hon. Gen. (Rtd.) J. Nkaissery, Delegate No. 146
Hon. Daniel Njagi, Delegate No. 486
Hon. J. K. Waitiki, Delegate No. 317
Hon. Esther Lelei, Delegate No. 445
Hon. Moses Akaranga, Delegate No. 005

MIN. NO. 24/2004: ADJOURNMENT

And the time being Thirty Minutes past Eleven O'clock, the Convenor interrupted the proceedings and adjourned the sitting for tea break for 15 minutes.

MIN. NO. 25/2004: RESUMPTION OF PROCEEDINGS

The proceedings interrupted at 11.30 a.m. resumed.

Motion made and Question proposed;

THAT, **“the Administration Police Service be under the Police Service Commission”**, (Hon. M. H. Madoka, Delegate No. 086, 30.01.2003).

Debate arising,

Question put and **negatived**.

MIN. NO. 26/2004: ANY OTHER BUSINESS

The Hon. Delegates raised the issue of the Committee visiting some of the areas/institutions relevant to the work of the Committee.

The Convenor advised that the issue was under consideration and that Delegates will be informed of the progress made in due course.

The Delegates also agreed that during these visits, the Committee be accompanied by its support staff.

MIN. NO. 27/2004: ADJOURNMENT

And the time being One O'clock, and the Committee having concluded its deliberations, the Convenor adjourned the sitting *sine die*.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

February 16, 2003

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, February 17, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of Minutes of the Meeting held on Friday, January 30, 2004.
4. Consideration of the Report of the Mombasa Retreat.
5. Any other business.
6. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWENTIETH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON TUESDAY, FEBRUARY 17, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Muraguri Nderi	305	
8. Daniel Njagi	486	
9. Elizabeth Mayieka	503	
10. Francis Kilemi	592	
11. Galgallo Tuye Adano	266	
12. John Kinuthia Waitiki	317	
13. Kingi Kahindi Joseph	064	
14. Robert Maithya Maluki	289	
15. King'ori Mwangi	624	
16. Simon L. Alew	326	
17. David Koros	076	
18. H. K. N. Manonda	596	
19. Maj. General (Rtd.) J. Nkaisserry	146	
20. Rukia Subow	504	
21. James John Mageria	528	
22. Kiplagat arap Koech	373	
23. Ogur Tobias O. Ochola	158	
24. Esther Lelei	445	
25. Titus Ngoyoni	144	
26. Waithaka Mwangi	201	
27. David Mwenje	135	
28. Odhiambo Omamba	165	
29. Brig. T. K. Githiora	629	
30. Emmanuel Lomorukai	322	
31. Kihara Njeri Jane	058	
32. Ekwee Ethuro	024	

ABSENT:

1. Morris Dzoro	023
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2.	Mkawerweren Chebii	336
3.	Samuel Moroto	110
4.	Tola Kofa	071
5.	Moses Akaranga	005
6.	Dr. Julia Ojiambo	220
7.	William Boit	017
8.	Raphael G. Mwai	485
9.	Petkay Shen Miriti	104
10.	Wycliffe Osundwa	172

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC(Draftperson)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 28/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 29/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Friday, January 30, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. K. arap Koech, Delegate No. 373 and seconded by Hon. J. J. Mageria, Delegate No. 528 respectively.

**MIN. NO. 30/2004: REPORT ON THE MOMBASA RETREAT
(FEBRUARY 03 – 11, 2004)**

The Convenor, Hon. M. H. Madoka presented the issues raised during the retreat to Mombasa for the harmonization of the Committee’s reports and compilation of the “Zero Draft” as follows:-

1. Civilian involvement in matters of security:-

The National Security Council indeed has civilian membership i.e. the President, Deputy President, Prime Minister, Ministers are all civilians.

2. The provisions of Article 266(2) and 275E shall be retained as proposed by the Technical Working Committee.
3. **Article 266(5)(c)**, It was proposed that “**one person of integrity who has served the public with distinction**” should sit in the tribunal that shall recommend the dismissal of the Inspector General.
4. **Article 266(A) – The Police Service Commission** – There is need to harmonize the functions of the Police Service Commission regarding recruitment of persons into the service with functions recommended for various levels of Government by the Committee on Devolution of powers.

The Technical Working Committee on Defence should specify who should be the Secretary to the Police Service Commission.

It was then proposed that the **Police Service Commission** shall appoint its Secretary.

5. Administration Police:

Article 275(1) and 275D(2) – it was proposed that the Administration Police be merged with the regular Police since Provincial Administration would be abolished upon implementation of the devolved structure of Government.

It was also proposed that the Police Service should be a national service while the Administration Police should be a regional service.

6. Kenya Police Service:

It was agreed that the Police Service shall be a national service but shall take into account the structure of devolution.

7. Community Policing:

It was proposed that this shall be covered under an Act of Parliament.

8. Women’s Rights:

- (i) Principles of Article 271(2)(b) compelled organs of National Security to comply with human rights and fundamental freedoms.

- (ii) Article 271(2)(d) – the National Security Organs should take gender equality into consideration in the recruitment process.

It was then proposed that Article 271(2)(d) which reads: **“Recruitment by National Security Organs shall reflect the diversity of the Kenya People in equitable proportions”** covers the gender equality.

9. National Security Intelligence Service:

It was noted that there was need to harmonize the titles of, Permanent Secretary, Secretary to the Cabinet, and Head of Public Service as provided for in Article 275B(1) with the provisions by the Committee on the Executive.

The Committee shall then decide who of the three shall sit in the National Security Intelligence Service (NSIS) Council.

10. Deployment of Forces – Article 273(4):

It was proposed that when Kenyan forces are deployed to other countries, they should be under the command of Kenyan forces and vice versa.

11. Affirmative Action for Border Communities.

This was sufficiently covered by Article 271(1).

12. Recruitment:

This is sufficiently covered by **Article 271(2)(d)**.

13. Functions of the Police Service Commission (Article 266(4)(a) and (e)):

It was proposed that **Article 266A(4)(a)** be amended to read as follows:-

“recruit and appoint persons to hold or act in an office and to determine promotions in the Kenya Police Service”.

14. It was proposed that a National Service be established by an Act of Parliament to train youth in age sets.

15. Change of Titles:

It was agreed that the following new titles be harmonized in all the Chapters of the Draft Bill:

- (i) Commissioner of Police - to **Inspector General of Police** as adopted by Committee on Defence.
- (ii) **Permanent Secretary** - to **Principal Secretary** (as recommended by the Committee on Executive).
- (iii) **Secretary to the Cabinet and Head of Public Service** - to **Secretary to the Cabinet** (as adopted by Committee on Executive).
- (iv) **Vice-President** - to **Deputy President** (as adopted by the Committee on Executive).

After lengthy deliberations, it was proposed that the Committee adjourns until Thursday, February 19, 2004 to give delegates time to familiarize themselves with the provisions of Chapter 15, Part V as proposed in the “Zero Draft”.

MIN. NO. 31/2004: ADJOURNMENT

Rising in his place on a point of order, the Hon. David Mwenje, Delegate No. 135 moved that “the Committee doth now adjourn”.

And the Convenor acceding to the claim, adjourned the sitting after Question put until Thursday, February 19, 2004 at 9.30 a.m.

MEMORANDUM

The Convenor will take the Chair on Thursday, February 19, 2004 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

February 17, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Thursday, February 19, 2004 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Minutes of the Meeting held on Tuesday, February 17, 2004.
3. Matters Arising.
4. Deliberations of Chapter 15 Part V Article 275B
5. Any other Business.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWENTY FIRST MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON THURSDAY, FEBRUARY 19, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. Charles Lwanga Lwole	380	
7. D. Mugaruri Nderi	305	
8. Elizabeth Mayieka	503	
9. Francis Kilemi	592	
10. Galgallo Tuye Adano	266	
11. John Kinuthia Waitiki	317	
12. Kingi Kahindi Joseph	064	
13. Robert Maithya Maluki	289	
14. King'ori Mwangi	624	
15. Simon L. Alew	326	
16. David Koros	076	
17. H. K. N. Manonda	596	
18. Rukia Subow	504	
19. James John Mageria	528	
20. Kiplagat arap Koech	373	
21. Ogur Tobias O. Ochola	158	
22. Esther Lelei	445	
23. David Mwenje	135	
24. Odhiambo Omamba	165	
25. Brig. T. K. Githiora	629	
26. Emmanuel Lomorukai	322	
27. Kihara Njeri Jane	058	
28. Ekwee Ethuro	024	
29. Morris Dzoro	023	
30. Mkawerweren Chebii	336	
31. Samuel Moroto	110	
32. William Boit	017	

ABSENT:

1.	Tola Kofa	071
2.	Moses Akaranga	005
3.	Dr. Julia Ojiambo	220
4.	Raphael G. Mwai	485
5.	Petkay Shen Miriti	104
6.	Wycliffe Osundwa	172
7.	Daniel Njagi	486
8.	Maj. General (Rtd.) J. Nkaisserry	146
9.	Titus Ngoyoni	144
10.	Waithaka Mwangi	201

OBSERVERS:

1.	Chris O. Oyucho	140
2.	G. N. Macgoye	187
3.	Lt. Col. (Rtd.) Ben Muema	023
4.	Dr. Kiprono Mitei	100
5.	Lt. Gen. (Rtd.) A. K. Arap Cheruiyot	205

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC(Draftperson)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 32/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 33/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Tuesday, February 17, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. A. Guyo, Delegate No. 262 and seconded by Hon. Rukia Subow, Delegate No. 504 respectively.

MIN. NO. 34/2004: MATTERS ARISING

- (i) **From Min. No. 30/2004(a)**, it was agreed that further consultations be held with the Committee on the Executive regarding the position of the Head of Public Service before a decision could be made.

MIN. NO. 35/2004: DELIBERATIONS ON CHAPTER 15, PART V

- (i) Motion made and Question proposed;

THAT, “**the Committee reconsider the entire Part V of Chapter 15 of the Draft Bill**”, (Hon. J. K. Waitiki, Delegate No. 317, 19.02.2004).

Debate arising,

Question put and **agreed to**.

- (ii) Motion made and Question proposed;

THAT, Article 275B(I) be amended by adding the phrase, “**they will compliment the role of the regular Police**”, (Brig. T. G. Githiora, Delegate No. 629, 19.02.2004).

Debate arising,

Question put and by consensus **negatived**.

It was agreed that a minority view on this issue be recorded.

The following delegates therefore had their views recorded:-

Brig. T. G. Githiora, Delegate No. 629

Hon. J. K. Waitiki, Delegate No. 317

Hon. J. J. Mageria, Delegate No. 528

Hon. Kingori Mwangi, Delegate No. 624

- (iii) Motion made and Question proposed;

THAT, Article 275B(I) be amended by adding the following new paragraph “**observe the principles as outlined in Article 273(2)(a)(b)(c)(f) and (g)**”, Hon. Esther Lelei, Delegate No. 445, 19.02.2004).

Debate arising,

Question put and agreed to.

- (iv) Article 275(c)(5) – Amendment proposed;

THAT, Article 275C(5) be amended by deleting the word public appearing after “the” and replacing therewith the word “Police”, (Hon. Mkawerwen Chebii, Delegate No. 336, 19.02.2004).

Debate arising,

Question put and agreed to.

(v) Amendment proposed;

THAT, Article 275A(i) be amended by deleting the word “Kenya” appearing between “the “ and “Police”, (Hon. Mkawerweren Chebii, Delegate No. 336, 19.02.2004).

Debate arising,
Question put and agreed to.

Article 275A(i) as amended – agreed to.

(vi) Amendment proposed;

THAT, Article 275C(3) be included in Article 269B(4), (Brig. T. K. Githiora, Delegate No. 629, 19.02.2004).

Debate arising,
Question put and agreed to.

MIN. NO. 36/2004: ADJOURNMENT

And the time being Forty Five Minutes past One O'clock the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair today, Wednesday, February 19, 2004 at 3.00 p.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

February 20, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Monday, February 23, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Previous Minutes.
3. Matters Arising.
4. Deliberation on Chapter 15 Part V Article 275B.
5. Any other business.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWENTY SECOND MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON MONDAY, FEBRUARY 23, 2004 AT 9.00 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. D. Mugaruri Nderi	305	
7. Francis Kilemi	592	
8. Galgallo Tuye Adano	266	
9. John Kinuthia Waitiki	317	
10. Robert Maithya Maluki	289	
11. King'ori Mwangi	624	
12. Simon L. Alew	326	
13. David Koros	076	
14. H. K. N. Manonda	596	
15. Rukia Subow	504	
16. James John Mageria	528	
17. Kiplangat arap Koech	373	
18. Ogur Tobias O. Ochola	158	
19. Esther Lelei	445	
20. David Mwenje	135	
21. Brig. T. K. Githiora	629	
22. Emmanuel Lomorukai	322	
23. Mkawerweren Chebii	336	
24. William Boit	017	
25. Tola Kofa	071	
26. Moses Akaranga	005	
27. Daniel Njagi	486	
28. Maj. General (Rtd.) J. Nkaisserry	146	
29. Titus Ngoyoni	144	
30. Waithaka Mwangi	201	

ABSENT WITH APOLOGY:

1. Charles Lwanga Lwole	380
2. Kingi Kahindi Joseph	064

ABSENT:

1.	Dr. Julia Ojiambo	220
2.	Raphael G. Mwai	485
3.	Petkay Shen Miriti	104
4.	Wycliffe Osundwa	172
5.	Odhiambo Omamba	165
6.	Kihara Njeri Jane	058
7.	Ekwee Ethuro	024
8.	Morris Dzoro	023
9.	Samuel Moroto	110
10.	Elizabeth Mayieka	503

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Linda M. Murila	-	CKRC(Draftperson)
3.	Ms. Leah Symekher	-	CKRC
4.	Ms. Grace Kamau	-	CKRC
5.	Mary A. Babu	-	CKRC

MIN. NO. 37/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 38/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Thursday, February 19, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. H. K. N. Manonda, Delegate No. 596 and seconded by Hon. Robert M. Maluki, Delegate No. 289 respectively.

MIN. NO. 39/2004: DELIBERATIONS ON CHAPTER 15

- (i) Amendment proposed;

THAT, Article 275(A)(4)(f) be amended to read as follow:-

“exercise such powers including overall policy, control, supervision organisation and discharge of such functions as are provided for by this Constitution or under an Act of Parliament”, (Hon. J. J. Mageria, Delegate No. 528, 23.02.2004).

Debate arising,

- (ii) Amendment of amendment proposed;

THAT, the word “**overall**” in the proposed amendment be deleted, (Hon. William Boit).

Debate arising,

Question put and **agreed to.**

- (iii) Further amendment proposed;

THAT, the word “**making**” be inserted between words “**policy**” and “**control**”, (Hon. Esther Lelei, Delegate No. 445, 23.02.2004).

Debate arising,

Question put and **agreed to.**

- (iv) Motion as amended to read as follows:-

“exercise such powers including policy making, control, supervision, organisation and discharge of such functions as are provided by this Constitution or by an Act of Parliament”.

Debate arising,

Question put and **agreed to.**

- (v) Amendment proposed,

THAT, A new subsection (f) be added to Article 275A(2) which should read as follows:-

“the Commandant of the Administration Police Service, who shall be an Ex-Officio Member”, (Hon. Mkawerweren Chebii, Delegate No. 336, 23.02.2004).

Debate arising,

Question put and **agreed to.**

- (vi) Amendment proposed,

THAT, Article 275A(2)(c) be amended by adding the words “**one from each of the services**” immediately after the word “**officers**”, (Hon. Mkawerweren Chebii, Delegate No. 336, 23.02.2004).

Debate arising,

Question put and **agreed to.**

(vii) Amendment proposed;

THAT, Article 271(2) be amended by deleting the words “**and its reserve**” appearing in subparagraphs (a), (b) and (c), (Brig. T. K. Githiora, Delegate No. 629, 23.02.2004).

Debate arising,

Question put and **agreed to.**

(viii) Amendment proposed;

THAT, Article 269(i) be amended by adding a new Subclause (k) to read as follows:-

“**The Commandant of the Administration Police Service**”, (Hon. Moses Akaranga, Delegate No. 005, 23.02.2004).

Debate arising,

Question put and **agreed to.**

A minority view was recorded from the following delegates:-

Hon. Mugaruri D. Nderi, Delegate No. 305
Brig. T. K. Githiora, Delegate No. 629
Hon. J. J. Mageria, Delegate No. 528
Hon. J. K. Waitiki, Delegate No. 317
Hon. King’ori Mwangi, Delegate No. 624
Hon. Daniel Njagi, Delegate No. 486

MIN. NO. 40/2004: ADJOURNMENT

And the time being One O’clock, the Convenor interrupted the proceedings and adjourned the sitting without Question put in accordance with the National Constitutional Conference Regulations.

MEMORANDUM

The Convenor will take the Chair tomorrow, Tuesday, February 24, 2004 at 9.30 a.m.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

February 23, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Tuesday, February 24, 2004 in Tent No. 9, Bomas of Kenya at 9.30 a.m.**

AGENDA

1. Prayers.
2. Confirmation of Previous Minutes.
3. Matters Arising.
4. Confirmation of the Committee's Report to Plenary.
5. Any other business.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWENTY THIRD MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON TUESDAY, FEBRUARY 24, 2004 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	<i>(Convenor)</i>
2. Prof. Idha Salim	549	Commissioner (Rapporteur)
3. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)
4. Abdikadir Guyo	262	
5. Bruno Kaimba	280	
6. D. Mugaruri Nderi	305	
7. Francis Kilemi	592	
8. Galgallo Tuye Adano	266	
9. John Kinuthia Waitiki	317	
10. Robert Maithya Maluki	289	
11. King'ori Mwangi	624	
12. Simon L. Alew	326	
13. Rukia Subow	504	
14. James John Mageria	528	
15. Kiplangat arap Koech	373	
16. Esther Lelei	445	
17. Brig. T. K. Githiora	629	
18. Emmanuel Lomorukai	322	
19. Mkawerweren Chebii	336	
20. William Boit	017	
21. Tola Kofa	071	
22. Moses Akaranga	005	
23. Daniel Njagi	486	
24. Maj. General (Rtd.) J. Nkaisserry	146	
25. Waithaka Mwangi	201	
26. Kingi Kahindi Joseph	064	
27. Ekwee Ethuro	024	

ABSENT WITH APOLOGY:

1. Charles Lwanga Lwole	380
2. Dr. Julia Ojiambo	220
3. Samuel Moroto	110

ABSENT:

1.	Petkay Shen Miriti	104
2.	Wycliffe Osundwa	172
3.	Odhiambo Omamba	165
4.	Kihara Njeri Jane	058
5.	Morris Dzoro	023
6.	Elizabeth Mayieka	503
7.	David Mwenje	135
8.	David Koros	076
9.	H. K. N. Manonda	596
10.	Ogur Tobias O. Ochola	158
11.	Titus Ngoyoni	144

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Leah Symekher	-	CKRC
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

OBSERVER:

1.	Dr. Kiprono Mitei	-	100
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MIN. NO. 41/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 42/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the meeting held on Monday, February 23, 2004 were confirmed by Members present and signed by the Convenor after they were proposed by Hon. J. J. Mageria, Delegate No. 528 and seconded by Hon. Esther Lelei, Delegate No. 445 respectively.

MIN. NO. 43/2004: ADOPTION OF THE COMMITTEE'S REPORT TO PLENARY

The Convenor explained to the Members the modalities of presentation of the Committee's report to Plenary, whose contents the Committee adopted by consensus.

MIN. NO. 44/2004: ADJOURNMENT

And the time being Thirty Minutes Past Eleven O'clock, and the Committee having concluded its deliberations, the Convenor adjourned the sitting *sine die*.

Signed: _____

Date: _____

NATIONAL CONSTITUTIONAL CONFERENCE

February 26, 2004

TECHNICAL WORKING COMMITTEE 'I' ON DEFENCE AND NATIONAL SECURITY

The Convenor presents his compliments to Members of the Technical Working Committee "I" and has the honour to inform them that a sitting of the Committee will be held on **Friday, February 27, 2004 in Tent No. 9, Bomas of Kenya at 9.00 a.m.**

AGENDA

1. Prayers.
2. Apologies.
3. Confirmation of the Previous Minutes.
4. Deliberations On Part III Of Chapter Seventeen Of The Zero Draft
5. Any other business.
6. Date of next Meeting.

Approved for circulation - Convenor

Date.....

Time.....

MINUTES OF THE TWENTY FOURTH MEETING OF THE TECHNICAL WORKING GROUP I – DEFENCE AND NATIONAL SECURITY HELD AT COMMITTEE TENT NO. 9 – BOMAS OF KENYA, ON FRIDAY, FEBRUARY 27, 2004 AT 9.30 A.M.

PRESENT: The following Members of the Working Group were present:

<u>Name</u>	<u>Delegate No.</u>	
1. <i>Maj. (Rtd.) Marsden Madoka</i>	086	(Convenor)
2. Bruno Kaimba	280	
3. D. Mugaruri Nderi	305	
4. Galgallo Tuye Adano	266	
5. John Kinuthia Waitiki	317	
6. Robert Maithya Maluki	289	
7. King'ori Mwangi	624	
8. Simon L. Alew	326	
9. Rukia Subow	504	
10. James John Mageria	528	
11. Kiplangat arap Koech	373	
12. Esther Lelei	445	
13. Brig. T. K. Githiora	629	
14. Emmanuel Lomorukai	322	
15. Mkawerweren Chebii	336	
16. William Boit	017	
17. Ogur Tobias O. Ochola	158	
18. Daniel Njagi	486	
19. Maj. General (Rtd.) J. Nkaisserry	146	
20. Waithaka Mwangi	201	
21. Kingi Kahindi Joseph	064	
22. Ekwee Ethuro	024	
23. Wycliffe Osundwa	172	
24. Odhiambo Omamba	165	
25. Charles Lwanga Lwole	380	

ABSENT WITH APOLOGY:

1. Dr. Julia Ojiambo	220	
2. Samuel Moroto	110	
3. Prof. Idha Salim	549	Commissioner (Rapporteur)
4. Mr. D. M. Ratanya	573	Commissioner (Rapporteur)

ABSENT:

1. Abdikadir Guyo	262
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2.	Petkay Shen Miriti	104
3.	Kihara Njeri Jane	058
4.	Morris Dzoro	023
5.	Elizabeth Mayieka	503
6.	David Mwenje	135
7.	David Koros	076
8.	H. K. N. Manonda	596
9.	Titus Ngoyoni	144
10.	Francis Kilemi	592
11.	Moses Akaranga	005

IN ATTENDANCE:

1.	Ms. Christine Mwambua	-	National Assembly
2.	Ms. Leah Symekher	-	CKRC
3.	Ms. Grace Kamau	-	CKRC
4.	Mary A. Babu	-	CKRC

OBSERVER:

1.	Dr. Kiprono Mitei	-	100
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MIN. NO. 45/2004: PRAYERS

The proceedings were opened with prayer.

MIN. NO. 46/2004: DELIBERATIONS ON PART III OF CHAPTER SEVENTEEN OF THE ZERO DRAFT

Amendment proposed,

THAT, PART III of Chapter 17 of the Zero Draft be amended by deleting the word “security” appearing between “National and Intelligence” (Hon. J.J. Mageria, Del. No. 528. 27.2.2004)

Question put and by consensus, **agreed to.**

MIN. NO. 47/2004: ADJOURNMENT

And the time being Twelve Noon, and the Committee having concluded its deliberations, the Convenor adjourned the sitting *sine die*.

Signed: _____

Date: _____

Appendix D: List of Members

NATIONAL CONSTITUTIONAL CONFERENCE

TECHNICAL WORKING GROUP I

Defence and National Security

Convenor: Maj. (Rtd.) Marsden Madoka

	<u>NAME</u>	<u>DELEGATE NO.</u>
1	Hon. Abdikadir Guyo	262
2	Hon. Bruno Kaimba	280
3	Hon. Charles Lwanga Lwole	380
4	Hon. D. Mugaruri Nderi	305
5	Hon. Daniel Njagi	486
6	Hon. David Koros	076
7	Hon. David Mwenje	135
8	Hon. Elizabeth Mayieka	503
9	Hon. Emmanuel Lomorukai	322
10	Hon. Esther Lelei	445
11	Hon. Francis Kilemi	592
12	Hon. Galgallo Tuye Adano	266
13	Hon. James John Mageria	528
14	Hon. John Kinuthia Waitiki	317
15	Hon. H. K. N. Manonda	596
16	Hon. Kihara Njeri Jane	058
17	Hon. Kingi Kahindi Joseph	064

18	Hon. Kiplangat arap Koech	373
19	Hon. Maj. General (Rtd.) Nkaiserry	146
20	Hon. Mkawerweren Chebii	336
21	Hon.Odhiambo Omamba	165
22	Hon.Ogur Tobias O. Ochola	158
23	Hon. Petkay Shen Miriti	104
24	Hon.Robert Maithya Maluki	289
25	Hon.Simon L. Alew	326
26	Hon. Brig.T. K. Githiora	629
27	Hon.Waithaka Mwangi	201
28	Hon.William Boit	017
29	Hon.Wyclife Osundwa	172
30	Hon.Dr. Julia Ojiambo	220
31	Hon. Morris Dzoro	023
32	Hon. Kingori Mwangi	624
33	Hon.Samuel Moroto	110
34	Hon.Titus Ngoyoni	144
35	Hon.Rukia Subow	504
36	Hon.Ekwee Ethuro	024
37	Hon.Moses Akaranga	005
38	Hon.Tola Kofa	071
39	Hon.Maj. (Rtd.) Marsden Madoka (Convenor)	086

40	Hon.Prof. Idha Salim (Rapporteur)	549
41	Hon.Domiziano Ratanya (Rapporteur)	573

Appendix E: Legislative Drafter's Report

Annotated Draft CHAPTER FIFTEEN

~~THE DEFENCE FORCES AND NATIONAL SECURITY~~

Definition.

270A National Security is the preservation of the people of Kenya, their property, freedoms, and other national interests against internal and external threats.

National Security Organs

270B (1) There shall be National Security Organs, which shall comprise the following –

- (a) the Defence Forces;*
- (b) the National Security Intelligence Service;*
- (c) the Kenya Police Service; and*
- (d) the Administration Police Service.*

(2) An agency, establishment or any other organisation concerned with national security shall not be established except by or under an Act of Parliament.

(4) The National Security Organs shall be subordinate to civil authority.

Principles and Objects of ~~Defence and~~ National Security

271. (1). The primary object of the ~~Defence Forces~~ *National Security Organs* and security system of the Republic of Kenya is to safeguard the well being of the people of Kenya, *its sovereignty*, the peace, national unity and *territorial* integrity of the Republic.

(2) The defence and national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles -

- (a) National security is subject to the authority of the Constitution and Parliament;
- (b) National security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms; and

(c) ~~The Defence Forces shall endeavour to learn from, and make use of, the experience and traditions of the diverse communities within Kenya, and their leaders, in making and maintaining peace;~~

(c) the national security organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties; and

(d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.

(3) ~~The Defence Forces~~ **National Security Organs** shall act and train and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements that are binding on Kenya

(4) In the performance of their functions, the ~~Defence Forces~~ **National Security Organs** and every member of the ~~Defence Forces~~ **National Security Organs** shall not -

- (a) act in a partisan manner;
- (b) further any interest of a political party or cause; or
- (c) prejudice a political interest or political cause that is legitimate in terms of the Constitution.

Establishment of the National Security Council.

272. (1) There is established a National Security Council consisting of -

- (a) the President;
- (b) the Vice President;
- (c) the Prime Minister;
- (d) the Minister ~~in Charge of defence;~~
for the time being responsible for Defence;
- (e) the Chief of Defence Forces;
- ~~(f) Army Commander;~~
- ~~(g) Navy Commander;~~
- ~~(h) Air Force Commander;~~
- (i) the ~~Commissioner~~ **Inspector-General** of the **Kenya** Police Service;
- ~~(j) the Director of Kenya Correctional services;~~
- (k) *the* Director-**General** of National Security Intelligence Service;
- ~~(l) the Chairperson of the relevant Parliamentary Committee;~~
and

- (m) the Attorney General.
 - (n) *the Minister for the time being responsible for foreign affairs and*
 - (o) *the Minister for the time being responsible for internal security;*
- (2) The President shall preside at the meetings of the Council, and, in the absence of the President, the Vice-President, and in the absence of the Vice President, the Prime Minister shall preside.
 - (3) The *National Security* Council shall make rules of procedure to guide the conduct of its meetings.
 - (4) The *National Security* Council shall elect or appoint its secretary ~~from among its members.~~

Functions of the National Security Council

273. (1) The National Security Council has the responsibility-
- (a) **to ensure the integration of the domestic, foreign and military polices relating to the national security in order to enable the ~~military services, departments and agencies~~ *National Security Organs* to co-operate effectively ~~in matters relating to national security~~;**
 - (b) **to assess and appraise the objectives, commitments *and* risks to ~~of~~ the Republic in relation to actual and potential ~~military power in the interests of~~ national security *capabilities*; and**
 - (c) **to consider policies on matters of common interests to the ~~departments~~ *national security organs* ~~and agencies of environment concerned with national security~~, and to exercise supervisory control over ~~these departments~~ *the national security organs*.**
- ~~(2) The Prime Minister shall keep the President informed on the state of the security of the Republic and of the deliberations of the Council.~~
- (2) *The National Security Council shall inform Parliament of the state of the security of the Republic through the relevant Committee.*
 - (3) **Where a state of emergency is declared by the President, the *National Security Council* shall be the authority responsible, subject**

to the Constitution, for taking and implementing the measures that are reasonably justifiable for dealing with the situation that had arisen.

~~(4) An agency, establishment or any other organization concerned with national security that not be established except by or under an Act of Parliament.~~

(4) *The National Security Council may with the approval of Parliament:-*

(a) *deploy national forces outside Kenya for –*

(i) *United Nations and other peace support operations;*

(ii) *other support operations; or*

(b) *approve the deployment of foreign forces in Kenya.*

Defence Forces

274. (1) **No one may raise a defence force, or military or a Paramilitary organization except by or under the authority of an Act of Parliament this Constitution.**

(1A) There is established the Kenya Defence Forces consisting of the following:

(a) the Kenya Army and its reserve;

(b) the Kenya Air force and its reserve; and

(c) the Kenya Navy and its reserve.

(3) **There is established a Defence Council consisting of –**

~~(a) — The President;~~

~~(b) — The Vice President;~~

~~(c) — The Prime Minister;~~

(a) **The Minister** for the time being responsible for defence who shall be the Chairperson; ~~in Charge of Defence;~~

(b) *the Assistant Minister for the time being responsible for defence who shall be the Vice-Chairperson;*

(c) **the Chief of General Staff Defence Forces;**

(d) **the Navy Commander;**

(e) **the Army Commander; and**

(f) **the Air Force Commander; and**

(g) *the Permanent Secretary for the time being responsible for defence.*

(3) *The Defence Council shall appoint its Secretary*

(4) The Defence Council shall be responsible for the overall policy, control, and supervision of the Defence Forces and such other functions as may be specified by Parliament.

Commanding Officers Command of Defence Forces

~~275.(1) The Chief of Defence Forces of the Defence Forces shall be appointed by the President in consultation with the National Security Council.~~

275.(1) The President, who is the Commander-in-Chief of the Armed Forces shall, in consultation with the Defence Council appoint the Chief of Defence Forces, the Army Commander, the Air force Commander, and the Navy Commander.

~~(2) The Chief of Defence Forces of the Defence Forces, subject to this Article, is responsible for the operational use and the general administration of the Defence Forces.~~

(2) The Chief of Defence Forces and Service Commanders shall exercise command over the defence forces and perform such other duties as may be specified by Parliament.

~~(3) The President, acting in accordance with the recommendations of Defence Forces Council shall appoint-~~

- ~~(a) the Army Commander who is responsible to the Council and for the administration of the Army;~~**
- ~~(b) the Naval Commander who is responsible to the Council and for the administration of the Navy; and~~**
- ~~(c) the Air Force Commander who is responsible for the Council and administration of the Air Force.~~**

~~(4) Each of the officers referred to in Clause (4) is subject to the general direction of the Defence Forces Council.~~

~~(5) The President, acting in accordance with the recommendation of the Defence Forces Council—~~

- ~~(a) shall grant commissions to officers of the Defence Forces; and~~**
- ~~(b) shall appoint persons to office or to act in an office in the Defence Forces;~~**

~~(6) Subject to the Constitution, the Defence Forces Council may make regulations for the effective and efficient administration of the Defence Forces.~~

~~(7) The Regulations shall include matters relating to:~~

- ~~(a) — the control and administration of the Navy, the Army and the Air Force;~~
- ~~(b) — the ranks of officers and of the men and women of each Defence Force, the member of each rank and the use of the weapons by the officers, men and women;~~
- ~~(c) — the conditions of service, including conditions of service relating to the enrolment and to the pay, pensions, gratuities and other allowances of the officers, men and women of the Defence Force;~~
- ~~(d) — the authority and process of command of the officers men and women of the Defence Force; and~~
- ~~(d) the delegation to other persons of commanding officers to try accused persons and the conditions subject to which the delegation is made.~~

NATIONAL SECURITY INTELLIGENCE SERVICE

Establishment of The National Security Intelligence Service

275A(1) There is established a service to be known as the National Security Intelligence Service.

(2) The National Intelligence Security Intelligence Service shall be under the command of the Director-General who shall be appointed by the President with the approval of Parliament.

(3) **The National Intelligence Security Service shall be responsible for security intelligence, and counter intelligence to enhance national security, defend the constitution, the interest of the state and the well being of the people of Kenya.**

(4) **Subject to this Constitution, the National Intelligence Security Service shall be organized and administered in such manner and shall exercise such functions as Parliament may prescribe.**

(5) **The National Intelligence Security Service shall in exercising its functions observe respect for human rights, fundamental freedoms and the rule of law.**

(6) **No intelligence service, other than an intelligence division of the defence Force or the Kenya Police Service shall be established except by or under an Act of Parliament.**

Establishment of the National Security Intelligence Council.

275B (1) There is established a National Security Intelligence Council consisting of –

- (f) the Minister for the time being responsible for matters relating to national security and Intelligence who shall be the Chairperson;**
- (g) the Minister for the time being responsible for foreign affairs;**
- (h) the Minister for the time being responsible for finance;**
- (i) the Attorney-General; and**
- (j) the Permanent Secretary, Secretary to the Cabinet and Head of Public Service..**

(2) The Director-General of the National Security Intelligence Service shall be the Secretary to the National Security Intelligence Council.

(3) The functions of the National Security Intelligence Council shall be -

- (b) to advise the National Security Intelligence Service on all matters pertaining to –**
 - (i) national security and intelligence policies;**
 - (ii) the administration of the service;**
 - (iii) the expenditure of the service; and**

(b) to perform such other functions as are conferred on the Council by an Act of Parliament.

KENYA POLICE SERVICE

Principles and objects

264. (1) The primary object of the Kenya Police Service is to work with and for the people to ensure –

- (a) a peaceful and safe environment;**
- (b) the protection of rights and freedoms;**
- (c) the security of the people;**
- (d) the prevention and detection of crime;**
- (e) the support of victims of crime and disorder; and**
- (f) the protection of *life and* property.**

(2) In furtherance of these objects the *Kenya Police* Service ~~will~~ *shall*
-

- (a) strive for the highest standards of professionalism;**
- (b) work to eliminate and avoid corruption of all sorts;**

- ~~(e) avoid bias or discrimination with regard to political groups or other sections of society;~~
- (c) **observe the principles specified in Article 271(4);**
- (d) observe human rights standards;
- (e) train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;
- ~~(f) recognize the duty of accountability to society and democratic institutions;~~
- (f) *abide by the principles of transparency and accountability to society and democratic institutions; and*
- (g) ~~build up~~ **foster and promote** relationships with the broader society;
- ~~(h) train its members, including members of any paramilitary, armed or riot police units, to the highest possible standards of competence, minimal use of force, integrity and respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society; and~~

Establishment of the Kenya Police Service

265. (1) There is established a service to be known as the Kenya Police Service.
- (2) Subject to this Constitution, the *Kenya Police Service* shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe.
- (3) The *Kenya Police Service* shall be professional and disciplined.
- (4) The *Kenya Police Service* shall remain a national police force, and the division of its functions shall be organized to take into account the structure of devolution.
- (5) The Police Service shall work closely with communities to ensure security and safety for ~~all citizens through community policing-~~ *the people of Kenya.*

Appointment of the ~~Commissioner~~ *Inspector-General* of the Kenya Police Service

266. (1) There shall be a ~~Commissioner~~ *Inspector-General* of the Kenya Police Service *who shall be the head of the Kenya Police Service.*
- (2) The ~~Commissioner~~ *Inspector General* shall be appointed by the President with the approval of Parliament for one term of ~~ten~~ *five* years.
- ~~(3) No person may be appointed as Commissioner unless that person—~~

- ~~(a) has a degree from a recognized university; and~~
- ~~(b) has served in the police service for at least ten years.~~
- ~~(4) The Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two deputy Commissioners.~~
- ~~(5) The Commissioner shall be subject to, and act in accordance with the Constitution and laws of Kenya; except that on matters of policy, the President acting on the advise of the prime Minister, may give direction to the Commissioner.~~
- ~~(6) The Commissioner of Police may be removed from office by the President for good cause, with approval of Parliament.~~
- (4) Subject to the provisions of this Constitution, the Inspector - General shall, in exercise of his functions not be subject to the direction or control of any person or authority.
- (5) Subject to this Constitution, the Inspector-General may be removed from office by the President only for –
 - (i) inability to perform the functions of his or her office arising from infirmity of body or mind; or
 - (j) misconduct; or
 - (k) incompetence; or
 - (l) any other just cause.
- (6) The Inspector-General shall not be removed from office except on the recommendation of a tribunal appointed by the President comprising of the following -
 - (a) the Chairperson of the Kenya Police Service Commission;
 - (b) a High Court Judge; and
 - (c) one other person.

ESTABLISHMENT OF THE KENYA POLICE SERVICE COMMISSION

266A(1) *There is established a Service to be known as the Police Service Commission.*

- (2) *The Kenya Police Service Commission shall consist of -*
- (a) *a chairperson appointed by the President from amongst-the members of the Commission;*
 - (b) *a person who is qualified to be appointed as a Highcourt Judge;*
 - (c) *two retired senior police officers;*
 - (d) *three persons of integrity who have served the public with distinction; and*
 - (e) *the Inspector-General of the Kenya Police Service who shall be an ex-officio member.*
- (3) *The Commissioners appointed under subarticle (2) shall hold office for a period of five years and shall be eligible for re-appointment for only one further term.*
- (4) *The functions of the Kenya Police Service Commission shall be to -*
- i. *recruit and appoint persons to hold or act in an office, to determine promotions in the Kenya Police Service, and to exercise disciplinary control over such persons;*
 - ii. *keep under review all matters relating to the standards or qualifications required of members of the Kenya Police Service;*
 - iii. *keep under review all matters relating to salaries, allowances and other terms and conditions of service;*
 - iv. *ensure adequate budgetary provision for the Kenya Police Service;*
 - v. *promote and exercise disciplinary control, including hearing and disposal of appeals by persons in the Kenya Police Service;*
 - vi. *exercise such powers including the power to delegate and discharge such functions as are provided for by this constitution or under an Act of Parliament.*

THE ADMINISTRATION POLICE SERVICE

Principles And Objects

275C(1) The primary object of the Administration Police Service is to work with and for the people to -

- (a) preserve and maintain public peace; and*
- (b) prevent Commission of offences*

(2) The Administration Police Service is established to work with and for the people supporting and assisting within existing law with Administration in the public service.

(3) In the discharge of those functions the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms.

Establishment Of The Administration Police Service

275D(1) There is established a service to be known as Administration Police Service.

(2) The Administration Police Service shall be a separate service from the Kenya Police Service.

(3) Parliament may enact legislation for the organisation, administration and discipline of the Administration Police Service including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service.

- (4) The Administration Police Service shall be organised to take into account the structure of devolution.*
- (5) The Administration Police service shall be a Service under the Public Service Commission.*

Appointment Of The Commandant Of The Administration Police Service.

275E There shall be a Commandant of the Administration Police Service who shall be appointed by the President with the approval of Parliament, for one term of five years.

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
Title	THE DEFENCE AND NATIONAL SECURITY	NATIONAL SECURITY		'National Security' is the key principle in the chapter and 'Defence' is just a part of it. The chapter covers other national security organs; The Police, NSIS, Defence Forces and the Administration Police.
	NEW	<p><i>Part 1 – National Security Organs</i></p> <p><u><i>Definition</i></u> <i>270A National Security is the preservation of the people of Kenya, their property, freedoms, and other national interests against internal and external threats.</i></p>		It was strongly felt that there is need to define National Security.
	NEW	<p><u><i>National Security Organs</i></u></p> <p><i>270B(1) There shall be National Security Organs, which shall comprise the following-</i></p>		A new Article needed to be added listing all organs of national security.

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>(a) the Defence Forces;</i> <i>(b) the National Intelligence Service;</i> <i>(c) the Kenya Police service;</i> <i>and</i> <i>(d) the Administration Police Service.</i></p> <p><i>(2)An agency, establishment or any other organisation concerned with national security shall not be established except by or under an Act of Parliament.</i></p> <p><i>(3)The national security organs shall be subordinate to civil authority.</i></p>		<p>This provision prevents the emergence of any paramilitary or security agencies except by an Act of Parliament.</p> <p>This provision was added to make sure that the security organs remain under civil control.</p>

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
271	<p>Principles and Objects of Defence and National Security</p> <p>(1). The primary object of the Defence Forces and security system of the Republic of Kenya is to safeguard the well-being of the people of Kenya, the peace, national unity and integrity of the Republic.</p>	<p>Principles and Objects of National Security</p> <p>(1). The primary object of the National Security Organs and security system of the Republic of Kenya is to safeguard the well-being of the people of Kenya, its sovereignty, the peace, national unity and territorial integrity of the Republic.</p>		<p>‘National Security Organs’ replaces ‘Defence forces.’</p> <p>The term ‘sovereignty’ was added to highlight Kenya’s independence as a nation.</p> <p>‘Territorial’ was added to remove ambiguity.</p>
	<p>(2) The defence and national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles -</p>	<p>(2) The defence and national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles -</p>		<p>Adopted without amendments</p>
	<p>(a) National security is subject to the authority of the</p>	<p>(a) national security is subject to the authority of the Constitution</p>		<p>Adopted without amendments</p>

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	Constitution and Parliament;	and Parliament;		
	(b) National security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms; and	(b) national security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms; and		Adopted without amendments
	(c) The Defence Forces shall endeavour to learn from, and make use of, the experience and traditions of the diverse communities within Kenya, and their leaders, in making and maintaining peace;	(c) the national security organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties; and		It was resolved that the Constitution should recognize traditional approaches to conflict resolution.
	NEW	<i>(d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.</i>	The provision should be covered under Chapter 3, National Goals, Values and Principles as a	<ul style="list-style-type: none"> The provision was adopted to facilitate a rational mode of recruitment in the disciplined forces

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
			general principle in the Constitution or be covered by an Act of Parliament.	since past experience was marred with bias towards certain ethnic groups.
	(3) The Defence Forces shall act and train and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements that are binding on Kenya.	(3) The National Security Organs shall act and train and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements that are binding on Kenya.		“Defence Forces” was replaced with “National Security Organs.”
	(4) In the performance of their functions, the Defence Forces and every member of the Defence Forces shall not -	(4) In the performance of their functions, the National Security Organs and every member of the National Security Organs shall not-		“Defence Forces” was replaced with “National Security Organs.”
	(a) act in a partisan manner;	(a) act in a partisan manner;		Adopted without amendments

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(b) further any interest of a political party or cause; or	(b) further any interest of a political party or cause; or		Adopted without amendments
	(c) prejudice a political interest or political cause that is legitimate in terms of the Constitution.	(c) prejudice a political interest or political cause that is legitimate in terms of the Constitution.		Adopted without amendments
	New	<i>(5) Parliament shall enact legislation for the organization, administration and discipline of the national security organs, including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service.</i>		
272	Establishment of the National Security Council. (1) There is established a National Security Council	Establishment of the National Security Council. (1) There is established a National Security Council		<ul style="list-style-type: none"> The title “Chief of General Staff “was replaced with “Chief of Defence

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>consisting of –</p> <p>dent;</p> <p>ister;</p> <p>n Charge of Defence;</p> <p>eneral Staff;</p> <p>nder;</p> <p>nder;</p> <p>mander;</p> <p>oner of Police;</p> <p>f Kenya Correctional Services;</p> <p>tional Security Intelligence</p> <p>on of the relevant Parliamentary</p> <p>d</p> <p>General.</p>	<p>consisting of –</p> <p>(a) the President;</p> <p>(b) the Vice President;</p> <p>(c) the Prime Minister;</p> <p>(d) the Minister for the time being responsible for Defence;</p> <p>(e) the Chief of Defence Forces;</p> <p>(f) the Inspector-General of the Kenya Police Service;</p> <p>(g) the Director-General of the National Intelligence Service;</p> <p>(h) the Attorney General;</p> <p>(i) the Minister for the time being responsible for foreign affairs;</p> <p>(j) the Minister for the time being responsible for internal security; and</p> <p>(k) <i>the Commandant of the Administration Police.</i></p>	<p>The Commandant of the Administration Police should not be a member of the</p>	<p>Forces.”</p> <ul style="list-style-type: none"> • The service commanders of the Defence Forces were excluded from the council as they are well represented by the Chief of Defence Forces. • The title “Commissioner of Police” was replaced with “Inspector General of the Kenya Police Service.” • The Prisons Department does not constitute an organ of National Security therefore the Director of Correctional

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
			National Security Council.	<p>services was excluded from the Council.</p> <ul style="list-style-type: none"> Defence Forces are often deployed to other countries, hence the need for the Minister for Foreign Affairs to be a member of the National Security Council.
	(2)The President shall preside at the meetings of the Council, and, in the absence of the President, the Vice-President, and in the absence of the Vice President, the Prime Minister shall preside.	(2)The President shall preside at the meetings of the Council, and, in the absence of the President, the Vice-President, and in the absence of the Vice President, the Prime Minister shall preside.		Adopted without amendments
	(3)The Council shall make rules of procedure to guide the conduct of its meetings.	(3)The Council shall make rules of procedure to guide the conduct of its meetings.		Adopted without amendments

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(4)The Council shall elect or appoint its secretary from among its members.	(4)The Council shall elect or appoint its secretary.		The Council should be free to appoint its secretary from within or without its membership.
273	Functions of the National Security Council (1)The National Security Council has the responsibility-	Functions of the National Security Council (1) The National Security Council has the responsibility-		
	(a) to ensure the integration of the domestic, foreign and military policies relating to the national security in order to enable the military services, departments and agencies to co-operate effectively in matters relating to national security;	(a) to ensure the integration of the domestic, foreign and military policies relating to the national security in order to enable the national security organs to co-operate effectively;		The provision was amended to include other national security organs and rationalise the sub-article.
	(b) to assess and appraise the objectives, commitments and risks of the Republic in relation to actual and potential military power in the interest of national	(b) to assess and appraise the objectives, commitments and risks to the Republic in relation to actual and potential national security capabilities; and		The provision was amended to remove ambiguity and include other national security organs.

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	security; and			
	(c) to consider policies and matters of common interests to the departments and agencies of environment concerned with national security, and to exercise supervisory control over these departments.	(c) to consider policies on matters of common interests to the national security organs and to exercise supervisory control over the National Security Organs.		The provision was amended to remove ambiguity and include other national security organs.
	(2) The Prime Minister shall keep the President informed on the state of the security of the Republic and of the deliberations of the Council.	(2) The National Security Council shall inform Parliament of the state of the security of the Republic through the relevant Committee.		Since the President chairs the National Security Council he does not need to be informed on the state of security but Parliament does through the relevant parliamentary committee.
	(3) Where a state of emergency is declared by the President, the Council shall be the authority responsible, subject to the Constitution, for taking and implementing the measures that	(3) Where a state of emergency is declared by the President, the Council shall be the authority responsible, subject to the Constitution, for taking and implementing the measures that		Adopted without amendments

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	are reasonably justifiable for dealing with the situation that had arisen.	are reasonably justifiable for dealing with the situation that had arisen.		
	(4) An agency, establishment or any other organisation concerned with national security shall not be established except by or under the authority of an Act of Parliament.	(4) The National Security Council may with the approval of Parliament:- (a) deploy national forces outside Kenya for- (i) United Nations and other peace support operations; (ii) Other support operations; or (b) approve the deployment of foreign forces in Kenya.		The original sub-article was transferred to the Article on Organs of National Security. The National security council should have the authority subject to approval by parliament to deploy local forces abroad and approve deployment of foreign forces into Kenya. This is to prevent an individual or group of persons making such important decisions independently.
274	Defence Forces	Part II - Defence Forces		The Provision was amended to counter a

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(1) No one may raise a defence force or military or a paramilitary organisation except by or under the authority of an Act of Parliament	(1) No one may raise a defence force, military or a paramilitary organisation except by or under the authority of this Constitution.		case where a simple majority can amend an Act of Parliament.
	New	<i>IA There is established the Kenya Defence Forces consisting of the following</i> <i>(a) the Kenya Army;</i> <i>(b) the Kenya Air Force; and</i> <i>(c) the Kenya Navy.</i>		<ul style="list-style-type: none"> The Committee felt that it was imperative to define which services comprise the Defence Forces.
	(2) There is established a Defence Forces Council consisting of- (a) The President; (b) The Vice President; (c) The Prime Minister; (d) The Minister in charge of Defence; (e) The Chief of General Staff; (f) Army Commander;	(2) There is established a Defence Council consisting of - (a) the Minister for the time being responsible for Defence who shall be the chairperson; (b) the Assistant Minister for the time being responsible for defence who shall be the Vice Chairperson; (c) the Chief of Defence		<ul style="list-style-type: none"> The title “Defence Forces Council” was changed to “Defence Council.” The President, Vice President and Prime Minister being the most senior officials in government should

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(g) Navy Commander; and (h) Air Force Commander.	Forces; (d) the Army Commander; (e) the Air Force Commander; (f) the Navy Commander; and (g) the Permanent Secretary for the time being responsible for defence.		not sit in the Council. • The Minister for Defence shall be the council's chairperson and the Assistant Minister in the same ministry shall be the Vice Chairperson.
	New	<i>The Defence council shall appoint its Secretary.</i>		
	New	<i>The Defence Council shall be responsible for the overall policy, control, and supervision of the Defence Forces and such other functions as may be specified by Parliament.</i>		The committee felt it was important to state functions of the Defence Council.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
275	<p><u>Commanding Officers</u></p> <p>(1) The Chief of General Staff of the Defence Forces shall be appointed by the President in consultation with the National Security Council.</p>	<p><u>Command of Defence Forces</u></p> <p>(1) The President, who is the Commander-in-Chief of the Defence Forces shall, in consultation with the Defence Council appoint the Chief of Defence Forces, the Army Commander, the Air Force Commander and the Navy Commander.</p>		<ul style="list-style-type: none"> • The sub-title was changed because ‘commanding officer’ refers to the leader of a battalion whereas the new one is more apt in referring to the hierarchy of Defence Forces. • The Defence Council should be involved in the decision as to who shall head the various Defence forces.
	<p>(2) The Chief of General Staff of the Defence Forces, subject to this Article, is responsible for the operational use and the general administration of the Defence Forces.</p>	<p>(2) The Chief of Defence Forces and Service Commanders shall exercise command over the defence forces and perform such other duties as may be specified by Parliament.</p>		<ul style="list-style-type: none"> • The Chief of Defence Forces and the Service Commanders may be given additional powers by

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
				parliament. • The original clause gave the Chief of Defence Forces exclusive power, while the adopted one requires him to exercise command together with the Service Commanders.
	(3) The President acting in accordance with the recommendations of Defence Forces Council shall appoint- (a) the Army Commander who is responsible to Council and for the administration of the Army; (b) the Naval Commander who is responsible to the Council and for the administration of the Navy; and			<u>Deleted</u> Should be covered by an Act of Parliament.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	(c) the Air Force Commander who is responsible for the Council and administration of the Air Force.			
	(4) Each of the officers referred to in Clause (3) is subject to the general direction of the Defence Forces Council.			<u>Deleted</u> Should be covered by an Act of Parliament.
	(5) The President, acting in accordance with recommendation of the Defence Forces Council- (a) shall grant commission of the Defence Forces; and shall appoint persons to office or to act in an office in the defence forces.			<u>Deleted</u> Should be covered by an Act of Parliament.
	(6) Subject to the Constitution, the Defence Forces Council may make regulations for the effective and efficient administration of the			<u>Deleted</u> Should be covered by an Act of Parliament.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	defence forces.			
	<p>(7) The regulations shall include matters relating to:</p> <ul style="list-style-type: none"> (a) the control and administration of the Navy, the Army and the Air Force; (b) the ranks of officers and of the men and women of each defence force, the member of each rank and the use of the weapons by the officers, men and women; (c) the conditions of service, including conditions of service relating to the enrolment and to the pay, pensions, gratuities and other allowances of the officers, men and women of the defence forces; (d) the authority and process of command of the 			<p><u>Deleted</u> Should be by an Act of Parliament.</p>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>officers, men and women of the defence forces; and (e) the delegation to other persons of commanding officers to try accused persons and the conditions subject to which the delegation is made.</p>			
	<p>New</p>	<p><i>Part III - National Intelligence Service</i> <i>275 A Establishment of the National Intelligence Service</i> <i>(1) There is established a service to be known as The National Intelligence Service.</i></p>		<p>The Committee felt it was important to entrench the NIS into the Constitution as one of the organs of national security. Therefore some Articles in the Annotated Draft concerning the NSIS were adopted.</p>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	New	<i>(2) The National Intelligence Service shall be under the command of the Director General who shall be appointed by the President with the approval of Parliament.</i>		The NIS shall be headed by the Director General
	New	<i>(3) The National Intelligence Service shall be responsible for security intelligence and counter intelligence to enhance national security, defend the constitution, the interest of the state and the well being of the people of Kenya.</i>		The provision specifies the core functions of the NIS.
	New	<i>(4) Subject to this Constitution, the National Intelligence Service shall be organised and administered in such manner and shall exercise such functions as Parliament may prescribe.</i>		The new provision gives Parliament control over the functions and operations of the NIS.
	New	<i>(5) The National Intelligence Service shall, in exercising its functions observe respect for</i>		The Intelligence Service has previously been accused of abuse

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<i>human rights, fundamental freedoms and the rule of law.</i>		of human rights. Therefore there is need to put in place constitutional safeguards against human rights abuses.
	New	<i>(6) No intelligence service, other than an intelligence division of the defence forces or the Kenya Police Service, shall be established except by or under an Act of Parliament.</i>		This provision would prevent the formation of other Intelligence Services that may destabilise the country's security status.
	New	<i>275 B Establishment of the National Intelligence Council (1) There is established a National Intelligence Council consisting of- (a) the Minister for the time being responsible for matters relating to national security and Intelligence who shall be the</i>		Some provisions of section 23 of the NSIS Act on the National Intelligence Council have been adopted.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>Chairperson;</i> <i>(b) the Minister for the time being responsible for foreign affairs;</i> <i>(c) the Minister for the time being responsible for finance;</i> <i>(d) the Attorney-General; and</i> <i>(e) the Secretary to the Cabinet.</i></p>		
	New	<p><i>(2) The Director-General of the National Intelligence Service shall be the Secretary to the National Intelligence Council.</i></p>		
	New	<p><i>(3)The functions of the National Intelligence Council shall be-</i> <i>(a) to advise the National Intelligence Service on all matters pertaining to-</i> <i>(i)national security and intelligence policies;</i> <i>(ii) the administration of the service;</i> <i>(iii)the expenditure of</i></p>		<p>The Committee resolved to entrench the functions of the NIS in the Constitution.</p>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p align="center"><i>the Service; and</i></p> <p><i>(b)to perform such other functions as are conferred on the Council by an Act of Parliament.</i></p>		
264	<p>KENYA POLICE SERVICE</p> <p>Principles and Objects</p> <p>(1) The primary object of the Kenya Police Service is to work with and for the people to ensure-</p> <ul style="list-style-type: none"> (a) a peaceful and safe environment; (b) the protection of rights and freedoms; (c) the security of the people; (d) the prevention and detection of crime; (e) the support of victims of 	<p>Part IV - Kenya Police Service Principles and Objects</p> <p>(1) The primary object of the Kenya Police Service is to work with and for the people to ensure-</p> <ul style="list-style-type: none"> (a) a peaceful and safe environment; (b) the protection of rights and freedoms; (c) the security of the people; (d) the prevention and detection of crime; (e) the support of victims of crime and disorder; and 		<p>Part II of Chapter 14 on the Kenya Police Service was transferred to Chapter 15.</p> <p>The term “life” was added to 1 (f) the provision because protection of life is as important if not more important than the protection of property.</p>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p align="center">crime and disorder; and (f) the protection of property.</p>	<p align="center">(f) the protection of life and property.</p>		
	<p>(2) In furtherance of these objects the Service will-</p> <ul style="list-style-type: none"> (a) strive for the highest standards of professionalism; (b) work to eliminate and avoid corruption of all sorts; (c) avoid bias or discrimination with regard to political groups or other sections of society; (d) observe human rights standards; (e) train staff to the highest possible standards of competence, integrity and respect for human rights and dignity; (f) recognise the duty of accountability to society and democratic 	<p>(2) In furtherance of these objects the Kenya Police Service shall-</p> <ul style="list-style-type: none"> (a) strive for the highest standards of professionalism; (b) work to eliminate and avoid corruption of all sorts; (c) observe the principles specified in Article 271(4); (d) observe human rights standards; (e) train staff to the highest possible standards of competence, integrity and respect for human rights and dignity; (f) abide by the principles of transparency and accountability to society 		<ul style="list-style-type: none"> • The Police Service has not been very professional in the past therefore professionalism has to be stressed. • The police have been known to abuse human rights therefore there is need to curb that abuse. • It was felt that Sub-clause (h) was a repetition of (e) and (f) therefore (h) was deleted.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	<p>institutions; (g) build up relationships with the broader society; (h) train its members, including members of any paramilitary, armed or riot police units, to the highest possible standards of competence, minimal use of force, integrity and respect for human rights and fundamental freedoms and dignity, and to recognise the duty of accountability to society.</p>	<p>and democratic institutions; (g) foster and promote relationships with the broader society.</p>		
265	<p>Establishment of the Kenya Police Service</p> <p>(1) There is established a service to be known as the Kenya Police Service.</p>	<p>Establishment of the Kenya Police Service</p> <p>(1) There is established a service to be known as the Kenya Police Service.</p>		
	(2) Subject to this Constitution,	(2) Subject to this Constitution,		The provision was

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	the Police Service shall be organised and administered in such a manner and shall have such functions as Parliament may prescribe.	the Kenya Police Service shall be organised and administered in such a manner and shall have such functions as Parliament may prescribe.		amended by inserting the word 'Kenya' before 'Police Service'.
	(3) The Police Service shall be professional and disciplined.	(3) The Kenya Police Service shall be professional and disciplined.		The provision was amended by inserting the word 'Kenya' before 'Police Service'.
	(4) The Police Service shall remain a national police force, and the division of its functions shall be organised to take into account the structure of devolution.	(4) The Kenya Police Service shall remain a national police force, and the division of its functions shall be organised to take into account the structure of devolution.		The provision was amended by inserting the word 'Kenya' before 'Police Service'.
	(5) The Police Service shall work closely with communities to ensure security and safety for all citizens through community policing.	(5) The Kenya Police Service shall work closely with communities to ensure security and safety for the people of Kenya.		The words 'community policing' were deleted because they are a repetition of 'work closely with communities'.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
266	<p>Appointment of the Commissioner of the Kenya Police (1) There shall be a Commissioner of the Kenya Police Service</p>	<p>Appointment of the Inspector General of the Kenya Police Service (1) There shall be an Inspector General of the Kenya Police Service who shall be the head of the Kenya Police Service.</p>		The title “Commissioner of Police” was replaced with “Inspector General.”
	(2) The Commissioner shall be appointed by the President with the approval of Parliament for one term of ten years.	(2) The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years.		There was need to reduce the Inspector General’s term of office so as to prevent abuse of that office and to facilitate upward mobility within the Service.
	(3) No person may be appointed as Commissioner unless that person – (a) has a degree from a recognised university; and (b) has served in the Police Service.			<u>Deleted</u> Should be covered by an Act of Parliament.
	(4) The Kenya Police Service			<u>Deleted</u>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	shall be under the command of the Commissioner who shall be assisted by two deputy commissioners.			Should be covered under an Act of Parliament or administratively.
	(5) The Commissioner shall be subject to, and act in accordance with the Constitution and laws of Kenya; except that on matters of policy, the President acting on the advise of the Prime Minister, may give direction to the Commissioner.	(3) Subject to the provisions of this Constitution, the Inspector General shall, in exercise of his functions, not be subject to the direction or control of any person or authority.		The Inspector General should be completely independent from the direction of any authority including the Presidency, save for the constitution.
	(6) The Commissioner of Police may be removed from office by the President for good cause, with approval of Parliament.	(4) Subject to this Constitution, the Inspector General may be removed from office by the President only for- (a) inability to perform the functions of his or her office arising from infirmity of body or mind; or (b) misconduct; (c) incompetence; (d) any other just cause.		

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	NEW	<p><i>(5) The Inspector General shall not be removed from office except on the recommendation of a tribunal appointed by the President comprising of the following-</i></p> <ul style="list-style-type: none"> <i>(a) the Chairperson of the Police Service Commission;</i> <i>(b) a High Court judge; and</i> <i>(c) one other person who has served the public with distinction.</i> 		The Inspector General shall be removed from office by the President, only on recommendation of a tribunal to ensure that the President does not abuse this power.
	New	<p><i>Establishment of the Police Service Commission</i></p> <p><i>266A (1) There is established a Police Service Commission.</i></p>		After lengthy deliberations, the Committee adopted some of the provisions in the Annotated Draft on the Police Service Commission.
	New	<p><i>(2) The Police Service Commission shall consist of -</i></p>		

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>(a) a chairperson appointed by the President from amongst members of the Commission;</i></p> <p><i>(b) a person who is qualified to be appointed as a High Court Judge;</i></p> <p><i>(c) two retired senior police officers, one from each of the services;</i></p> <p><i>(d) three persons of integrity who have served the public with distinction;</i></p> <p><i>(e) the Inspector General of the Kenya Police Service who shall be an ex-officio member; and</i></p> <p><i>(f) the Commandant of the Administration Police Service who shall be an ex-officio member.</i></p>		
		<p><i>(3) The Police Service Commission shall appoint its secretary.</i></p>		

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
	New	<i>(4)The Commissioners appointed under sub-article (2) shall hold office for a period of five years and shall be eligible for re-appointment for only one further term of five years.</i>		
	New	<i>(5) The functions of the Police Service Commission shall be to-</i> <i>(a) recruit and appoint persons to hold or act in an office, to determine promotions in the Police Service, and to exercise disciplinary control over such persons;</i> <i>(b) keep under review all matters relating to the standards or qualifications required of members of the Police Service;</i> <i>(c) keep under review all matters relating to salaries, allowances and other terms and</i>		The Police Service is a unique Service whose needs should be addressed by a special body i.e. the Police Service Commission. So far the Public Service Commission has not adequately addressed the needs of the Police Service.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p align="center"><i>conditions of service;</i> <i>(d) ensure adequate budgetary provisions for the Police Service;</i> <i>(e) promote and exercise disciplinary control, including hearing and disposal of appeals by persons in the Police Service;</i> <i>(f) exercise such powers, including policy making, control, supervision, organization and discharge such functions, as are provided for by this Constitution or under an Act of Parliament.</i></p>		
	New	<p><i>Part V - The Administration Police Service</i></p> <p><i>Principles and Objects</i> 275C (1) The primary object of the Administration Police</p>	275C (1) The primary object of	The Administration Police Service was incorporated into Chapter 15 as one of the organs of national security.

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p><i>Service is to work with and for the people to-</i> <i>(a) preserve and maintain public peace; and</i> <i>(b) prevent commission of offences.</i></p>	<p>the Administration Police Service is to work with and for the people to-</p> <p>(c) preserve and maintain public peace; and</p> <p>(d) prevent commission of offences.</p> <p>(2) Functions set out in (1) shall be carried out to complement the role of the Police Service.</p>	
	New	<p><i>(2) The Administration Police Service is established to work with and for the people supporting and assisting within existing law with administration</i></p>		<p>The services of the Administration Police at all local levels of public administration were highly praised</p>

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<i>in the public service.</i>		and greatly appreciated hence the call to entrench the Service in the Constitution.
	New	<i>(3) In the discharge of the functions specified in sub-article (2), the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms.</i>		
	New	<i>(4) In furtherance of these objects the Administration Police Service shall-</i> <i>a) Strive for the highest standards of professionalism;</i> <i>b) Work to eliminate and avoid corruption of all sorts;</i> <i>c) Train staff to the highest possible standards of</i>		

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
		<p align="center"><i>competence, integrity and respect for human rights and dignity;</i></p> <p><i>d) Abide by principles of transparency and accountability to society and democratic institutions; and</i></p> <p><i>e) Foster and promote relationships with the border society.</i></p>		
	New	<p align="center"><i>Establishment of the Administration Police Service</i></p> <p><i>275 D (1) There is established a service to be known as the Administration Police Service.</i></p>		
	New	<p><i>(2) The Administration Police Service shall be a separate service from the Kenya Police Service</i></p>	The Administration Police Service should be merged with the Kenya	<ul style="list-style-type: none"> • The core function of the Administration Police is to support the public service,

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ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
			Police Service.	<p>while members of the Police Service are exclusively law enforcers. Therefore the two should not be merged.</p> <ul style="list-style-type: none"> • Merging the Administration Police with the Police Service would lower the standards of the former because the Police Service has been described as inefficient and corrupt. • People at the local level and outlying areas have more trust and confidence in the Administration police than the

Appendix F : Decisions Reached As Recommendations to the Conference

ARTICLE	AS PRINTED IN THE DRAFT BILL	AS ADOPTED BY THE COMMITTEE	AS FORMULATED BY THE MINORITY	EXPLANATORY NOTES
				regular Police.
	New	<i>(4) The Administration Police Service shall be organised to take into account the structure of devolution.</i>		In the devolved structure of government the Administration Police should be the security force in the devolved units.
	New	<i>(5) The Administration Police Service shall be a Service under the Police Service Commission.</i>		
	New	<i>Appointment of the Commandant of the Administration Police Service</i> <i>275E There shall be a Commandant of the Administration Police Service who shall be appointed by the President with the approval of Parliament, for one term of five years.</i>		It was deemed necessary to entrench the office of the Commandant of the Administration Police in the Constitution.