

Hon. Speaker



Recommended for
approval for ^{tabling}

PARLIAMENT OF KENYA

THE SENATE

Eg
20/11/19

TWELFTH PARLIAMENT – THIRD SESSION

DC-EG
RECOMMENDED & FORWARDED
20/11/19

REPORT OF THE
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS
ON
THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2019)

Clerk's Chambers,
The Senate,
Parliament of Kenya,
Main Parliament Buildings,
NAIROBI.

November, 2019

Preface

1. **Mr. Speaker Sir**, the Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to standing order 218(3) of the Senate Standing Orders. According to the said standing order and the Second Schedule to the Senate Standing Orders, the Committee has a mandate to-

Consider all matters related to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.

2. **Mr. Speaker Sir**, the Standing Committee on Justice, Legal Affairs and Human Rights comprises the following Members -

Sen. Samson Kiprotich, MP	-	Chairperson
Sen. Mithika Linturi, MP	-	Vice Chairperson
Sen. Amos Wako, MP	-	Member
Sen. James Orengo, MP	-	Member
Sen. Fatuma Dullo, MP	-	Member
Sen. Susan Kihika, MP	-	Member
Sen. Mutula Kilonzo Junior, MP	-	Member
Sen. Faki Mohamed, MP	-	Member
Sen. Irungu Kang'ata, MP	-	Member

Background

3. **Mr. Speaker Sir**, the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019), sponsored by Senator Kipchumba Murkomen, Senate Majority Leader, was published on 14th February, 2019 and read a First Time in the Senate on 28th February, 2019. Following this, it was committed to the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration and facilitation of public participation as per standing order 140(1) and (5).
4. **Mr. Speaker Sir**, the key purpose of this Bill is to amend Article 89 of the Constitution of Kenya to make it mandatory for the Independent Electoral and Boundaries Commission to submit a report to Parliament, containing details of proposed alterations to names and boundaries of constituencies and wards.

5. Mr. Speaker Sir, Article 89 states that, "...

(1) *There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).*

(2) *The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.*

(3) *The Commission shall review the number, names and boundaries of wards periodically.*

(4) *If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.*

(5) *The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—*

(a) geographical features and urban centres;

(b) community of interest, historical, economic and cultural ties; and

(c) means of communication.

(6) *The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—*

(a) forty per cent for cities and sparsely populated areas; and

(b) thirty per cent for the other areas.

(7) *In reviewing constituency and ward boundaries the Commission shall*

(a) consult all interested parties; and

(b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(8) *If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.*

(9) *Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.*

(10) *A person may apply to the High Court for review of a decision of the Commission made under this Article.*

(11) *An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and*

shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Public Participation and Submissions by Stakeholders

6. **Mr. Speaker Sir**, as per the provisions of Article 118 of the Constitution and standing order 140 (5), the Committee sought the participation of interested members of the public by inviting them, through newspaper advertisements, to make oral submissions or submit written memoranda on the Bill. The Committee, by advertisement in the *Star Newspaper* dated 18th October, 2019, invited members of the general public to a public hearing forum on Thursday 24th October, 2019 between 9:00 am and 1:00 pm at Shimba Hills Hall, First Floor, KICC, with the aim of discussing the Bill. The participants included the Committee and representatives from the Media and the Independent Electoral and Boundaries Commission.

7. **Mr. Speaker Sir**, the participants were in not in support of the Bill due to the fact that it infringed on the constitutional mandate of the Independent Electoral and Boundaries Commission.

8. **Mr. Speaker Sir**, in addition to this, stakeholders made the following submissions-

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
1.	2	The Kenya National Commission on Human Rights and the Independent Electoral and Boundaries Commission	<p>Proposal 1 Delete the clause.</p> <p>Rationale 1 1) The procedure for delimiting boundaries is already provided for under section 36 of the Independent Electoral and Boundaries Commission Act. 2) The mechanism for reporting to Parliament is also provided for under section 36(5), (6), (7) and (8) of the Independent Electoral and Boundaries Commission Act.</p> <p>Proposal 2 Delete the sub clauses 8C and 8D.</p>

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
			<p>Rationale 2</p> <ol style="list-style-type: none"> 1) The amendments seek to take away the constitutional independence of the Independent Electoral and Boundaries Commission through the back door. 2) The Bill does not provide timelines for approval by Parliament given that there are two houses of Parliament. 3) There is need to make provision for a situation where the Independent Electoral and Boundaries Commission does not receive recommendations of Parliament within the set timelines.
2.	General	The Kenya National Commission on Human Rights and the Independent Electoral and Boundaries Commission	<p>Proposal 1 Amend the Bill by including consequential amendments to the Independent Electoral and Boundaries Commission Act which hitherto made provision for the procedure to be undertaken by the Commission when delimiting boundaries. The amendments should also include the Senate in the reporting structure.</p> <p>Rationale 1</p> <ol style="list-style-type: none"> 1) The Independent Electoral and Boundaries Commission Act currently makes provision for the procedure to be undertaken when delimiting boundaries and should therefore be amended to comply with the Constitutional amendment. 2) The Independent Electoral and Boundaries Commission Act only provides for reporting to the National Assembly. This ought to be amended to include the Senate as boundaries not only affect counties but also affect senators. <p>Proposal 2 Opposed to the Bill</p> <p>Rationale 2</p> <ol style="list-style-type: none"> 1) The Bill infringes on the constitutional mandate of the Independent Electoral and Boundaries Commission to delimit boundaries. 2) Members of Parliament can have their views considered by the Commission during public participation. 3) The Bill creates a conflict of interest as Members of Parliament are subject to the delimitations. They cannot sit as judges in their own cause.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
			<p>Proposal 3 Amend Article 89(9) of the Constitution to remove reference to the dissolution of Parliament.</p> <p>Rationale 3 The Constitution no longer provides for the dissolution of Parliament</p>

Committee Observations

9. **Mr. Speaker Sir**, the Standing Committee on Justice, Legal Affairs and Human Rights scrutinised the Constitution of Kenya (Amendment) Bill, (Sen. Bills No. 2 of 2019) and noted that that political interference in the process of delimitation of boundaries should be stopped at all costs. Therefore the report should be shared with Parliament for its information but not for Parliament’s approval.

Recommendation(s)

10. **Mr. Speaker Sir**, the Committee recommends that the House votes to reject the Bill.

11. **Mr. Speaker Sir**, it is therefore my pleasant duty and privilege, on behalf of the Standing Committee on Justice, Legal Affairs and Human Rights, to table its report on the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019), pursuant to standing order 143(1) of the Senate Standing Orders.

Signed  Date 22/11/2019

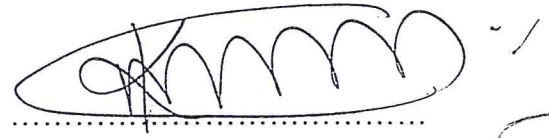
SEN. SAMSON CHERARKEY, MP
CHAIRPERSON, JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS
COMMITTEE

ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS COMMITTEE OF THE SENATE

We, the undersigned Members of the Justice, Legal Affairs and Human
Rights Committee of the Senate, do hereby append our signatures to adopt
the Report-

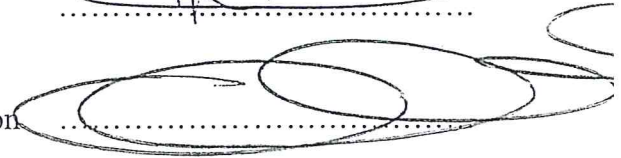
Sen. Samson Cherarkey, MP

Chairperson



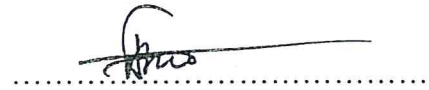
Sen. Mithika Linturi, MP

Vice-Chairperson



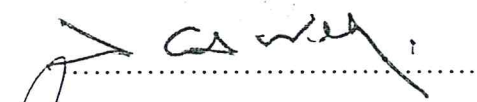
Sen. Fatuma Dullo, MP

Member



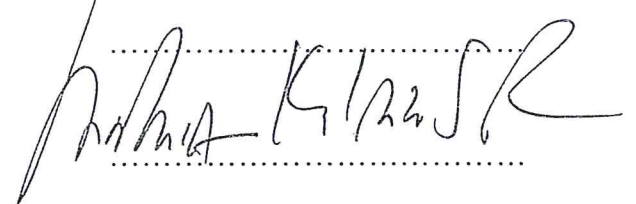
Sen. James Orengo, MP

Member



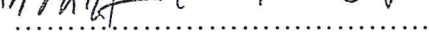
Sen. Amos Sitswila Wako, MP

Member



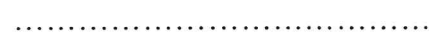
Sen. Kilonzo Mutula Jnr., MP

Member



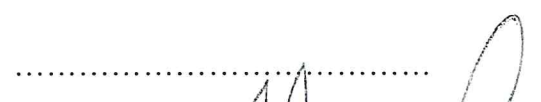
Sen. Irungu Kang'ata, MP

Member



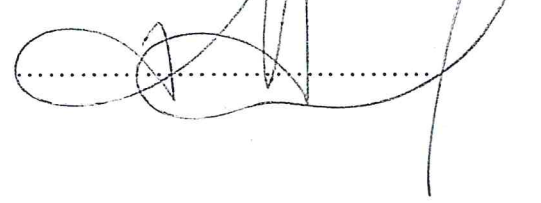
Sen. Susan Wakarura Kihika, MP

Member



Sen. Faki Mohamed, MP

Member



ANNEXES

1. Minutes
2. Advertisement for public hearing

MINUTES OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 20TH NOVEMBER, 2019 IN GROUND FLOOR BOARDROOM, RED CROSS BUILDING, PARLIAMENT BUILDINGS' AT 10.02 AM.

PRESENT

- | | |
|----------------------------|-------------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. Mithika Linturi | -Vice Chairperson |
| 3. Sen. James Orenge | -Member |
| 4. Sen. Mutula Kilonzo Jr. | -Member |
| 5. Sen. Fatuma Dullo | -Member |
| 6. Sen. Mohamed Faki | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Amos Wako | -Member |
| 2. Sen. Susan Kihika | -Member |
| 3. Sen. Irungu Kang'ata | -Member |

IN-ATTENDANCE

- | |
|------------------------|
| 1. Ms. Kavata Musyoka |
| 2. Mr. Mitch Otoro |
| 3. Mr. Humprey Ringera |

SENATE SECRETARIAT

- | |
|--------------------|
| - Clerk Assistant |
| - Legal Counsel |
| - Research Officer |

MIN NO. 272/2019

The Chairperson called the meeting to order at 10.02 a.m. and commenced the meeting with a word of prayer.

PRELIMINARIES

MIN NO. 273/2019

The agenda of the meeting was adopted as presented having been proposed by Sen. Mutula and seconded by Sen. Faki.

ADOPTION OF THE AGENDA.

MIN NO. 274/2019

The agenda of the meeting was adopted as presented having been proposed by Sen. Linturi and seconded by Sen. Faki.

CONFIRMATION OF MINUTES OF THE 38TH TO 41ST SITTINGS

MIN NO. 275/2019

None

MATTERS ARISING

MIN NO. 276/2019

CONSIDERATION OF REPORTS PENDING BEFORE THE COMMITTEE

The Committee adopted the following reports for tabling by consensus-

- (i) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018);

- (ii) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019);
- (iii) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019);
- (iv) the Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019); and
- (v) the Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 13 of 2018).

MIN NO. 279/2019

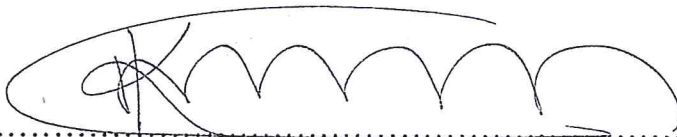
ANY OTHER BUSINESS

There was no other business

MIN NO. 280/2019

DATE OF THE NEXT MEETING AND
ADJOURNMENT

The meeting was adjourned at 12.06 pm. Date of the next meeting will be communicated through a notice.



Signed

SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date: 29/11/19

MINUTES OF THE 41ST SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 12TH NOVEMBER, 2019, COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS, 4.43 P.M.

MEMBERS PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. Samson Kiprotich, MP | - Chairperson |
| 2. Sen. Mithika Linturi, MP | - Vice-Chairperson |
| 3. Sen. James Orengo, MP | - Member |
| 4. Sen. Mohamed Faki, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-----------------------------------|-------------|
| 1. Sen. Amos Wako, MP | - Member |
| 2. Sen. Susan Kihika, MP | - Member |
| 3. Sen. Mutula Kilonzo Junior, MP | - Ag: Chair |
| 4. Sen. Fatuma Dullo | -Member |
| 5. Sen. Irungu Kang'ata, MP | - Member |

IN ATTENDANCE

- | | |
|-----------------------|-------------------|
| 1. Ms. Kavata Musyoka | - Clerk Assistant |
| 2. Mr. Mitch Otoro | - Legal Counsel |

MIN. NO.260/2019

PRELIMINARIES

The Chairperson called the meeting to order at 4.43 pm followed by a word of prayer.

MIN. NO.261/2019

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted after being proposed by Sen. Mohamed Faki, MP and being seconded by Sen. James Orengo, MP.

MIN. NO.262/2019

CONSIDERATION OF SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NA BILLS NO. 13 OF 2018)

Members considered the Bill clause by clause and they made the following recommendations-

The National Hospital Insurance Fund Act, 1998 (No. 9 of 1998)

- (i) In Section 10 include a new clause to provide for the qualifications of the CEO namely a university degree, minimum of 5 years' experience at senior level of management and meet the requirement of chapter 6 of the Constitution of Kenya on leadership and integrity;

- (ix) Delete Section 142 (3) (3) and retain as provided in the principal Act. This is because the provisions proposed will disadvantage the groups referred to in the section economically;
- (x) Clarify Section 143 by referring to Section 142 (1) and 142 (1) (a);
- (xi) Amend Section 144 (2) & (3) by providing a notice of seizure of 7 days to the issuer of the performance security; and
- (xii) Delete Section 172

The National Employment Authority Act, 2016 (No. 3 of 2016)

- (i) Provide for definition of the term “Kenyan migrant workers”;
- (ii) Amend Section 8A (i) to provide that the legal and other necessary assistance for Kenyan migrant workers who are in distress will be provided for by the Authority in consultation with the Ministry of Foreign Affairs; and
- (iii) Retain Section 17 (2) as outlined in the Principal Act.

The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

- (i) Amend Section 6 to replace (f) with the Kenya National Maritime Fisheries Institute, which is the principal body on matters fisheries in Kenya;
- (ii) Amend Section 6 (h) to include 2 nominees from the Council of Governors; and
- (iii) Amend Section 6 to include the Kenya Maritime Authority in the membership of the Council;
- (iv) Amend Section 84 (4) (g) by retaining as is in the principal Act. This is a devolved function; and
- (v) In Section 91, include the role of the Kenya Maritime Authority in the making of regulations.

MIN. NO.263/2019

ANY OTHER BUSINESS

The Secretariat brought to the attention of the Members present that the Chief Justice had invited representation from the Committee to attend a half day meeting on the financial autonomy of the judiciary that Friday at Safari Park Hotel.

MIN. NO.264/2019

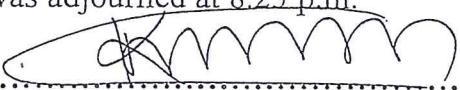
DATE OF NEXT MEETING

The date of the next meeting would be communicated by notice.

MIN. NO.265/2019

ADJOURNMENT

The meeting was adjourned at 8.25 p.m.

SIGN 

(CHAIRPERSON)

DATE 19/11/2019

MINUTES OF THE 40TH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 7TH NOVEMBER, 2019, MEDIA CENTER, MAIN PARLIAMENT BUILDINGS, 10.39 A.M.

MEMBERS PRESENT

1. Sen. Samson Kiprotich, MP - Chairperson
2. Sen. James Orengo, MP - Member
3. Sen. Susan Kihika, MP - Member
4. Sen. Mohamed Faki, MP - Member

ABSENT WITH APOLOGIES

1. Sen. Mithika Linturi, MP - Vice-Chairperson
2. Sen. Amos Wako, MP - Member
3. Sen. Mutula Kilonzo Junior, MP - Ag. Chair
4. Sen. Fatuma Dullo -Member
5. Sen. Irungu Kang'ata, MP - Member

IN ATTENDANCE

1. Ms. Kavata Musyoka - Clerk Assistant
2. Mr. Mitch Otoro - Legal Counsel

MIN. NO.253/2019

PRELIMINARIES

The Chairperson called the meeting to order at 10.39 a.m followed by a word of prayer.

MIN. NO.254/2019

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted after being proposed by Sen. Susan Kihika, MP and being seconded by Sen. Mohamed Faki, MP.

MIN. NO.255/2019

CONSIDERATION OF SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NA BILLS NO. 13 OF 2018)

Members considered the Bill clause by clause and recommended as follows-

The Betting Lotteries and Gaming Act (Cap 131)

- (i) Delete reference to the term 'permanent secretary' in the entire Act and replace the same with the term 'principal secretary'. The Bill only replaces the term 'permanent secretary' in the interpretation section. The Committee recommends that the term be replaced in the whole Act.
- (ii) In the proposed amendment to section 3(2A), insert the words 'of three years' immediately after the words 'one further term'. This will align it with the language of the Constitution and give the provision more clarity.

- (x) In the proposed amendment to section 59(2), delete the words 'one million and five years' appearing immediately after the words 'therefor the expressions' and substitute therefor with the words "fifty thousand" and "six months". The penalty of one million shillings and/or five years under the Bill is too harsh and does not fit the crime of prohibition competitions or prizes involving no skill.
- (xi) In the proposed amendment to section 61, delete the words 'five hundred thousand and two years' appearing immediately after the words 'therefor the expressions' and substitute therefor with the words "twenty thousand" and "three months". The penalty of five hundred thousand shillings and/or two years under the Bill is too harsh and does not fit the crime of cheating in gaming.

The Dairy Industry Act (Cap. 336)

- (i) Amend Section 3 by deleting the phrase "...whether in liquid, solid or any other form...;"
- (ii) Amend Section 19 (w) by addition the words "county government" after the words "other dairy produce". This is because agriculture is a devolved function;
- (iii) Delete Section 20. This is because a Cabinet Secretary should not be given powers to determine an offense. It should be provided for in statute;
- (iv) Delete the new Section 23 A (1) & (2). These provisions introduce double taxation to poor Kenyans in an economy that is not expanding; and
- (v) Amend Section 33 deleting the phrase "one million shillings or imprisonment for a term not exceeding one year or both" and replace with the phrase "five thousand".

MIN. NO.256/2019

**STATEMENT ON THE FINANCIAL
AUTONOMY AND
INDEPENDENCE OF THE
JUDICIARY**

The Committee considered the revised Statement and approved it to be issued by the Chairperson of the Committee that afternoon during plenary.

MIN. NO.257/2019

ANY OTHER BUSINESS

None

MIN. NO.258/2019

DATE OF NEXT MEETING

The date of the next meeting would be communicated by notice.

MIN. NO.259/2019

ADJOURNMENT

The meeting was adjourned at 11.45 a.m.

SIGN 

(CHAIRPERSON)

DATE 17/11/2019

MINUTES OF THE 39TH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 6TH NOVEMBER, 2019, SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS, 10.39 A.M.

MEMBERS PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. Samson Kiprotich, MP | - Chairperson |
| 2. Sen. Mithika Linturi, MP | - Vice-Chairperson |
| 3. Sen. James Orengo, MP | - Member |
| 4. Sen. Susan Kihika, MP | - Member |
| 5. Sen. Mohamed Faki, MP | - Member |
| 6. Sen. Irungu Kang'ata, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-----------------------------------|-------------|
| 1. Sen. Mutula Kilonzo Junior, MP | - Ag. Chair |
| 2. Sen. Fatuma Dullo | -Member |
| 3. Sen. Amos Wako, MP | - Member |

IN ATTENDANCE

- | | |
|-----------------------|-------------------|
| 1. Ms. Kavata Musyoka | - Clerk Assistant |
| 2. Mr. Mitch Otoro | - Legal Counsel |

MIN. NO.247/2019

PRELIMINARIES

The Chairperson called the meeting to order at 10.39a.m followed by a word of prayer.

MIN. NO.248/2019

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted after being proposed by Sen. Susan Kihika, MP and being seconded by Sen. Mohamed Faki, MP.

MIN. NO.249/2019

**CONSIDERATION OF
SUBMISSIONS BY VARIOUS
STAKEHOLDERS VARIOUS
LEGISLATIONS-**

The Committee considered the submissions on the various Bills by stakeholders as follows-

- 1) **the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018);**
 - (i) there is lack of clarity on how the Commission is expected to delimit administrative structures except by reference of national legislation which would be devoid of constitutional principles as provided for under Art 89 of the Constitution of Kenya;
 - (ii) there is need to clearly distinguish what constitutes administrative structures as envisioned in the Bill in distinction to the already existing Executive Administrative structures and or units;

5) the Elections (Amendment) Bill (Sen. Bills No. 18 of 2019)

The Committee noted that determination of the popular name would be difficult. Therefore the Committee proposed that the sponsor of the Bill be invited for a meeting the following week.

6) the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)

Deferred to the next sitting

7) the Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019)

The Committee noted that-

- i) that the number of Commissioners were too many thus they should be reduced to seven (7);
- ii) some of the persons proposed to constitute the panel do not have a role therefore they should be removed thus delete clauses (b), (c), (e) and (f); and
- iii) that qualifications of the panelists should be provided for, if they are not provided for.

The Committee noted that there was need for an urgent review of the elections and IEBC laws.

MIN. NO.250/2019

ANY OTHER BUSINESS

- i) The Chairperson brought to the attention of the Committee that a Petition of the Senate concerning the arbitrary cancellation of the Kimwarer Dam and scaling down of Aror Dam had been referred to the Committee thus the Committee needed to expedite. The Committee directed that a meeting be scheduled with the Petitioners, National Treasury, Attorney General, Director of Criminal Investigations, Director of Public Prosecution, Ethics and Anti-Corruption Commission and the Cabinet Secretary In charge Of Water and Irrigation.
- ii) The Committee considered the draft Statement on the financial autonomy and independence of the judiciary and directed that it needed to be improved on further by including facts from the constitution review processes.

MIN. NO.251/2019

DATE OF NEXT MEETING

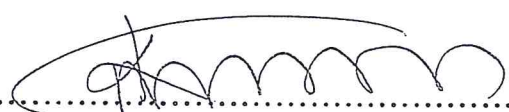
The date of the next meeting would be communicated by notice.

MIN. NO.252/2019

ADJOURNMENT

The meeting was adjourned at 11.45 a.m.

SIGN



(CHAIRPERSON)

DATE

17/11/2019

MINUTES OF THE 38TH SITTING OF THE SENATE STANDING COMMITTEE
ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY
24TH OCTOBER, 2019, SHIMBA HALL, KICC, 10.18 A.M.

MEMBERS PRESENT

1. Sen. Susan Kihika, MP - Member (Ag. Ch)
2. Sen. Fatuma Dullo - Member
3. Sen. Mohamed Faki, MP - Member

ABSENT WITH APOLOGIES

1. Sen. Samson Kiprotich, MP - Chairperson
2. Sen. Mithika Linturi, MP - Vice-Chairperson
3. Sen. Mutula Kilonzo Junior, MP - Ag. Chair
4. Sen. James Orendo, MP - Member
5. Sen. Amos Wako, MP - Member
6. Sen. Irungu Kang'ata, MP - Member

IN ATTENDANCE

1. Ms. Kavata Musyoka - Clerk Assistant
2. Mr. Moses Kenyanchui - Legal Counsel
3. Ms. Carol Cheruiyot - Legal Counsel
4. Ms. Ann Kigoro - Research Officer

MIN. NO.240/2019

PRELIMINARIES

The Ag. Chairperson called the meeting to order at 10.18 a.m followed by a word of prayer. Thereafter she invited stakeholders to the public hearing on the following bills that had been read a first time and referred to the Standing Committee on Justice, Legal Affairs and Human Rights for public participation-

- 1) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018);
- 2) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019)
- 3) the Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 13 of 2018)
- 4) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019)
- 5) the Elections (Amendment) Bill (Sen. Bills No. 18 of 2019);
- 6) the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019); and
- 7) the Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019)

MIN. NO.241/2019

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted after being proposed by Sen. Fatuma Dullo, MP and being seconded by Sen. Mohamed Faki, MP.

- (vi) the Bill ought to address issue of overlap with existing laws, hierarchy in other existing laws and demonstrate the relationship that various bodies that promote ADR have; and
- (vii) the bill proposes blanket registration for all institutions yet there are other existing laws such as the ADR Act that caters for its own processes.

Mr. Kukebe Kelvin- ICMC

Mr. Kukebe made the following submissions with respect to the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)-

- (i) The Bill does not have a clear scope; and
- (ii) There is need for a stand-alone Bill on mediation.

Mediation Training Institute

The Institute made the following submissions with respect to the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)-

- (i) There is need for a stand-alone Bill on mediation;
- (ii) There is need to embrace early dispute resolution;
- (iii) The Bill does not address the existing needs; and
- (iv) The Bill address more of arbitration as opposed to ADR and traditional dispute resolution mechanisms in entirety.

Judiciary

The Judiciary made the following submissions with respect to the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)-

- (i) The Bill is more regulatory as opposed to be facilitative. There is need to bring all ADR mechanisms together;
- (ii) For the Bill to implemented, resources will be required hence the Bill is a money Bill and should provide for the requisite infrastructure and resources;
- (iii) The Bill does not incorporate others courts that participate in ADR such as kadhi court, labor and environment court etc;
- (iv) The Bill as currently crafted leaves room for a lot of litigation as the agreements are open and there is no clear implementation mechanism;
- (v) The Bill limits traditional dispute resolution; and
- (vi) The parameters for registering disputes resolvers should be clear and affordable.

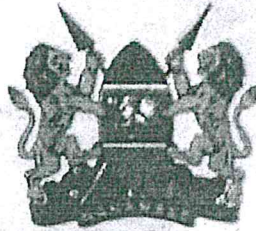
Wasilianahub Mediators Africa

They made the following submissions with respect to the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)-

- (i) There is need for a stand-alone Bill on mediation;
- (ii) Financial sustainability of the Bill is lacking;

- would be devoid of constitutional principles as provided for under Art 89 of the Constitution of Kenya; and
- (ii) there is need to clearly distinguish what constitutes administrative structures as envisioned in the Bill in distinction to the already existing Executive Administrative structures and or units.
- 2) **the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019)**
- (i) the Bill infringes of the constitutional rights of the IEBC to delimit boundaries of the constituencies and wards; and
- (ii) provide a clear procedure on parliament's role in reporting on delimitation of boundaries.
- 3) **the Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 13 of 2018)**
- (i) Clause 126 (3) proposes to reduce the timeline for evaluation of proposals from 21 to 7 days... the IEBC does not support this amendment and proposes the retention of the 21 days. As it is, the 21 days are not sufficient and have posed a challenge during an election period which by itself attracts a high number of tenderers.
- 4) **the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019)**
- (i) noting that the proposed amendments are aligned to Article 90 of the Constitution, it will also require additional provisions for the Senate as reflected for the National Assembly to emphasize that- the Members contemplated in Clauses (1) (d) and (da) shall be nominated by political parties in proportion to the Senate seats received by the political party at the General Election.
- 5) **the Elections (Amendment) Bill (Sen. Bills No. 18 of 2019)**
- (i) review the definition of the term "popular name";
- (ii) there is need to determine the number of acceptable popular names;
- (iii) review the registration of persons act to conform to the proposals in the Bill;
- (iv) determine where the popular name will be placed; and
- (v) provide for instances where two people have a similar name.
- 6) **the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)**
- (i) IEBC are in support of the Bill in its entirety.
- 7) **the Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019)**
- (i) IEBC is in agreement with all the proposals in their entirety.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018)
The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019)
The Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 13 of 2018)
The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019)
The Elections (Amendment) Bill (Sen. Bills No. 18 of 2017)
The Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)
The Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019)

The following Bills were read a First Time in the Senate on various dates and were subsequently committed to the Senate Standing Committee on Justice, Legal Affairs and Human Rights-

- 1) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018);
- 2) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019)
- 3) the Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 13 of 2018)
- 4) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019)
- 5) the Elections (Amendment) Bill (Sen. Bills No. 18 of 2017);
- 6) the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019); and
- 7) the Independent Electoral and Boundaries Commission (Amendment) Bill (NA Bills No. 35 of 2019)

Pursuant to the provisions of Article 118 and standing order 140 (5) of the Standing Orders of the Senate, the Standing Committee on Justice, Legal Affairs and Human Rights now invites interested members of the public to submit any representations that they may have on the Bills. The representations may be made orally or by submission of written memoranda in the following manner -

1. Public Hearing for the Bills shall be held on **Thursday, 24th October, 2019 from 9.00 am to 1.00 pm at Shimba Hall, First Floor, KICC, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **cSenate@parliament.go.ke**, to be received on or before **Wednesday, 23rd October 2019 at 5.00 p.m.**

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**