

THE NATIONAL ASSEMBLY  
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THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT – THIRD SESSION

THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE (CIOC)

REPORT ON THE CONSIDERATION OF THE INDEPENDENT  
ELECTORAL AND BOUNDARIES COMMISSION  
(AMENDMENT) (No. 2) BILL, 2019  
(NATIONAL ASSEMBLY BILLS NO. 30 OF 2019)

DIRECTORATE OF COMMITTEE SERVICES  
THE NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST, 2019

Approved for table  
7/8/19  
DINA

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**LIST OF ANNEXURES**

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill and adoption of report.
- Annexure 2:** Signed list of Members who attended the sitting that considered and adopted the report on the Bill.
- Annexure 3:** Copy of newspaper advertisement inviting the public to present written submissions on the Bill.
- Annexure 4:** Written submission received from stakeholders

## CHAIRPERSON'S FOREWORD

The Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019 is sponsored by the Constitutional Implementation Oversight Committee (CIOC) through its Chairperson, Hon. Jeremiah Kioni.

The Bill was published in the Kenya Gazette on 15<sup>th</sup> April, 2019 (as National Assembly Bills No. 30 of 2019). The Bill was introduced in the National Assembly through First Reading on 9<sup>th</sup> May, 2019 and was subsequently committed to the Constitutional Implementation Oversight Committee on for consideration, facilitation of public participation and giving a report to the House pursuant to the provisions of Standing Order 127(6).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of 20<sup>th</sup> May, 2019 invited the public to make representations on the Bill. The Committee held meetings with various stakeholders where submissions were received and considered. The Committee also heard from the stakeholders to make oral representations and clarifications before retreating to consider the representations and adopt this report.

In total, the Committee held six meetings to consider the Bill, 4 with stakeholders and two in-house to consider the submissions from the stakeholders and adoption of its report.

The Committee consulted and held deliberations with the following stakeholders of the Bill:

- a) the Independent Electoral and Boundaries Commission (IEBC);
- b) the Kenya Law Reform Commission;
- c) the Office of the Attorney General and Department of Justice;
- d) the Inter-Religious Council of Kenya;
- e) the Media Council of Kenya (MCK);
- f) the Centre for Multi-Party Democracy (CMD);
- g) the Office of Registrar of Political Parties;
- h) the Political Parties Liaison Committee (PPLC);
- i) the Kenya National Commission on Human Rights (KNCHR) and
- j) the National Gender and Equality Commission;



May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the submissions by different stakeholders on the Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability, transparency and ensuring the participation of the public.

On behalf of the Constitutional implementation Oversight Committee (CIOC) and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to this House the report of the Committee on its consideration of the Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019.



Hon. Jeremiah Kioni, M.P.

**CHAIRMAN, CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE**

## CHAPTER 1

### 1. PREFACE

#### 1.1. **Establishment and Mandate**

1) The Constitutional Implementation Oversight Committee (CIOC) is a National Assembly Select Committee constituted under Section 4 of the Sixth Schedule to the Constitution of Kenya. The Committee is responsible for overseeing the implementation of the Constitution and is expected to among other things-

i. Receive regular reports from the Commission on the Implementation of the Constitution on the implementation of the Constitution of Kenya, 2010 including reports concerning: -

(a) the preparation of the legislation required by the Constitution and any challenges in that regard;

(b) the process of establishing the new commissions;

(c) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff.

(d) The devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule;

(e) Any impediments to the process of implementing this Constitution.

ii. Coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and

iii. Take appropriate action on the reports including addressing any problems in the implementation of the Constitution.



## 1.2. Committee Membership

2) The Committee consists of the following Honourable Members:

Hon. Jeremiah Kioni, M.P. – Chairman

Ndaragua Constituency

**Jubilee Party**

Hon. Fred Kapondi, M.P – Vice Chairperson

Mt. Elgon Constituency

**Jubilee Party**

Hon. (Dr.) Naomi Shaban, M.P.

Taveta Constituency

**Jubilee Party**

Hon. Wafula Wamunyinyi, M.P.

Kanduyi

**Jubilee Party**

Hon. T. J. Kajwang, M.P.

Ruaraka Constituency

**Orange Democratic Movement Party**

Hon. Ayub Savula, M.P.

Lugari Constituency

**Amani National Congress Party**

Hon. Ken Okoth, M.P.

Kibra Constituency

**Orange Democratic Movement Party**

Hon. Raphael B. S. Wanjala, M.P

Budalangi Constituency

**Orange Democratic Movement Party**

Hon. Charles Gimose, M.P.

Hamisi Constituency

**FORD Kenya Party**

Hon. Peris Tobiko, M.P.

Kajiado East Constituency

**Jubilee Party**

Hon. Sarah P. Korere, M.P.

Laikipia North Constituency

**Jubilee Party**

Hon. Abdi Shurie, M.P.

Balambala Constituency

**Jubilee Party**

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Hon. Fabian K. Muli, M.P.

Kangundo Constituency

**Muongano Party**

Hon. (Col.) Geoffrey King'angi, M.P.

Mbeere South Constituency

**Jubilee Party**

Hon. Gideon Koske, M.P.

Chepalungu Constituency

**Chama Cha Mashinani Party**

Hon. Halima Mucheke, M.P.

Nominated Member of Parliament

**Jubilee Party**

Hon. Jane Njiru, M.P.

Women Representative Embu County

**Jubilee Party**

Hon. Joshua Chepyegon, M.P.

Baringo Central Constituency

**Maendeleo Chap Chap Party**

Hon. Japheth Mutai, M.P.

Bureti Constituency

**Jubilee Party**

Hon. Simon Ng'ang'a King'ara, M.P.

Ruiru Constituency

**Jubilee Party**

Hon. Daniel Rono, M.P.

Keiyo South Constituency

**Jubilee Party**

Hon. Anthony Aluoch, M.P.

Mathare Constituency

**Orange Democratic Movement Party**

Hon. Christine Ombaka, M.P.

Women Representative Siaya County

**Orange Democratic Movement Party**

### **1.3. Committee Secretariat**

3) The Committee's secretariat comprises the following officers-

Mr. Edward Libendi	-	Senior Legal Counsel & Clerk of the Committee
Ms. Christine Odhiambo	-	Legal Counsel I
Ms. Mary Luka Lemerelle	-	Clerk Assistant III
Mr. Allan Gituku	-	Serjeant-at-Arms

### **1.4. Adoption of the Committee Report**

4) We, the Members of the Constitutional Implementation Oversight Committee have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 2)

## CHAPTER 2

### 2. INTRODUCTION AND BACKGROUND

5) The Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019, was published in the Kenya Gazette on 15<sup>th</sup> April, 2019 (as National Assembly Bills No. 30 of 2019). The Bill was introduced in the National Assembly through First Reading on 9<sup>th</sup> May, 2019 and was subsequently committed to the Constitutional Implementation Oversight Committee (CIOC) for consideration, facilitation of public participation and giving a report to the House pursuant to the provisions of Standing Order 127(6).

#### 2.1. Analysis of the Bill

6) The principal object of the Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019 is to introduce the following amendments to the Independent Electoral and Boundaries Commission (IEBC) Act, No. 9 of 2011:

(a) Amendment to section 5 of the Act to reduce the number of Commissioners of the IEBC from the current 7 to 5 (the Chairman and 4 Commissioners). This will in addition to reducing the cost of running the Commission since the Commissioners will be fewer; also help in enabling the Commission as is currently constituted to function since quorum which is a majority will now be 3.

(b) Amendment to sub-paragraph 2 (1) of the first schedule which provided for establishment of a selection panel for recruitment of the first IEBC Commissioners under the Act. The current First Schedule only applied to the recruitment of the current Commissioners and does not address the selection panel for subsequent recruitment of Commissioners or of filling any existing vacancies or those that may arise in future. The Committee therefore proposes to retain the Selection Panel so that it oversees subsequent recruitment of IEBC Commissioners.



- c) Amendment to the fifth schedule concerning process of resolving disputes that may arise following future reviews of boundaries of constituencies. The fifth schedule only addresses disputes arising from the first review of boundaries following enactment of the IEBC Act which happened in 2012. This ultimately aligns the schedule with section 36 of the Elections Act and allows the IEBC to implement article 89 of the Constitution.
- 7) Under the Bill, it is proposed that the selection panel remains as was originally constituted comprising of four persons nominated by the Parliamentary Service Commission, one person nominated by the Kenya Conference of Catholic Bishops, one person nominated by the National Council of Churches of Kenya, one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya, one person nominated by the Evangelical Alliance of Kenya and one person nominated by the Hindu Council of Kenya.
- 8) The Bill does not delegate legislative powers neither does it contain provisions limiting fundamental rights and freedoms.
- 9) The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.
- 10) The enactment of the Bill does not occasion additional expenditure of public funds.

### CHAPTER 3

#### 3. PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

11) Article 118 (1) (b) of the Constitution of Kenya provides as follows-

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*

12) Standing Order 127(3) as read together with S.O. 127 (6)(a) provides as follows-

*“The Select Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House”.*

13) In line with the Constitution and the Standing Orders, the Constitutional Implementation Oversight Committee, in the local daily newspapers of 20<sup>th</sup> May, 2019 attached as *annexure 3* of the report invited the public to make written submissions on the Bill. The Committee did not however receive any response from the public.

14) The Committee further invited and received written and oral submissions from the following stakeholders it considered important in preparation of the Bill:

- a) The Independent Electoral and Boundaries Commission (IEBC);
- b) the Kenya Law Reform Commission;
- c) the Office of the Attorney General and Department of Justice;
- d) the Inter-Religious Council of Kenya;
- e) the Media Council of Kenya (MCK);
- f) the Centre for Multi-Party Democracy (CMD);
- g) the Office of Registrar of Political Parties;
- h) the Political Parties Liaison Committee (PPLC);
- i) the Kenya National Commission on Human Rights (KNCHR);
- and,
- j) the National Gender and Equality Commission;

### **The Independent Electoral and Boundaries Commission (IEBC)**

15) The Chairman of the IEBC explained the following:

- a) That the current law provided for the Commission to be constituted of a Chairman and 6 Commissioners;
- b) That following resignation by 4 Commissioners, there were only three Commissioners the Chairman included;
- c) That the socio-economic audit report of the Constitution done by the Auditor General proposed that Commissions be comprised of 3 to 5 Commissioners to reduce the cost of running the Commissions;
- d) That some big democracies like India have 3 Commissioners, Canada has 1 Commissioner, New Zealand has 3 Commissioners yet they organize and conduct elections efficiently;
- e) That some independent Commissions in Kenya had less than 5 Commissioners among them the Commission on Administrative Justice (CAJ) and the the Ethics and Anti-Corruption Commission;
- f) That since article 250 of the Constitution provides that Independent Commissions consist of a minimum of 3 Commissioners, the IEBC supports the reduction in number of Commissioners to 5;
- g) That the appointment of Commissioners be staggered so that there is no instance when all Commissioners vacate office at once;
- h) Proposed that the first schedule, section 1, paragraph 5 be amended by deleting the words "as parliament shall determine for purposes of appointment of the chairperson or member of the Commission". This has the effect of removing the role of Parliament in picking the Selection Panel and leaving the mandate to the President;
- i) That the IEBC supported the proposed amendment contained in the 5<sup>th</sup> Schedule on resolution of issues arising from boundary reviews since it was aligning the Act with the provisions of section 36 of the Elections Act.

16) The Chairman of IEBC also explained that the IEBC faced challenges especially the late release of funds by Treasury. That due to lack of adequate disbursement of funds to the IEBC, the equipment used in the last general elections were wasting away and could not be



maintained by the Commission. This will result in the need to acquire new equipment during subsequent general elections.

### **3.1. Centre for Multi-Party Democracy**

17) The Executive Director of the Centre for Multi-Party Democracy appeared before the Committee and shared the following:-

- a) Regarding the Selection Panel, there was need to indicate the specific qualifications of the Members to join the panel; They proposed that A master's degree should be the minimum qualification for appointment as a Commissioner with ten to twelve years' experience;
- b) Regarding the Chairperson of the Commission, that the qualifications of the holder of the office be opened up such that he need not be an advocate;
- c) That appointment of the Chairperson should be done by the Commissioners themselves either by consensus or election in order to build trust in the Chairpersons and not by the President so that any of the Commissioners appointed can qualify to be Chairperson;
- d) That appointment of Commissioners should be staggered so that not all of them leave the office at the same time;
  - e) That the recommendations of Kriggler in his report that Commissioners should be appointed at least two years before a general election should be observed;
  - f) That the Committee should propose amendments to the First Schedule on the composition of the Selection Panel in order to bring in diversity and various expertise. This is because the panel as presently constituted has heavy representation from the religious outfits.
  - g) That Political parties should be given four slots in the Selection panel
  - h) That Experts on electoral matters be given three slots.
  - i) That Commissioners be given oversight powers over the Secretariat.

### **3.3. Political Parties Liaison Committee (PPLC)**

The Political Parties Liaison Committee appeared before the Committee led by its Chairman and a number of Members. They had the following to say regarding the Bill:

18) Regarding qualification of the Commission Chairperson, they proposed that it should not be the same as that of a judge of the Supreme Court. They therefore proposed to introduce a new amendment into the Bill.

a) Regarding vacancy in the office of the Chairperson and Member of the Commission (section 7A), they proposed addition of a new sub-clause to include office becoming vacant as a result of absence from duty by the Chairperson or Member for a period of 90 days without justifiable reasons.

b) The PPLC proposes a new amendment to provide that where a vacancy has arisen for any reason, and notwithstanding the provisions of subsection 2 which gives the President power to gazette the vacancy within 7 days, the Parliamentary Service Commission shall commence the process of recruitment of a new chairperson/member of the Commission within 30 days of the occurrence of the vacancy;

c) They propose to add a new sub-clause to cater for the amendment in (b) above. The proposed subsection (3A) will read thus: "*whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act shall commence immediately after the declaration of the vacancy by the President under subsection (2) or (2A)*".

19) To introduce an amendment to the selection panel so that out of the 4 nominees of the Parliamentary Service Commission, **two are male and female youth of 35 years and below in line with Article 100 of the Constitution.**

20) To introduce a new amendment for inclusion of a new Member of the Selection panel nominated by the PPLC

21) To introduce a new amendment to require 'the Parliamentary Service Commission to ensure that the list submitted by the various bodies adheres to the two thirds gender rule;' and inserting the words 'within *fourteen* days of the declaration of a vacancy in the office of chairperson or member of the commission' immediately after the words 'President for appointment'

#### **3.4. Media Council of Kenya**

The Media Council of Kenya had the following to say regarding the Bill;



**22) On accreditation of journalists,**

The Media Council of Kenya proposed that all local and foreign journalists who intend to cover elections must be accredited by the Media Council of Kenya. They also proposed that the Independent Electoral and Boundaries Commission shall in consultation with the Media Council of Kenya publish the names of such accredited journalists and accord them requisite access to election centers.

**23) On equal media coverage and expenditure**

The Council proposed that the Independent Electoral and Boundaries Commission in consultation with the Media Council of Kenya shall develop guidelines on equal distribution of media coverage amongst different political parties and candidates. They also proposed that the Commission in due regard to Election Campaign Financing Act shall develop guidelines on spending to ensure it does not exceed the prescribed percentage of the media house revenue from political parties or candidates.

**24) On engagement and training**

The Media Council of Kenya proposed that the Independent Electoral and Boundaries Commission shall in collaboration with the Media Council of Kenya train journalists on election matters;

- That the Commission shall enter into a Memorandum of Understanding with Media Council of Kenya to ensure timely training of journalists,
- Prudent and efficient expenditure for resources dedicated to such activities.
- That the Media centers established during election periods shall be manned by the Media Council in consultation with the Media sector.

**25) Regarding attacks on journalists and media houses**

The Media Council of Kenya proposed that Independent Electoral and Boundaries Commission shall review election offenses to include attacks on journalists, media houses and media workers and ensure those caught violating such provisions are effectively sanctioned.

The Council also proposed that the Commission in consultation with Media Council of Kenya shall monitor broadcasting stations and ensure media owners and or editors do.

### **3.5. Kenya Editors Guild**

26) Mr. Gaitho on behalf of the Kenya Editors Guild had the following to say regarding the Bill:

- i. Denial of free access to accredited journalists which they termed as foul play and suggested that the right to access be granted under the Act and that Electoral Officials who defy this right be penalized.
- ii. The results announcement method was described to be outmoded and not favorable for free and unhindered Media coverage. According to Kenya Editors' Guild, in the last 3 general elections IEBC agreed to allow Media houses to log into and obtain real-time results from database but each time reneged at the last minute without credible explanation. They proposed that the right should be guaranteed under the Act with necessary safeguards against data pollution.
- iii. That the directive by the cabinet secretary for Information and Communications Technology 's directive to bar Media from collecting and collating election count results from Polling and Tallying Centres and disseminating same to readers and views was illegal and amounted to gross interference in the electoral process.
- iv. The Act to more aggressively ensure KBC compliance, the Public Broadcaster which by law is supposed to be neutral and to give a balanced coverage for all political contenders yet it operates as a publicity and propaganda arm of the governing party.
- v. The proliferation of TV and Radio stations across the country has seen emergence of many broadcast outlets owned by politicians, same applies to growing number of county based and regional magazines and newspapers and intended mainly as campaign tools at elections need to be firmly checked under Election Laws in addition to Media Laws.
- vi. The law on campaign advertising should be strengthened to ensure compliance by requiring Media houses and outdoor advertising firms to keep clear and verifiable records of entities who book and pay for advertising, and to publish the same along with the advert. Where adverts are placed by support groups for example friends of a certain party, they must still be clearly identified to a legal entity or a person booking and paying for the placement, and approved by the intended beneficiary.

**3.6. National Council For Persons With Disabilities (NCPWD)**

27) Representing the Director of the National Council for Persons With Disabilities (NCPWD) who was indisposed, Mr. Peter Chebii, legal officer for the NCPWD made a presentation on the provision regarding composition of the selection panel. He informed the meeting that the organization had no objections to other provisions.

He mentioned that it was very rare for marginalized groups, notably the Persons with Disabilities to be included in public bodies just like they had been left out of the composition of the Selection Panel. He conveyed the organization's proposal to include representatives of Persons with Disabilities to the selection panel for inclusivity and fairness.

He concluded by stating that the Committee should consider developing amendments to the laws to have persons with disabilities appointed to all constitutional commissions.



## CHAPTER 4

### **4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL AND RECOMMENDATIONS**

28) **Clause 2** of the Bill provides that section 5 of the Independent Electoral and Boundaries Commission Act, 2011 is amended—

*in subsection (1) by deleting the word “six” appearing immediately after the words “a Chairperson and” and substituting therefor the word “four”.*

#### **4.1. STAKEHOLDERS SUBMISSIONS**

29) The Independent Electoral and Boundaries Commission and other stakeholders who appeared before the Committee had no objection to the proposed amendment.

#### **Observations and Recommendations**

30) The Committee observed that the effect of the proposed amendment is to reduce the number of Commissioners of the IEBC from the current 7 to 5 (the Chairman and 4 Commissioners).

31) This will in addition to reducing the cost of running the Commission since the Commissioners will be fewer; also help in enabling the Commission as is currently constituted to function since quorum which is a majority will now be 3.

32) The Committee therefore recommends that the House passes the proposed amendment.

#### **Clause 3 of the Bill proposes amendment to the First Schedule on appointment of Selection Panel to recruit the IEBC Commissioners**

33) The Committee proposed to amend the First Schedule sub-paragraph 2 (1) which provided for establishment of a selection panel for recruitment of the first IEBC Commissioners under the Act so as to allow the same panel to recruit subsequent Commissioners.

### Stakeholders Submissions

- 34) All the stakeholders who appeared before the Committee had no objection to the proposed amendment to the fifth Schedule
- 35) The IEBC however proposed a further amendment to the first schedule, section 1 in paragraph 5. They proposed that the section be amended by deleting the words *“as parliament shall determine for purposes of appointment of the Chairperson or Member of the Commission”*. This had the effect of removing the role of parliament in picking the selection panel and leaving the mandate solely to the President.
- 36) The Political Parties Liaison Committee (PPLC) which is a body established under the Political Parties Act to represent political parties proposed a new amendment to the first schedule on the composition of the selection panel to incorporate one person from the PPLC. They explained that to promote democracy and ensure inclusivity and involvement of persons with expertise in the political process, it was important to have the PPLC submit one name to join the selection panel.
- 37) The National Council for Persons with Disabilities (NCPWD) proposed a new amendment to expand the selection panel to include one person with disabilities nominated by the NCPWD to join the panel. This they explained would give effect to the principle of inclusiveness as enshrined in Article 10 of the Constitution and ensure that the rights of PWDs are protected during the recruitment of Commissioners.



### **Committee observations**

- 38) The Committee noted that the current fifth Schedule only applied to the selection panel for recruitment of the current Commissioners and did not address the selection panel for subsequent recruitment of Commissioners or of filling any existing vacancies or those that may arise in future.
- 39) The Committee having heard from the Political Parties Liaison Committee and the National Council of Persons with Disabilities was convinced on the need to expand the Selection Panel from 9 Members to 11 so as to accommodate one person each from the two bodies. This was so as to have a mix of persons in the panel and cater for the minority group.
- 40) Regarding the proposed amendment by the IEBC to remove the role of Parliament in determination of the selection panel, the Committee observed that Parliament was the single largest congregation of elected representatives of the people and therefore actors in the electoral process and that therefore for acceptability of results, it was important for the parliament to have a role in selecting the panel. The Committee on that basis therefore rejected the proposal by the IEBC;
- 41) The Committee therefore recommends that the House passes the proposed amendment to the first schedule as proposed but incorporating amendments from the PPLC and the NCPWD as regards membership to the selection panel.

### **Clause 4 proposes amendments to the fifth schedule regarding procedure for resolution of disputes following boundaries review.**

- 42) The Committee proposed to amend the fifth schedule concerning process of resolving disputes that may arise following future reviews of boundaries of constituencies.

### **Stakeholders Submissions**

- 43) The IEBC and other stakeholders including the Office of the Attorney General supported this proposal saying it would align the IEBC Act to section 36 of the Elections Act.

### **Committee Observations**

- 44) The Committee observed that the fifth schedule only addresses disputes arising from the first review of boundaries following enactment of the IEBC Act which happened in 2012.
- 45) It observed that the proposed amendment would ultimately align the schedule with section 36 of the Elections Act and allows the IEBC to implement article 89 of the Constitution on review of boundaries smoothly.
- 46) That there is need for an amendment to paragraph 3(4) of the First Schedule to the Act, to provide that the President shall nominate one person as chairperson and four persons as members of the Commission. This amendment is necessary to bring this paragraph into conformity with section 5 of the Act which is amended in the Bill to reduce the members of the Commission from six to four.
- 47) The Committee noted that paragraph 3 subparagraph (4) would require an amendment to make it conform with the amendments to section 5 to reduce the number of Commissioners from 6 to 4. Thus it would propose deletion of the word “six” appearing in subparagraph (4) and substitute it with the word “four”.

### **4.2. COMMITTEE RECOMMENDATIONS**

- 48) The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations of amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, 2019—

**THAT** clause 3 of the Bill be deleted and substituted therefor the following new clause—

Amendment  
of the First  
Schedule to  
No. 9 of  
2011.

**3.** The First Schedule to the principal Act is amended—

(a) by deleting subparagraph (2) and substituting therefor the following new subparagraph—

“(2) For the purpose of appointment of the Chairperson or commissioners under section 5, the selection panel shall consist of—

(a) four persons, being two women and two men, nominated by the Parliamentary Service Commission;

(b) one person nominated by the Kenya Conference of

Catholic Bishops;

- (c) one person nominated by the National Council of Churches of Kenya;
- (d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;
- (e) one person nominated by the Evangelical Alliance of Kenya;
- (f) one person nominated by the Hindu Council of Kenya;
- (g) one person nominated by the Political Parties Liaison Committee; and
- (h) one person nominated by the National Council for Persons with Disabilities.

(b) in paragraph 3 by deleting the word “six” appearing in subparagraph (4) and substituting therefor the word “four”.

**Signed** 

HON. JEREMIAH KIONI, M.P.

**CHAIRMAN, CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE**

DATE...6/8/2019.....



**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, 1<sup>ST</sup> AUGUST, 2019 IN PROTECTION HOUSE, 4<sup>TH</sup> FLOOR COMMITTEE ROOM, PARLIAMENT BUILDINGS AT 11.30 A.M.**

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**PRESENT**

1. The Hon. Fred Kapondi, M.P. - Vice-Chairman (*Chairing*)
2. The Hon. Wafula Wamunyinyi, M.P.
3. The Hon. (Dr.) Christine Ombaka, M.P.
4. The Hon. Raphael B. S. Wanjala, M.P.
5. The Hon. Peris Tobiko, M.P.
6. The Hon. Joshua Chepyegon, M.P.
7. The Hon. Abdi Shurie, M.P.
8. The Hon. Jane Njiru, M.P.
9. The Hon. (Col.) Geoffrey King'ang'i, M.P.
10. The Hon. Fabian K. Muli, M.P.
11. The Hon. Simon Ng'ang'a King'ara, M.P.
12. The Hon. Japheth Mutai, M.P.
13. The Hon. Halima Mucheke, M.P.

**APOLOGY**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Anthony Oluoch, M.P.
3. The Hon. Charles Gimose, M.P.
4. The Hon. Sarah Korere, M.P.
5. The Hon. (Dr.) Naomi Shaban, M.P.
6. The Hon. Daniel Rono, M.P.
7. The Hon. Gideon Koske, M.P.
8. The Hon. Ayub Savula, M.P.
9. The Hon. Ken Okoth, M.P.
10. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Clerk Assistant
2. Ms. Christine Odhiambo - Legal Counsel
3. Mr. Allan Githaiga - Serjeant-at-Arms

**MIN.NO.CIOC/2019/176    PRELIMINARIES**

The Chairman called the meeting to order at twenty minutes to twelve O'clock (11.40 am) and commenced with a word of prayer. Agenda of the meeting was adopted as adoption of the report of the Committee on consideration of the Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019.

The Chairman noted that the committee had held engagements with various stakeholders and received memoranda and oral submissions on the Bill and informed the Committee that time was ripe to move the Bill to the next stage.

**MIN.NO.CIOC/2019/177    CONFIRMATION OF MINUTES**

Minutes of the meeting held on Tuesday, 30<sup>th</sup> July, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Hon. Fabian Muli, M.P. and seconded by Hon. Abdi Shurie, M.P.

**MIN.NO.CIOC/2019/178    CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE IEBC BILL, 2019**

The Chairman took Members through the report of the Committee on the Independent Electoral and Boundaries Commission (Amendment No. 2) Bill, 2019. Members unanimously adopted the report as a true reflection of their deliberations after having been proposed and seconded by Hon. Abdi Shurie, M.P. and Hon. Wafula Wamunyinyi, M.P. respectively.

**MIN.NO.CIOC/2019/179    ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/180    ADJOURNMENT**

There being no other business the meeting was adjourned at Quarter to One o'clock (12. 45 pm). The next sitting will be on Tuesday, 6<sup>th</sup> August, 2019 at 11.30 am.

SIGN.....  
THE HON. JEREMIAH KIONI, M.P.

DATE 6/8/2019.....  
CHAIRMAN

**MINUTES OF THE 29<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON TUESDAY, 30<sup>TH</sup> JULY, 2019 IN PROTECTION  
HOUSE, 4<sup>TH</sup> FLOOR COMMITTEE ROOM, PARLIAMENT BUILDINGS AT 11.30  
A.M.**

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**PRESENT**

1. **The Hon. Jeremiah Kioni, M.P.** - **Chairman**
2. The Hon. Wafula Wamunyinyi, M.P.
3. The Hon. Anthony Oluoch, M.P.
4. The Hon. Joshua Chepyegon, M.P.
5. The Hon. Sarah Korere, M.P.
6. The Hon. Abdi Shurie, M.P.
7. The Hon. Jane Njiru, M.P.
8. The Hon. Fabian K. Muli, M.P.
9. The Hon. Peris Tobiko, M.P.
10. The Hon. Daniel Rono, M.P.
11. The Hon. Japheth Mutai, M.P.
12. The Hon. Simon Ng'ang'a King'ara, M.P.
13. The Hon. (Dr.) Christine Ombaka, M.P.

**APOLOGY**

14. The Hon. Fred Kapondi, M.P. - **Vice-Chairman**
15. The Hon. Charles Gimose, M.P.
16. The Hon. Halima Mucheke, M.P.
17. The Hon. (Dr.) Naomi Shaban, M.P.
18. The Hon. (Col.) Geoffrey King'ang'i, M.P.
19. The Hon. Raphael B. S. Wanjala, M.P.
20. The Hon. Gideon Koske, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. Ken Okoth, M.P.
23. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Clerk Assistant
2. Ms. Christine Odhiambo - Legal Counsel
3. Mr. Allan Githaiga - Serjeant-at-Arms



**MIN.NO.CIOC/2019/171    PRELIMINARIES**

The Chairman called the meeting to order at twenty minutes to twelve O'clock (11.40am) and commenced with prayer from Hon. Jane Njiru. Agenda of the meeting was adopted as consideration of the Independent Electoral and Boundaries Commission (Amendment) (No. 2) Bill, 2019.

The Chairman noted that the committee had held engagements with various stakeholders and received memoranda and oral submissions on the Bill and informed the Committee that time was ripe to move the Bill to the next stage.

**MIN.NO.CIOC/2019/172    CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred.

**MIN.NO.CIOC/2019/173    CONSIDERATION OF THE IEBC (AMENDMENT) (NO. 2) BILL, 2019**

The Chairman invited the clerk of the Committee to take the Members through the draft report and the views of the stakeholders for Members to make any observations and recommendations.

The Committee Clerk went through the report with Members noting as follows:

**IEBC Proposals**

- a) That since article 250 of the Constitution provides that Independent Commissions consist of a minimum of 3 Commissioners, the IEBC did not have objection to the reduction in number of Commissioners from 7 to 5; The Committee agreed with this proposal.
- b) That the appointment of Commissioners be staggered so that there is no instance when all Commissioners vacate office at once; The Committee noted that this would be addressed automatically by the current Bill since any subsequent Commissioners would be appointed for a 6 year term.
- c) Proposed that the first schedule, section 1, paragraph 5 be amended by deleting the words "as parliament shall determine for purposes of appointment of the chairperson or member of the Commission". This has the effect of removing the role of Parliament in picking the Selection Panel and leaving the mandate to the President; The Committee rejected this proposal on

account of the fact that Members of Parliament as players in an electoral process needed to participate in identification of the selection panel.

### **Centre for Multi-Party Democracy**

The CMD stated the following regarding the Bill:

- a) That as regards the Selection Panel, there was need to indicate the specific qualifications of the Members to join the panel; They proposed that A master's degree should be the minimum qualification for appointment as a Commissioner with ten to twelve years' experience; Members felt that these requirements could lock out many Kenyans who would be suitable for the job and therefore it was rejected.
- b) That as regards the Chairperson of the Commission, the qualifications of the holder of the office be opened up such that he need not be an advocate; The Committee considered this proposal and although it was agreeable to a number of Members, it was agreed that the provision on qualifications of the Chairperson was not among those up for consideration and could therefore not be considered.
- c) That Chairperson should be appointed by the Commissioners through a method they agree to and not by the President; The Members considered this proposal and noted that though it was a good proposal, such an amendment required a constitutional amendment and the same was rejected.
- d) That the recommendations of Kriggler in his report that Commissioners should be appointed at least two years before a general election should be observed; The Committee noted that this would be satisfied by an appointment of the new Commissioners once the amendment law is passed.

### **The Political Parties Liaison Committee**

Members of the Political Parties Liaison Committee raised the following regarding the Bill:

- a) They proposed to introduce an amendment to the selection panel to have one nominee in the Selection Panel appointed from the Political Parties Liaison Committee in order to represent interests of political parties; the Committee considered this proposal and agreed with it.

**Media Council of Kenya and Kenya Editors Guild**

The two bodies above appeared before the Committee and presented about treatment of journalists during elections, accreditation of foreign journalists, covering of political candidates by the public broadcaster KBC and sharing of information with the media by the IEBC during elections; The Committee though agreeing with the two bodies, explained that the proposals by the two bodies would introduce amendments to other sections of the IEBC Act and therefore were not related to the proposals in the Bill and therefore rejected the proposals.

**National Council for Persons with Disabilities**

The NCPWD proposed that the Selection Panel to recruit commissioners be expanded to include a representative of Person with Disabilities nominated by the NCPWD. The Committee considered this request and agreed that the selection panel be expanded to incorporate one person nominated by the Council to represent interests of PWDs.

**MIN.NO.CIOC/2019/174    ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/175    ADJOURNMENT**

There being no other business the meeting was adjourned at half past One o'clock (1. 30 pm). The next sitting will be on 1<sup>st</sup> August, 2019 at 11.30 am.

SIGN.....  
THE HON. JEREMIAH KIONI, M.P.

DATE .....1/8/2019.....  
CHAIRMAN



**MINUTES OF THE 24<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 20<sup>TH</sup> JUNE, 2019 IN CPA ROOM,  
MAIN PARLIAMENT BUILDINGS AT 11.30 A.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Fred Kapondi, M.P. - Vice-Chairman
3. The Hon. Anthony Oluoch, M.P.
4. The Hon. Raphael B. S. Wanjala, M.P.
5. The Hon. Simon Ng'ang'a King'ara, M.P.
6. The Hon. Joshua Chepyegon, M.P.
7. The Hon. Abdi Shurie, M.P.
8. The Hon. Jane Njiru, M.P.
9. The Hon. Daniel Rono, M.P.
10. The Hon. Gideon Koske, M.P.

**APOLOGY**

11. The Hon. (Dr.) Naomi Shaban, M.P.
12. The Hon. (Dr.) Christine Ombaka, M.P.
13. The Hon. Wafula Wamunyinyi, M.P.
14. The Hon. Charles Gimose, M.P.
15. The Hon. (Col.) Geoffrey Kingangi, M.P.
16. The Hon. Sarah Korere, M.P.
17. The Hon. Halima Mucheke, M.P.
18. The Hon. Peris Tobiko, M.P.
19. The Hon. Fabian K. Muli, M.P.
20. The Hon. Japheth Mutai, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. Ken Okoth, M.P.
23. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Abenayo Wasike - Senior Clerk Assistant
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Mr. Allan Gituku - Serjeant-at-Arms

**IN-ATTENDANCE- NATIONAL COUNCIL OF PERSONS WITH DISABILITIES**

1. Mr. Peter Chebii

- NCPWD legal officer

**MIN.NO.CIOOC/2019/136**

**PRELIMINARIES**

The Chairman called the meeting to order at forty minutes past Eleven O'clock (11.40am) and commenced with a word of prayer.

The Chairman invited the officer from the National Council of Persons with Disabilities to the meeting and invited him for introductions and to make presentations.

**MIN.NO.CIOOC/2019/137**

**CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to a later date.

**MIN.NO.CIOOC/2019/138**

**PROPOSALS ON IEBC AMENDMENT BILL BY THE NATIONAL COUNCIL OF PERSONS WITH DISABILITIES**

Representing the Director of NCPWD who was attending a function on Board of Trustees in Nanyuki, Mr. Peter Chebii, legal officer NCPWD made a presentation on the proposal regarding selection panel. He informed the meeting that the organization had no objections to other provisions.

He mentioned that it was very rare for marginalized groups notably the Persons with Disabilities to be included in the selection panel in other commissions yet they have skilled personnel. He conveyed the organization's proposal to include representatives of Persons with Disabilities to the selection panel for inclusivity and fairness.

He further stated that persons living with disability should be represented in all constitutional commissions.

**MIN.NO.CIOOC/2019/139**

**VIEWS AND SUGGESTIONS BY MEMBERS**

The chairman pointed out that the organization may be helped to include PWDs in the panel but once the panel is opened to accommodate NCPWD other groups will also ask for the inclusion.

He further stated that the committee will ensure that NCPWD will be adequately represented in the *Representations of Special Interests Group Bill* and NCPWD will be invited to consult with members on the amendments.

**MIN.NO.CIOOC/2019/140**

**COMMITTEE BILLS**

The chairman informed the meeting that the constitutional amendment on Article 152 to have the Attorney General as a Cabinet, the speaker advised that the Constitutional Bills be published separately.





The meeting also noted that National Cohesion Act need to be amended to be aligned with the constitution of Kenya 2010.

The meeting further noted that Article 225(1) on control of Public Money by National Treasury- an Act of Parliament shall provide for the establishment, functions and responsibilities of the National Treasury. It was proposed that all powers and resources should be decentralized thus the committee to redefine the National Treasury. The meeting proposed that the Act need to be aligned with the budget making process as core a function of Parliament and ensure the process of budget making is not passed as the National Treasury wishes. The meeting noted that there has to be input by Parliament and resolved get views from Public Budget Office for direction.

The meeting also proposed the need for the committee to address issues of inclusivity on election management and requested the secretariat to find out different views/options benchmarking to countries.

The meeting further proposed amendments to the Standing Orders for Constitutional commissions to report to CIOC. It was pointed out that the amendment to the Standing Order as at now will not affect the committees. It was further pointed out that if the committee succeeds, it will be able to engage the National Treasury and examine budget estimates.

Members informed the Secretariat to have a draft report on status of implementation of the Constitution for consideration in August during long recess and thereafter table to the house before end of the year.

**MIN.NO.CIOC/2019/141    ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/142                    ADJOURNMENT**

There being no other business the meeting adjourned at thirty minutes past One O'clock (1.18pm).The next sitting will be on 2<sup>nd</sup> July, 2019 at 11.30am.

Sign.....Date.....



1/8/2019

**Hon. Jeremiah Kioni, M.P.  
Chairperson**

**MINUTES OF THE 23<sup>RD</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 18<sup>TH</sup> JUNE, 2019 IN  
COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 11.30 A.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Fred Kapondi, M.P. - Vice-Chairman
3. The Hon. Charles Gimose, M.P.
4. The Hon. (Col.) Geoffrey Kingangi, M.P.
5. The Hon. Anthony Oluoch, M.P.
6. The Hon. Raphael B. S. Wanjala, M.P.
7. The Hon. Simon Ng'ang'a King'ara, M.P.
8. The Hon. Joshua Chepyegon, M.P.
9. The Hon. Jane Njiru, M.P.
10. The Hon. Halima Mucheke, M.P.
11. The Hon. Peris Tobiko, M.P.
12. The Hon. Daniel Rono, M.P.
13. The Hon. Fabian K. Muli, M.P.

**APOLOGY**

14. The Hon. (Dr.) Naomi Shaban, M.P.
15. The Hon. (Dr.) Christine Ombaka, M.P.
16. The Hon. Wafula Wamunyinyi, M.P.
17. The Hon. Abdi Shurie, M.P.
18. The Hon. Sarah Korere, M.P.
19. The Hon. Gideon Koske, M.P.
20. The Hon. Japheth Mutai, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. Ken Okoth, M.P.
23. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Abenayo Wasike - Senior Clerk Assistant
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Mr. Sydney Okumu - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms



**IN-ATTENDANCE- KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

1. Ms. Ann Mary Okutoyi - Leader of Delegation
2. Ms. Janet Kambaya
3. Ms. Faizah Sidi
4. Mr. Elijah Kandie Lotuk

**MIN.NO.CIOC/2019/130                      PRELIMINARIES**

The Chairman called the meeting to order at thirty seven minutes past Eleven O'clock (11.37am) and commenced with a word of prayer.

The Chairman informed the meeting that the committee will propose amendments to the Standing Orders of the National Assembly to have Constitutional Commissions placed under the mandate of the Constitutional Implementation Oversight Committee to have all the Constitutional Commissions report to CIOC.

The Chairperson highlighted on challenges faced by Commissions on issues such as budget cuts as an area that needs the committee's support.

The chairman invited the Kenya National Commission on Human Rights officials to the meeting and informed them that the committee was keen on views/ proposals on the three (3) aspects of the proposed amendments and that the committee was also open to other areas that the commission may provide views.

He briefed the meeting on sections proposed for amendments by the Committee as; composition of selection panel, appointment schedule and reduction of the number of commissioners from seven (7) to five (5). The chairman also mentioned groups which had appeared before the committee for public participation of the IEBC amendment Bill, 2019.

The chairman invited the leader of delegation to introduce her members and make their presentations to the committee.

**MIN.NO.CIOC/2019/131      CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to a later date.

**MIN.NO.CIOC/2019/132      PROPOSALS ON IEBC AMENDMENT BILL BY THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

Ms. Ann Okutoyi represented the KNCHR and presented a memorandum to the committee. She stated as follows;

- i. Reduction of membership of the Constitutional Commission from the current seven (7) to (5) would be in itself a reduction in the much required diversity and consultation in



decision making processes on policies and the direction of the Commission. Notably there is no rationale in the Memorandum of Objects for the proposed amendment.

- ii. The committee to consider comparative analysis in other Electoral Management Bodies in regions such as Malawi which has 7 members, Nigeria has 7 members, Uganda and Tanzania also 7 members each.
- iii. The committee to examine the recommendations of Kriegler report (independent review commission on the general elections held on 2<sup>nd</sup> December, 2007) on the composition and appointment of commissioners in which broad consultation and a number that would enable the Commission functionally do its work and effectively deliver on their mandate.
- iv. The committee to consider the recommendation from the IEBC regarding the appointment of commissioners in its post-elections evaluation report of the 2017 General Elections and fresh presidential elections that seeks to have commissioners appointed in such a manner that they are staggered, and are to serve the entire electoral cycle or at least be appointed two years before the elections date.
- v. KNCHR supports section 3 of the amendment Bill that brings clarity on the appointment of the chairperson and members of IEBC.
- vi. Deletion of section 4(b) relating to first review contradicts the provisions of paragraph 9 of the Fifth schedule that requires the maintenance of all records and materials related to the delimitation process to be kept in a form accessible and useable by members of the public. Such provisions are crucial as they form part of the materials from which reference may be made regarding the process.
- vii. KNCHR is concerned over deletion of paragraphs 1, 2 and 3 of the Fifth schedule which effectively does away with the original record of the first review process.
- viii. Provisions relating to electoral units which set out timelines for reporting, direct and indirect participation should be reworded to provide for the procedure for subsequent review of electoral units.
- ix. The committee to consider amending the Fifth Schedule to expressly include provisions for subsequent reviews of boundaries as provided under Article 89 of the Constitution.
- x. The Memorandum to the proposed amendment doesn't state the object for the amendments.
- xi. That for efficient functioning of the commission it should not be less than seven members constituting the commission.

In conclusion, the officers of the KNCHR reiterated the commissions position on the composition of selection panel that it should widely reflect the diversities of the Republic

of Kenya and urged the committee to adhere to principles of Article 10 of the Constitution particularly inclusiveness and good governance.

**MIN.NO.CIOC/2019/133    VIEWS AND SUGGESTIONS BY MEMBERS**

The members informed the meeting that IEBC has been able to manage with only three commissioners for about two years.

Some members suggested having political parties as a key player and omitting others like churches

Members were concerned on how to deal with a situation where the president fails to appoint commissioners as in the case of the current IEBC commissioners who resigned and the President ignored.

Members were also concerned with KNCHR basis on whether it is by law, research or case study to have 7 commissioners.

**MIN.NO.CIOC/2019/134    ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/135                      ADJOURNMENT**

There being no other business the meeting adjourned at thirty minutes past One O'clock (1.30pm). The next sitting will be on 20<sup>th</sup> June, 2019 at 11.30 am.

Sign..........Date .....1/8/2019.....

**HON. JEREMIAH KIONI, M.P  
CHAIRPERSON**

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**MINUTES OF THE 22<sup>ND</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 13<sup>TH</sup> JUNE, 2019 IN  
COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 11.30 A.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Fred Kapondi, M.P. - Vice-Chairman
3. The Hon. (Dr.) Christine Ombaka, M.P.
4. The Hon. Wafula Wamunyinyi, M.P.
5. The Hon. Charles Gimose, M.P.
6. The Hon. (Col.) Geoffrey Kingangi, M.P.
7. The Hon. Anthony Oluoch, M.P.
8. The Hon. Abdi Shurie, M.P.
9. The Hon. Simon Ng'ang'a King'ara, M.P.
10. The Hon. Joshua Chepyegon, M.P.
11. The Hon. Jane Njiru, M.P.
12. The Hon. Peris Tobiko, M.P.
13. The Hon. Japheth Mutai, M.P.

**APOLOGY**

14. The Hon. (Dr.) Naomi Shaban, M.P.
15. The Hon. Sarah Korere, M.P.
16. The Hon. Raphael B. S. Wanjala, M.P.
17. The Hon. Gideon Koske, M.P.
18. The Hon. Halima Mucheke, M.P.
19. The Hon. Fabian K. Muli, M.P.
20. The Hon. Ayub Savula, M.P.
21. The Hon. Daniel Rono, M.P.
22. The Hon. Ken Okoth, M.P.
23. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Abenayo Wasike - Senior Clerk Assistant
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Mr. Sydney Okumu - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms



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### **IN-ATTENDANCE**

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|-----------------------------|--|
| 1. Mr. Irungu Nyakera       | - Chairperson PPLC                                 |
| 2. Hon. Judy A. Sijeny      | - SG-WDM-K/PPLC                                    |
| 3. Mr. Mike Oliewo          | - Chairman Legal Subcommittee PPLC                 |
| 4. Ms. Alice Gathoni        | - D.Sec PPLC                                       |
| 5. Mr. Gerry Owiti          | - D.treasurer PPLC                                 |
| 6. Mr. Loserian Tukei       | - Legal Officer ORPP                               |
| 7. Ms. Stella Kaaria        | - Communication & Liaison PPLC                     |
| 8. Mr. George Nyambu        | - Ass.Prof UON /KEG                                |
| 9. Mr. Henry O. Maina       | - Member Media Complaints Commission               |
| 10. Ms. Pamela Sitoni       | - Executive editor, NMG trustee Kenya Editor Guild |
| 11. Mr. Hassan Kulundu      | - Legal Counsel, Kenya Editors Guild               |
| 12. Mr. Macharia Gaiho      | - Trustee, Kenya Editors Guild                     |
| 13. Mr. David Omwoyo        | - CEO,Media Council of Kenya                       |
| 14. Hon. Geoffrey King'angi | - M.P Mbeere South                                 |

### **MIN.NO.CIOC/2019/122**

### **PRELIMINARIES**

The Chairman called the meeting to order at thirty five minutes past Eleven O'clock (11.35am) and invited Hon. Dr. Christine Ombaka, M.P to say a word of prayer.

The Chairman invited the members of the Political Parties Liaison Committee, the Media Council of Kenya and the Kenya Editors' Guild to the meeting and thanked them for making time to appear before the committee.

He briefed them on the committee's mandate and observed that the Independent Electoral and Boundaries Commission was not fully constituted and that their views will help to address the gaps and shortcomings by providing amendments to the Act.

He noted that the committee had engaged other stakeholders and drawn views/proposals regarding the Bill. He thereafter invited the delegation leader to introduce his team and make presentations.

### **MIN.NO.CIOC/2019/123**

### **CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to a later date.

### **MIN.NO.CIOC/2019/124**

### **SUBMISSIONS BY THE POLITICAL PARTIES LIAISON COMMITTEE**

The chairperson, Mr. Irungu Nyakera, highlighted on his written presentation and supported the committee's proposed amendments.





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He submitted proposals on amendment of the principal Act as follows;

- i. Regarding qualification of a commission chairperson not to be same as that of a judge by deletion of Subsection 1 which provides; ‘the chairperson of the commission shall be a person who is qualified to hold office of judge of the Supreme Court under the Constitution.’
- ii. On vacancy in the office of the chairperson and members;
  - a) Addition of part (d) immediately after (c) to read ‘is absent from duty for a period of 90 days without justifiable reasons.
  - b) Expansion of section 2 by adding subsection (2A) that reads ‘notwithstanding the provisions of subsection 2, the Parliamentary Service Commission shall commence the process of recruitment of a new chairperson/member of the Commission within 30 days of the occurrence of the vacancy.’
  - c) Expansion of section 3 by adding subsection (3A) that reads ‘whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act shall commence immediately after the declaration of the vacancy by the President under subsection (2) or (2A).
- iii. To ensure compliance with Article 100 ‘four persons being two men and two women nominated by the Parliamentary Service Commission ; ***out of which two shall be male and female youth of 35years and below in line with Article 100 of the Constitution.***
- iv. Inserting a new sub-paragraph (h) immediately after sub-paragraph (g) to read ‘one person nominated by the Political Parties Liaison Committee;’
- v. 2 (iv) in sub-paragraph (3) by adding 3(a) to read ‘ the Parliamentary Service Commission shall ensure that the list submitted by the various bodies adheres to the two thirds gender rule;’ and inserting the words ‘within ***fourteen*** days of the declaration of a vacancy in the office of chairperson or member of the commission’ immediately after the words ‘President for appointment’

**MIN.NO.CIOC/2019/125 SUBMISSIONS BY THE MEDIA COUNCIL OF KENYA**

The Media Council of Kenya CEO Mr. David Omwoyo informed the meeting that the media sector had been in discussion on management of elections and as a key stakeholder proposed the following amendments;

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A. On accreditation of journalists,

The Media Council of Kenya proposed that all local and foreign journalists who intend to cover elections must be accredited by the Media Council of Kenya. They also proposed that the Independent Electoral and Boundaries Commission shall in consultation with the Media council of Kenya publish the names of such accredited journalists and accord them requisite access to election centers.

B. On equal media coverage and expenditure

The Council proposed that the Independent Electoral and Boundaries Commission in consultation with the Media Council of Kenya shall develop guidelines on equal distribution of media coverage amongst different political parties and candidates. They also proposed that commission in due regard to Election Campaign Financing Act shall develop guidelines on spending to ensure it does not exceed the prescribed percentage of the media house revenue from political parties or candidates.

C. On engagement and training

Media Council of Kenya proposed that the Independent Electoral and Boundaries Commission shall in collaboration with the Media Council of Kenya train journalists on election matters;

- That the Commission shall enter into a Memorandum of Understanding with Media Council of Kenya to ensure timely training of journalists,
- Prudent and efficient expenditure for resources dedicated to such activities.
- That the Media centers established during election periods shall be manned by the Media Council in consultation with the Media sector.

D. Regarding attacks on journalists and media houses

The Media Council of Kenya proposed that Independent Electoral and Boundaries Commission shall review election offenses to include attacks on journalists, media houses and media workers and ensure those caught violating such provisions are effectively sanctioned.

The Council also proposed that the Commission in consultation with Media Council of Kenya shall monitor broadcasting stations and ensure media owners and or editors do.

Mr. Macharia Gaitho, trustee of the Kenya Editors' Guild informed the meeting that they had read the Bill in their capacity as a statutory Media Regulatory body, and also as one of the Media Sector Stakeholders. He further informed the meeting that the Kenya Editor's Guild would adopt the said proposals with additions which he highlighted as follows;

Selection Panel was deemed to consist entirely of Political Class (four persons nominated by Parliamentary Service Commission) and religious groupings (one person each nominated by Catholics, NCKK, Evangelicals, Hindus, Muslims). According to the Kenya Editor's Guild, this composition ignores many other stakeholders with legitimate interests and they proposed that the Parliament and religious groups forego some of their slots to make way for groups such as Professional Associations, Trade Unions, Business Associations, Media and Civil Society.

Mr. Gaitho further added the following based on the experiences of journalists covering elections which he said was not covered by the Media Council of Kenya under the proposed amendments;

- i. Denial of free access to accredited journalists which they termed as foul play and suggested that the right to access be granted under the Act and that Electoral Officials who defy this right be penalized.
- ii. The results announcement method was described to be outmoded and not favorable for free and unhindered Media coverage. According to Kenya Editors' Guild, in the last 3 general elections IEBC agreed to allow Media houses to log into and obtain real-time results from database but each time reneged at the last minute without credible explanation. They proposed that the right should be guaranteed under the Act with necessary safeguards against data pollution.
- iii. That the directive by the cabinet secretary for Information and Communications Technology 's directive to bar Media from collecting and collating election count results from Polling and Tallying Centers and disseminating same to readers and views was illegal and amounted to gross interference in the electoral process.
- iv. The Act to more aggressively ensure KBC compliance, the Public Broadcaster which by law is supposed to be neutral and to give a balanced coverage for all political contenders yet it operates as a publicity and propaganda arm of the governing party.
- v. The proliferation of TV and Radio stations across the country has seen emergence of many broadcast outlets owned by politicians, same applies to growing number of county based and regional magazines and newspapers and intended mainly as campaign tools at elections need to be firmly checked under Election Laws in addition to Media Laws.
- vi. The law on campaign advertising should be strengthened to ensure compliance by requiring Media houses and outdoor advertising firms to keep clear and verifiable records of entities who book and pay for advertising, and to publish the same along with the

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advert. Where adverts are placed by support groups for example friends of a certain party, they must still be clearly identified to a legal entity or a person booking and paying for the placement, and approved by the intended beneficiary.

**MIN.NO.CIOC/2019/127    COMMENTS/VIEWS BY MEMBERS**

Members observed that proposals by the media council are good and advised the group to come up with their form of amendments on particular provisions of different electoral laws in place.

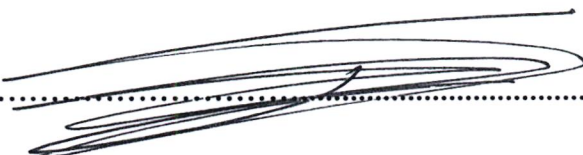
There is need for additional protection to be extended to the media by way of legislation.

**MIN.NO.CIOC/2019/128    ANY OTHER BUSINESS**

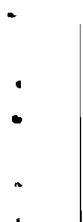
There was no any other business.

**MIN.NO.CIOC/2019/129                    ADJOURNMENT**

There being no other business the meeting adjourned at fifty two minutes past One O'clock (1.52pm). The next sitting will be on 18<sup>th</sup> June, 2019 at 11.30 am.

Sign..........Date.....11/8/2019.....

**HON. JEREMIAH KIONI, M.P  
CHAIRPERSON**



**MINUTES OF THE 20<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 4<sup>TH</sup> JUNE, 2019 IN COMMITTEE  
ROOM 12, MAIN PARLIAMENT BUILDINGS AT 11.30 A.M.**

---

**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. (Dr.) Christine Ombaka, M.P.
3. The Hon. Wafula Wamunyinyi, M.P.
4. The Hon. Simon Ng'ang'a King'ara, M.P.
5. The Hon. Joshua Chepyegon, M.P.
6. The Hon. Ayub Savula, M.P.
7. The Hon. Daniel Rono, M.P.

**APOLOGY**

8. The Hon. Fred Kapondi, M.P. - Vice-Chairman
9. The Hon. (Dr.) Naomi Shaban, M.P.
10. The Hon. (Col.) Geoffrey Kingangi, M.P.
11. The Hon. Anthony Oluoch, M.P.
12. The Hon. Abdi Shurie, M.P.
13. The Hon. Charles Gimose, M.P.
14. The Hon. Sarah Korere, M.P.
15. The Hon. Jane Njiru, M.P.
16. The Hon. Japheth Mutai, M.P.
17. The Hon. Raphael B. S. Wanjala, M.P.
18. The Hon. Fabian K. Muli, M.P.
19. The Hon. Peris Tobiko, M.P.
20. The Hon. Gideon Koske, M.P.
21. The Hon. Halima Mucheke, M.P.
22. The Hon. Ken Okoth, M.P.
23. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Abenayo Wasike - Senior Clerk Assistant
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Mr. Sydney Okumu - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms



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### **IN-ATTENDANCE**

1. Mr. Isaac Kinyua - CMD-Kenya
2. Mr. Frankline Mukwanja - CMD- Kenya
3. Mr. Taabu O.W Daniels - CMD-Kenya

### **MIN.NO.CIOC/2019/115**

### **PRELIMINARIES**

The Chairman called the meeting to order at forty minutes past Eleven O'clock (11.40 a.m.) and commenced with a word of prayer.

He informed the meeting that the IEBC Bill Amendment Bill,2019 was published on 15<sup>th</sup> April,2019 , read in the House for the first time on 2<sup>nd</sup> May, 2019 and the advert notice sent to the public on 9<sup>th</sup> May,2019.

He also informed the meeting that the committee had already received views and proposals from five (5) different stakeholders namely; the Attorney General, Kenya Law Reform Commission, National Gender and Equality Commission, Registrar of Political Parties and the Independent and Electoral Boundaries Commission.

### **MIN.NO.CIOC/2019/116    CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to a later date.

### **MIN.NO.CIOC/2019/117 MEETING WITH STAKEHOLDERS**

The chairman led members and stakeholders in attendance in a session of introductions followed by receipt of presentations from the Centre for Multiparty Democracy.

### **Submissions on the IEBC Amendment Bill by the Center for Multiparty and Democracy**

The CEO of the Center for Multiparty Democracy Mr. Frankline Mukwanja submitted for the Centre as follows;

- A. On appointment of Commissioners, he sought clarification on;
  - i. The current status whether the IEBC Chairperson must be a lawyer and qualified for appointment as a Judge of the High Court of Kenya,
  - ii. Observed that in the current commission we have one lawyer who is also the chairperson and;
  - iii. Why the president should be given two nominees for consideration to appoint the chairperson.

- B. On term of office, he submitted that the recruitment of commissioners should be staggered to provide for continuity in the event some commissioners retire or resign before their expiry of one's term.
- C. On composition of the selection panel; the CEO proposed there is need to reflect on composition of the selection panel and the process of appointing commissioners. He was of the opinion that having religious leaders in the selection panel does not guarantee credibility.

**The CEO recommended that;**

- a. The Selection panel should be lean and representative
- b. Political parties should be given four slots in the panel
- c. Experts on electoral matters are given three slots.
- d. Selection of the chairperson should be left to the appointed commissioners by consensus to build trust.
- e. Electoral laws should provide for staggered appointments of commissioners to ensure stability and continuity
- f. Commissioners should oversight the Secretariat
- g. A master's degree should be the minimum qualification for appointment as a Commissioner with ten to twelve years' experience.
- h. The CIOC should help enforce the *Kriegler* commission recommendation that if a commissioner quits the position two years into the election, another commissioner should not be appointed until after election.

**MIN.NO.CIOC/2019/118    MEMBERS' COMMENTS ON CMD'S SUBMISSIONS**

- a. Members appreciated the commitment demonstrated by CMD to improve the electoral system in Kenya.
- b. They appreciated the CMD views on the *Kriegler* report and agreed that there is need to reflect on the qualifications and process of appointing commissioners.
- c. Members were concerned that a master's degree should not be the minimum qualification given that there are first degree holders with vast experience.



- d. The President is the appointing authority of parastatal heads and thus exempting the president from appointing chairperson of Independent Electoral and Boundaries Commission may not succeed.
- e. Trust in managers of elections is a big challenge as noted by CMD and that stakeholders and Parliament should look for ideas and opportunities to tinker through dialogue and consensus approaches.
- f. The current panel was a diverse negotiated process and there is need for more input by CMD review application of their proposals.
- g. Members observed that the term of office of the commissioners is clearly spelt out in the Constitution and that staggering was not possible and commissioner may either leave voluntarily or removal through a tribunal.

**Members asked the Center for Multiparty and Democracy to provide more comprehensive information on their proposals on;**

- i. Composition of the panel and the number.
- ii. Appointing authority of the panel and their competency
- iii. Formula for staggered appointment of commissioners.
- iv. Proposals on how to address mistrust and build trust.

**MIN.NO.CIOOC/2019/119    REMARKS BY THE CENTER FOR DEMOCRACY CEO**

The CEO stated that;

- i. The IEBC commissioners should retain oversight role of the commission while operational issues should be handled by the secretariat.
- ii. The number of religious leaders in the selection panel being 5 out of 9 is not proportionate and should be reviewed to accommodate other bodies.
- iii. That there is need for clarity on justification for representation of the Public Service Commission in the panel
- iv. On mistrust, stated that the President's role should be minimized and commissioners left to pick one of their own as a chairperson.

MIN.NO.CIOC/2019/120    ANY OTHER BUSINESS

There was no any other business.

MIN.NO.CIOC/2019/121                    ADJOURNMENT

There being no other business the meeting adjourned at fifty two minutes past twelve O'clock (12.52pm).The next sitting will be on 11<sup>th</sup> June, 2019 at 11.30am.

Sign..........Date.....11/8/2019.....

**Hon. Jeremiah Kioni, M.P.**  
**Chairperson**

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE


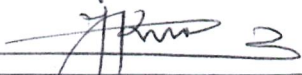
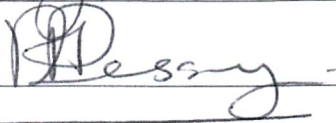

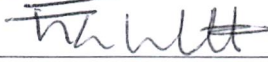




MEMBERS PRESENT DURING ADOPTION OF IEBC AMENDMENT (NO.2)  
BILL, 2019

Date: 1/8/2019

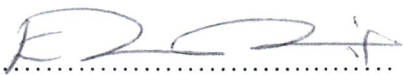
Venue: Protection House 4<sup>th</sup> Floor

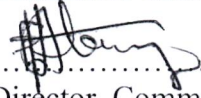
	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Fred Kapondi, M.P (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. Wafula Wamunyinyi, M.P.	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Anthony Oluoch, M.P.	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. (Col.) Geoffrey Kingangi, M.P	
10.	Hon. Raphael B. S. Wanjala, M.P	
11.	Hon. Simon Nganga Kingara, M.P.	
12.	Hon. Halima Mucheke, M.P.	
13.	Hon. Sarah P. Korere, M.P.	



	HON. MEMBER	SIGNATURE
14.	Hon. Jane Njiru, M.P.	
15.	Hon. Japheth Mutai, M.P.	
16.	Hon. Peris Tobiko, M.P.	
17.	Hon. Daniel Rono, M.P.	
18.	Hon. Joshua Chepyegon, M.P.	
19.	Hon. Fabian K. Muli, M.P.	
20.	Hon. Gideon Koske, M.P.	
21.	Hon. Ayub Savula, M.P.	
22.	Hon. Ken Okoth, M.P.	
23.	Hon. T.J Kajwang, M.P.	

Name: Edward Libendi  
 Committee Clerk

Signature 

Name:   
 Director, Committee Services

Signature 06/8/19

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Completed tender documents must be received at the address below on or before **14<sup>th</sup> May, 2019 at 11:00 am** in plain sealed envelope clearly marked "Addressed to".

General Manager,  
Standard Digger Classifieds Limited  
P.O. Box 41842, Nairobi  
KENYA

Opening of tenders will take place immediately thereafter on **14<sup>th</sup> May 2019** at the company's headquarters at 11:00 am. In presence of bidders or their representatives who choose to attend.

GENERAL MANAGER

Handwritten notes in the top right corner, partially illegible.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Independent Electoral and Boundaries Commission (Amendment) Bill, (National Assembly Bill No. 24 of 2019)
2. The Independent Electoral and Boundaries Commission (Amendment) Bill, (National Assembly Bill No. 30 of 2019)

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 24 of 2019) seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 in order to provide for a mechanism of appointing members of the Commission.

The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 30 of 2019) seeks to reduce the number of Commissioners of the IEBC from seven (7) to five (5) including the Chairperson. It further seeks to provide for the selection panel existing in law to carry out recruitment of the Chairperson and Commissioners whenever a vacancy arises in the Commission. The Bill also seeks to provide for the procedure through which the Commission may resolve issues arising from delimitation of boundaries of constituencies and wards.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3). The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 24 of 2019) stands committed to the Departmental Committee on Justice and Legal Affairs while the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 30 of 2019) stands committed to the Constitutional Implementation Oversight Committee, for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the respective Committees invite interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY



COUNTY GOVERNMENT  
OF  
HOMABAY

REPUBLIC OF KENYA

DEPARTMENT OF TRADE, INDUSTRY  
AND ENTERPRISE DEVELOPMENT

**PUBLIC**

The County Government of Homa Bay is inviting interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

S/NO:	TENDER NO.	TENDER DESCRIPTION
1	HB/CTY/TRD/145/2018-2019	PROPOSED CONSTRUCTION OF PHASE II OF HOMA BAY TOWN NORTHWESTERN UNIT 2 (C/2)
2	HB/CTY/TRD/146/2018-2019	EMULSION AND CONCRETE PROGRAM FOR THE CONSTRUCTION OF HOMA BAY TOWN NORTHWESTERN UNIT 2 (C/2)

Complete tender documents will only be submitted to [go.ke](http://go.ke) as per the requirements contained in the tender documents on or before **14<sup>th</sup> May 2019 at 10:00am East Africa time**. Tenders will be opened on **14<sup>th</sup> May 2019 at 10:00am East Africa time**.

Bidders are advised to visit the County Government of Homa Bay **time before deadline** for issuance of addendum/s and when it may be deemed necessary. Price quoted shall be in KSh (90) calendar days after tender opening.

Mandatory pre-tender site visits for Tender No. HB/CTY/TRD/145/2018-2019 at **9:00am** and for Tender No. HB/CTY/TRD/146/2018-2019 at **9:00am** starting from the Headquarters of Enterprise Development in Homa Bay Town. Tenderers are to attend from the site. Any tenderer(s) who may wish to attend will have to make a special arrangement with the Enterprise Development at their own cost.

Bidders are notified that tender documents submitted must be in plain sealed envelope clearly marked "Addressed to".

PETER OYOO  
DIRECTOR OF PROCUREMENT  
HOMA BAY COUNTY

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Annex A

**THE POLITICAL PARTIES LIAISON COMMITTEE POSITION ON THE PROPOSED AMENDMENTS TO THE IEBC ACT No. 9 OF 2011**

The Political Parties Liaison Committee (PPLC) is established by virtue of Section 38 of the Political Parties Act, 2011. The principle function of PPLC is to provide a platform for dialogue between the Registrar, Commission and political parties. Section 38 (2) further provides that the PPLC is established at both the National and County levels.

Currently, the PPLC has established six (6) Sub-Committees to help it achieve its mandate.

The PPLC has noted the concerted efforts by different players to amend the principal legislation that touches on the Commission.

The PPLC particularly notes Kenya Gazette Supplement No.53 by the Committee on Implementation of the Constitution through its Chair, Hon. Jeremiah Kioni and the Kenya Gazette Supplement No.36, a Private Member Bill by Hon. Jude Njomo and wish to submit as follows:

***i. Kenya Gazette Supplement No.53***

The Political Parties Liaison Committee agrees in totality with the proposed amendments by the Committee on Implementation of the Constitution.

Further, we would like to present the following proposals to the principal act:

	CITATION	CURRENT PROVISION	PROPOSED AMMENDMENTS
1	SECTION 6	<p>(1) The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.</p> <p>(2) A person is qualified for appointment as a member of the Commission if such person –</p> <p>(a) deleted by Act No. 36 of 2016,s.32;</p> <p>(b) holds a degree from a recognized university;</p> <p>(c) has proven relevant experience in any of the following fields –</p> <p>(i) electoral matters;</p> <p>(ii) management;</p> <p>(iii) finance;</p> <p>(iv) governance;</p> <p>(v) public administration;</p> <p>(vi) law; and</p> <p>(d) meets the requirements of Chapter Six of the Constitution. (Act No. 36 of 2016, s.32)</p>	<p><i>Deletion of Subsection 1 and amending subsection 2 to read as follows:</i></p> <p>(1) A person is qualified for appointment as Chairperson/Member of the Commission if such a person –</p> <p>a. deleted by Act No. 36 of 2016,s.32;</p> <p>b. holds a degree from a recognized university;</p> <p>c. has proven relevant experience in any of the following fields –</p> <p>(i) electoral matters;</p> <p>(ii) management;</p> <p>(iii) finance;</p> <p>(iv) governance;</p> <p>(v) public administration;</p> <p>(vi) law; and</p> <p>d. meets the requirements of Chapter Six of the Constitution. (Act No. 36 of</p>

			2016, s.32)
2	SECTION 7A	7A. Vacancy in the Office of chairperson and members  (1) The office of the chairperson or a member of the Commission shall become vacant if the holder – (a) dies; (b) resigns from office by notice in writing addressed to the President; or (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution	<i>Addition of part (d) immediately after (c)</i>  (d) is absent from duty for a period of 90 days without justifiable reasons
		(2) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.	<i>Expansion of section 2 by adding subsection 2A that reads:</i>  (2A) Notwithstanding the provisions of subsection 2, the Parliamentary Service Commission shall commence the process of recruitment of a new chairperson/member of the Commission within 30 days of the occurrence of the vacancy.
		(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2)	<i>Expansion of section 3 by adding subsection 3A that reads:</i>  (3A) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2) or (2A)

**ii. The Kenya Gazette Supplement No.36**

The Political Parties Liaison Committee agrees with the proposed amendments 2 (a) (i), (ii) and (v).

However, the Committee wishes to make further proposals to sub-section (iii) and (iv) of the proposed amendments by Hon. Jude Njomo.

	CITATION	CURRENT PROPOSALS	PROPOSED AMENDMENTS
1	2. the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended –	(2)(a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;	<i>To ensure compliance with Art. 100</i>  (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission; <b><i>out of which two shall be male and female Youth of of 35 years and below in line with Article 100 of the Constitution</i></b>
2	2. the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended –	(iii) by inserting the following new sub-paragraph immediately after sub-paragraph (f) –  (g) one person nominated by the National Council for the Persons with Disabilities;	(h) <b><i>one person nominated by the Political Parties Liason Committee;</i></b>
3	2 (iv)	2(iv) in sub-paragraph (3) by inserting the words –  “within seven days of the declaration of a vacancy in the office of chairperson or member	We propose:  2(iv) in sub-paragraph (3) by adding <b>3 (a) The Parliamentary Service Commission shall ensure that</b>



		of the Commission" immediately after the words "President for appointment".	<p><b>the list submitted by the various bodies adheres to the two thirds Gender Rule;</b></p> <p>2(iv) in sub-paragraph (3) by inserting the words –</p> <p>"within <b>fourteen</b> days of the declaration of a vacancy in the office of chairperson or member of the Commission" immediately after the words "President for appointment".</p>
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## KENYA EDITORS' GUILD

### COMMENTS ON THE IEBC (AMENDMENT) BILL, 2019

June 13, 2019

The Kenya Editors' Guild is pleased to take part in this Public Participation process hosted by the National Assembly Constitutional Implementation Oversight Committee in regards to the Independent Electoral and Boundaries Commission (Amendment) Bill.

We are aware the IEBC Act is just of the various laws governing the electoral process in Kenya, However, we believe that the Act cannot be looked at in isolation from related legislation, most specifically:-

- a) The Elections Act, 2011;
- b) The Election Laws (Amendment) Act, 2016;
- c) Elections Offenses Act, 2016;
- d) The Political Parties Act, 2011; and
- f) The Constitution of Kenya, 2010.

We have read the comments on the IEBC (Amendment) Bill put forward by the Media Council of Kenya in its capacity as the Statutory Media Regulatory body, and also as one of the equal Media Sector Stakeholders.

We would like to adopt those comments, but with the following additions:

#### 1. SELECTION PANEL

The proposed Panel is composed entirely of Political Classes (Four persons nominated by Parliamentary Service Commission) and Religious groupings (One person each nominated by Catholics, NCKK, Evangelicals, Hindus, Muslims).

This composition ignores many other Stakeholders with legitimate interests. We propose Parliament and Religious groups surrender some of their slots to make way for groups such as:

Professional Associations;

Trade Unions;

Business Associations;

Media;  
Civil Society;  
Et cetera.

## 2. MEDIA COVERAGE OF ELECTIONS

We note that this is not covered under the proposed Amendments. We have already put on record our adoption of the Media Council Submissions, but would like to add the following points based on our experiences as journalists covering elections:-

- a) The IEBC tends to take Media access to the Polling Stations and to National, County and Constituency Tallying Centres as favours rather than rights. At past elections there were various reports of Electoral Officials right from the National Tallying Centre down to Polling Centres at Ward Level denying free and unhindered access to accredited journalists. This brings about suspicion of foul play. We suggest that Right of Access be guaranteed under the Act, and that Electoral Officials who defy this right be penalised.
- b) The results announcement method is outmoded and not favourable for free and unhindered Media coverage. At the National Tallying Centre, Media has had to wait for periodic results announcements by Electoral Commissioners. Modern Jurisdictions allow Media access to real-time results updates as they are generated into the electoral results database. This acts as a safeguard against manipulation of results within the large time lag between the data generation, and official announcements and uploading on the Public portal. Over the last three election cycles (2007, 2013, 2017) the IEBC agreed to allow Media houses to log into and obtain real-time results from the database, but each time reneged at the last minute without credible explanation. We propose this right be guaranteed under the Act, with necessary safeguards against data pollution.
- c) At Polling Stations and Constituency Tallying Centres, our experience was that Electoral Officials in many instances did not display for public view election results as required by law. They also obstructed Media access to the Centres and to any results where displayed, citing lack of instruction from IEBC headquarters. This had the effect of hindering accurate reporting of the election count and tallying from the Polling Station to the Tallying Centre. This thus defeated the principles of an open and transparent election process that the law is supposed to guarantee. Additional safeguards are required under the Act.
- d) In relation to (c), above, it is instructive that prior to the elections, the Cabinet Secretary for Information and Communications Technology purported to bar the Media from collecting and collating election count results from Polling and Tallying Centres and disseminating the



same to their readers and viewers. This directive was illegal and also amounted to gross interference in the electoral process. We propose that the Act more effectively insulate the IEBC from interference and manipulation by the Executive and any other quarters, with appropriate penalties for transgressors.

- e) The Public Broadcaster, KBC, is by law supposed to be neutral and to give equitable and balanced coverage for all political contenders. It has however, even in the multi-party era and under the new Constitutional regime, continued to operate as a publicity and propaganda arm of the governing party. We propose that the Act more aggressively ensure KBC compliance.
- f) The proliferation of TV and Radio stations across the country has seen emergence of many broadcast outlets owned by politicians, and intended mainly as campaign tools at elections. They are responsible for the most blatant breaches of the IEBC Election Coverage guidelines, in particular to hate speech, ethnic /clan mobilisation, incitement and refusal to draw a line between campaign advertising and editorial. Same applies to the growing number of county-based and regional magazines and newspapers. They need to be more firmly checked under Election Laws in addition to Media Laws.
- g) The last elections witnessed an unprecedented level of negative political advertising. The law presently regulates the tone of campaign advertising to guard against hate speech, ethnic incitement and profiling, incitement to violence, unfair accusations, use of public resources etc. However, IEBC refused to act against clear breaches seen in Media adverts, Billboards and Online campaigns. We propose that the law on campaign advertising be strengthened to ensure compliance. This can be helped by requiring Media houses and Outdoor advertising firms to keep clear and verifiable records of entities who book and pay for advertising, and to publish the same along with the advert. Each advert should also carry an affirmation from the candidate/party owning and approving the message. Where adverts are placed by support groups (eg Friends of ABC Party), they must still be clearly identified to a legal entity or person booking and paying for the placement, and approved by the intended beneficiary.

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**MISCELLANEOUS COMMENTS ON THE IEBC  
AMENDMENT BILL (NATIONAL ASSEMBLY) NO.30  
OF 2019**

The Media as a key stakeholder proposes the following amendments;

**Accreditation of Journalists**

1. (1) All local and foreign Journalists who intend to cover elections must be accredited by the Media Council of Kenya.  
(2) The Commission shall in consultation with the Media Council of Kenya publish the names of such accredited journalists and accord them requisite access to election centers.

**Equal media Coverage and Expenditure**

2. (1) The Commission in consultation with Media Council of Kenya shall develop guidelines on equal distribution of media coverage amongst different political parties and candidates.  
(2) The Commission in due regard to Election Campaign Financing Act shall develop guidelines and in collaboration with the Media Council of Kenya monitor political parties or candidates spending to ensure it does not exceed the prescribed percentage of the media house revenue from political parties or candidates.

**Engagement and training**

3. (1) The Commission shall in collaboration with Media Council of Kenya train journalists on election related matters.  
(2) The Commission shall enter into a Memorandum of Understanding with Media Council of Kenya to ensure timely training of journalists, prudent and efficient expenditure for resources dedicated to such activities.  
The Media center (s) established during election periods shall be manned by the media Council in consultation with the Media sector

**Attacks on journalists and media houses**

4. (1) IEBC shall review election offences to include attacks on journalists, media houses and media workers and ensure those caught violating such provisions are effectively sanctioned.  
(2) Media Council of Kenya in consultation with IEBC shall monitor broadcasting stations and ensure media owners and or editors do.



Annex 4

**THE POLITICAL PARTIES LIAISON COMMITTEE POSITION ON THE PROPOSED AMENDMENTS TO THE IEBC ACT No. 9 OF 2011**

The Political Parties Liaison Committee (PPLC) is established by virtue of Section 38 of the Political Parties Act, 2011. The principle function of PPLC is to provide a platform for dialogue between the Registrar, Commission and political parties. Section 38 (2) further provides that the PPLC is established at both the National and County levels.

Currently, the PPLC has established six (6) Sub-Committees to help it achieve its mandate.

The PPLC has noted the concerted efforts by different players to amend the principal legislation that touches on the Commission.

The PPLC particularly notes Kenya Gazette Supplement No.53 by the Committee on Implementation of the Constitution through its Chair, Hon. Jeremiah Kioni and the Kenya Gazette Supplement No.36, a Private Member Bill by Hon. Jude Njomo and wish to submit as follows:

***i. Kenya Gazette Supplement No.53***

The Political Parties Liaison Committee agrees in totality with the proposed amendments by the Committee on Implementation of the Constitution.

Further, we would like to present the following proposals to the principal act:

	CITATION	CURRENT PROVISION	PROPOSED AMMENDMENTS
1	SECTION 6	<p>(1) The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.</p> <p>(2) A person is qualified for appointment as a member of the Commission if such person –</p> <p>(a) deleted by Act No. 36 of 2016,s.32;</p> <p>(b) holds a degree from a recognized university;</p> <p>(c) has proven relevant experience in any of the following fields –</p> <p>(i) electoral matters;</p> <p>(ii) management;</p> <p>(iii) finance;</p> <p>(iv) governance;</p> <p>(v) public administration;</p> <p>(vi) law; and</p> <p>(d) meets the requirements of Chapter Six of the Constitution. (Act No. 36 of 2016, s.32)</p>	<p><i>Deletion of Subsection 1 and amending subsection 2 to read as follows:</i></p> <p>(1) A person is qualified for appointment as Chairperson/Member of the Commission if such a person –</p> <p>a. deleted by Act No. 36 of 2016,s.32;</p> <p>b. holds a degree from a recognized university;</p> <p>c. has proven relevant experience in any of the following fields –</p> <p>(i) electoral matters;</p> <p>(ii) management;</p> <p>(iii) finance;</p> <p>(iv) governance;</p> <p>(v) public administration;</p> <p>(vi) law; and</p> <p>d. meets the requirements of Chapter Six of the Constitution. (Act No. 36 of</p>

			2016, s.32)
2	SECTION 7A	7A. Vacancy in the Office of chairperson and members  (1) The office of the chairperson or a member of the Commission shall become vacant if the holder – (a) dies; (b) resigns from office by notice in writing addressed to the President; or (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution	<i>Addition of part (d) immediately after (c)</i>  (d) is absent from duty for a period of 90 days without justifiable reasons
		(2) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.	<i>Expansion of section 2 by adding subsection 2A that reads:</i>  (2A) Notwithstanding the provisions subsection 2, the Parliamentary Service Commission shall commence the process of recruitment of a new chairperson/member of the Commission within 30 days of the occurrence of the vacancy.
		(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2)	<i>Expansion of section 3 by adding subsection 3A that reads:</i>  (3A) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2) or (2A)

**ii. The Kenya Gazette Supplement No.36**

The Political Parties Liaison Committee agrees with the proposed amendments 2 (a) (i), (ii) and (v).

However, the Committee wishes to make further proposals to sub-section (iii) and (iv) of the proposed amendments by Hon. Jude Njomo.

	CITATION	CURRENT PROPOSALS	PROPOSED AMENDMENTS
1	2. the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended –	(2)(a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;	<i>To ensure compliance with Art. 100</i>  (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission; <b><i>out of which two shall be male and female Youth of of 35 years and below in line with Article 100 of the Constitution</i></b>
2	2. the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended –	(iii) by inserting the following new sub-paragraph immediately after sub-paragraph (f) –  (g) one person nominated by the National Council for the Persons with Disabilities;	(h) <b><i>one person nominated by the Political Parties Liason Committee;</i></b>
3	2 (iv)	2(iv) in sub-paragraph (3) by inserting the words –  “within seven days of the declaration of a vacancy in the office of chairperson or member	We propose:  2(iv) in sub-paragraph (3) by adding <b>3 (a) The Parliamentary Service Commission shall ensure that</b>



		of the Commission" immediately after the words "President for appointment".	<p><b>the list submitted by the various bodies adheres to the two thirds Gender Rule;</b></p> <p>2(iv) in sub-paragraph (3) by inserting the words –</p> <p>"within <b>fourteen</b> days of the declaration of a vacancy in the office of chairperson or member of the Commission" immediately after the words "President for appointment".</p>
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## KENYA EDITORS' GUILD

### COMMENTS ON THE IEBC (AMENDMENT) BILL, 2019

**June 13, 2019**

The Kenya Editors' Guild is pleased to take part in this Public Participation process hosted by the National Assembly Constitutional Implementation Oversight Committee in regards to the Independent Electoral and Boundaries Commission (Amendment) Bill.

We are aware the IEBC Act is just of the various laws governing the electoral process in Kenya, However, we believe that the Act cannot be looked at in isolation from related legislation, most specifically:-

- a) The Elections Act, 2011;
- b) The Election Laws (Amendment) Act, 2016;
- c) Elections Offenses Act, 2016;
- d) The Political Parties Act, 2011; and
- f) The Constitution of Kenya, 2010.

We have read the comments on the IEBC (Amendment) Bill put forward by the Media Council of Kenya in its capacity as the Statutory Media Regulatory body, and also as one of the equal Media Sector Stakeholders.

We would like to adopt those comments, but with the following additions:

#### 1. SELECTION PANEL

The proposed Panel is composed entirely of Political Classes (Four persons nominated by Parliamentary Service Commission) and Religious groupings (One person each nominated by Catholics, NCKK, Evangelicals, Hindus, Muslims).

This composition ignores many other Stakeholders with legitimate interests. We propose Parliament and Religious groups surrender some of their slots to make way for groups such as:

- Professional Associations;
- Trade Unions;
- Business Associations;

Media;  
Civil Society;  
Et cetera.

## 2. MEDIA COVERAGE OF ELECTIONS

We note that this is not covered under the proposed Amendments. We have already put on record our adoption of the Media Council Submissions, but would like to add the following points based on our experiences as journalists covering elections:-

- a) The IEBC tends to take Media access to the Polling Stations and to National, County and Constituency Tallying Centres as favours rather than rights. At past elections there were various reports of Electoral Officials right from the National Tallying Centre down to Polling Centres at Ward Level denying free and unhindered access to accredited journalists. This brings about suspicion of foul play. We suggest that Right of Access be guaranteed under the Act, and that Electoral Officials who defy this right be penalised.
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