

Approved for tabling in the House

*Paper laid in
the table of the
House on 1/10/2020
J. G. M. O.*

REPUBLIC OF KENYA



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SNA
1/10/2020.

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (AMENDMENT) (NO.3) BILL (NATIONAL
ASSEMBLY BILL NO.35 OF 2019

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2020

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CHAIRPERSON'S FOREWORD

The Independent Electoral and Boundaries (Amendment) (No.3) Bill, 2019 (National Assembly Bill No.35 of 2019) was passed by the National Assembly and sent to the Senate for concurrence. The Bill was passed by the Senate with amendments and returned to the National Assembly for concurrence. It was committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

The Bill seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011, in order to establish a Selection Panel to oversee the filling of vacant positions in the Independent Electoral and Boundaries Commission.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bill No.35 of 2019).

Hon.Muturi Kigano, M.P

CHAPTER 1

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - (c) study and review all legislation referred to it;
 - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
 - (g) examine treaties, agreements and conventions;
 - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
 - (j) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
 - (a) Constitutional affairs;
 - (b) The administration of law and Justice
 - (c) The Judiciary;
 - (d) Public prosecutions;
 - (e) Elections;
 - (f) Ethics, integrity and anti-corruption; and
 - (g) Human rights.

1.2 Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017. The current membership is as follows-

Chairperson

Hon. Clement Muturi Kigano, M.P.

Kangema Constituency
Jubilee Party

Vice Chairperson

Hon. (Dr.) Paul Otiende Amollo, M.P

Rarieda Constituency
ODM Party

Hon. Emmanuel Wangwe, M.P.
Navakholo Constituency
Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P.
Suna East Constituency
ODM-Party

Hon. John Olago Aluoch, M.P.
Kisumu West Constituency
FORD-Kenya

Hon. George Peter Kaluma, M.P.
Homa Bay Town Constituency
ODM-Party

Hon. Roselinda SoipanTuya, M.P.
Narok County
Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P.
Samburu West Constituency
KANU-Kenya

Hon. W. Kamoti Mwamkale, M.P.
Rabai Constituency
ODM-Party

Hon. Zuleikha Hassan, M.P.
Kwale County
ODM-Party

Hon. Jennifer Shamalla, M.P.
Nominated MP
Jubilee Party

Hon. Adan Haji Yussuf, M.P.
Mandera West Constituency
Economic Freedom Party (EFP)

Hon. John Munene Wambugu, M.P.
Kirinyaga Central
Jubilee –Party

Hon. George Gitonga Murugara, M.P.
Tharaka Constituency
Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.
Mukurueni Constituency
Jubilee-Party

Hon. Japheth Mutai, M.P.
Bureti Constituency
Jubilee-Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency
Jubilee-Party

Hon. Anthony Oluoch, M.P.
Mathare Constituency
ODM-Party

Hon. Robert Gichimu Githinji, M.P.
Gichugu Constituency
Jubilee-Party

1.3 Committee Secretariat

4. The Committee secretariat staff is as follows--

Mr. Abenayo Wasike
Senior Clerk Assistant
Lead Clerk

Mr. Denis Abisai
Principal Legal Counsel I

Ms. Halima Hussein
Clerk Assistant II

Mr. Ahmed Hassan Odhwa
Principal Research Officer

Mr. Omar Abdirahim
Fiscal Analyst III

Ms. Roselyne Ndegi
Serjeant-at-Arms I

Mr. Joseph Okongo
Media Liaison Officer

5. Minutes of sittings of the Committee on the consideration of the Bill are attached to this report. (**Annexure 1**).

CHAPTER 2

2.0 BACKGROUND

2.1 The Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill, 2019, National Bill No. 35 of 2019

6. The Bill was sponsored by the Departmental Committee on Justice and Legal Affairs, passed by the National Assembly and was sent to the Senate for concurrence pursuant to the provisions of Standing Order 142 of the National Assembly. The Senate passed the Bill with amendments on Thursday 23rd July, 2020 and returned the same to the National Assembly for concurrence.
7. The Bill as passed by the National Assembly sought to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011, in order to establish a Selection Panel to oversee the filling of vacant positions in the Independent Electoral and Boundaries Commission.
8. The current First Schedule only applied to the recruitment of the current Commissioners and there is therefor need to provide for a selection panel to consider subsequent appointments.
9. Under the Bill as passed by the National Assembly, it was proposed that the selection panel comprises of;
 - 1) Four (4) persons nominated by the Parliamentary Service Commission;
 - 2) Seven (7) other persons nominated by;
 - (a) One (1) person nominated by the Public Service Commission
 - (b) One (1) Person nominated by the Ethics and Anti-Corruption Commission
 - (c) One (1) Person nominated by the Law Society of Kenya
 - (d) One (1) Person nominated by the National Gender and Equality Commission
 - (e) One (1) Person nominated by Kenya National Commission on Human Rights
 - (f) Two (2) persons nominated by the Inter-Religious Council of Kenya.
10. The Current Selection Panel consists of the following;
 - (a) Four (4) persons, being two men and two women, nominated by the Parliamentary Service Commission.
 - (b) One (1) person nominated by the Kenya Conference of Catholic Bishops
 - (c) One (1) person nominated by the National Council of churches of, Kenya;

- (d) One (1) 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 (1) person nominated by the Evangelical Alliance of Kenya; and
- (f) One (1) person nominated by the Hindu Council of Kenya.

CHAPTER 3

3.0 SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO.3) BILL (N.A BILL NO.35 OF 2019)

11. The Senate passed the Bill with amendments that the selection panel should consist of;
 - (a) Two men and two women nominated by the Parliamentary Service Commission;
 - (b) One person nominated by the Law Society of Kenya; and
 - (c) Two persons nominated by the Inter-religious Council of Kenya

12. The Senate has also proposed qualifications for a person to be appointed as a member of the selection panel as follows;
 - (a) Is a citizen of Kenya;
 - (b) Meets the requirements of leadership and integrity set out in chapter six of the Constitution; and
 - (c) Holds a degree from a university recognized in Kenya.

3.1 Clause by Clause Consideration of the Bill by the Committee

13. The Committee considered the Bill clause by clause and made observations and recommendations as follows-

14. **Clause 1** on short title and commencement time of the Bill.

15. **Committee comment:** The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 1 of the Bill as per the Senate Bill.

16. **Clause 2** on Amendment of the First Schedule to No. 9 of 2011

17. **Committee comment:** The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 1 of the Bill as per the Senate Bill.

CHAPTER 4

4.0 COMMITTEE'S OBSERVATIONS

18. The Committee considered the Senate amendments to the Bill and observed that;
- (a) There is no legal framework to deal with emergency cases like filling of vacant positions at IEBC as is the case with the current commission following the resignation of four commissioners.
 - (b) The proposed amendment Bill is relevant and extremely urgent as it may be used as an interim or stop gap measure pending comprehensive reforms on the IEBC.
 - (c) The current commission as constituted by three commissioners lacks capacity and the quorum to make major policy decisions.
 - (d) The Independent Electoral and Boundaries Commission may be paralysed if the Bill is not passed to provide for an avenue to appoint more commissioners.
 - (e) If the Bill is not passed as amended by the Senate, it will be referred to the Mediation Committee which may lead to further delays towards addressing the challenges at IEBC.

CHAPTER 5

5.0 COMMITTEE'S RECOMMENDATION

19. The Committee, having considered the proposed amendments to the Bill by the Senate, hereby recommends to the National Assembly that Senate amendments to the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (N.A Bill No.35 of 2019) be agreed to as passed by the Senate on Thursday 23rd July, 2020..

Signed.....^{1st}.....Date.....
M Muturi *15th October 2020*

Hon. Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

ANNEXURES

ANNEXURE 1

MINUTES

MINUTES OF THE TWENTY EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 10TH SEPTEMBER, 2020 AT 2:30 PM IN OAK ROOM, WINDSOR GOLF AND CLUB HOTEL

PRESENT-

- | | | |
|--|---|-------------------------|
| 1. Hon. Clement Muturi Kigano, M.P. | - | Chairperson |
| 2. Hon. (Dr.) Paul Otiende Amollo, M.P | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Peter Opondo Kaluma, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. Robert Gichimu Githinji, M.P | | |
| 8. Hon. Adan Haji Yussuf, M.P | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. George G. Murugara, M.P | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. Japheth Mutai, M.P. | | |
| 13. Hon. Anthony Oluoch, M.P. | | |
| 14. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Junet Sheikh Nuh Mohamed, M.P
2. Hon. Emmanuel Wangwe, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Josephine Naisula Lesuuda, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Abenayo Wasike | - | Senior Clerk Assistant |
| 2. Ms. Halima Hussein | - | Second Clerk Assistant |
| 3. Mr. Denis Abisai | - | Principal Legal Counsel |
| 4. Mr. Job Owaga | - | Audio Officer |

COMMITTEE SECRETARIAT-

MIN No. 01/2020:-

PRELIMINARIES

The meeting commenced at 10:00 am with a word of prayer from Chairperson and the agenda was adopted as filed.

MIN No.02/2020:-

Agenda was deferred.

CONFIRMATION OF MINUTES

MIN No.03/2020:-

**CONSIDERATION OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES
(AMENDMENT) (NO.3) BILL, 2019**

The Committee considered and unanimously adopted its draft report on the Independent Electoral and Boundaries (Amendment) (No.3) Bill, 2019 that sought to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011, in order to establish a Selection Panel to oversee the filling of vacant positions in the Independent Electoral and Boundaries Commission as passed by the Senate.

The Committee considered the Senate amendments to the Bill and observed that;

- (a) There is no legal framework to deal with emergency cases like filling of vacancy positions at IEBC as is the case with the current commission following the resignation of four commissioners.
- (b) The proposed amendment Bill is relevant and extremely urgent as it may be used as an interim or stop gap measure pending comprehensive reforms on the IEBC.
- (c) The current commission as constituted by three commissioners lacks capacity and the quorum to make major policy decisions.
- (d) The Independent Electoral and Boundaries Commission may be paralysed if the Bill is not passed to provide for an avenue to appoint more commissioners.
- (e) If the Bill is not passed as amended by the Senate, it will be referred to the Mediation Committee which may lead to further delays towards addressing the challenges at IEBC.

The Committee resolved to agree to the amendments as passed by the Senate on Thursday 23rd July, 2020.

The Committee's report was proposed for adoption by Hon. Otiende Amollo (Vice-Chairperson) and seconded by Hon Anthony Kiai.

MIN No.04/2020

**SUB-COMMITTEE REPORT ON SUCCESSION PLAN TO
THE OFFICE OF CHIEF JUSTICE AND PRESIDENT OF
THE SUPREME COURT**

The sub-committee was convened by the vice-chairperson and briefed members on the deliberations of the meeting held on Tuesday 9th September, 2020 as follows;

- i. That the committee should consider to bring an amendment to the Judicial Service Commission Act to address the issue of Succession to the Office of the Chief Justice and President of the Supreme Court of Kenya.
- ii. Whether an amendment can be introduced to the Act through Statute Law Miscellaneous (Amendment) Bill or through a Substantive Bill to be subjected to Public Participation. This follows the repeal of section 30 of the Act.
- iii. There is a constructive notice on the retirement of the Chief Justice and there is no need to wait for his exit before commencement of his recruitment process.

Members commended the sub-committee and observed that it was a good starting point on parameters of engagement with the JSC and resolved to use the above issues in a planned meeting with the Judicial Service Commission on Monday 14th September, 2020.

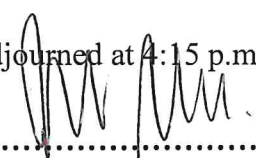
MIN No. 05/2020:
No matter arose

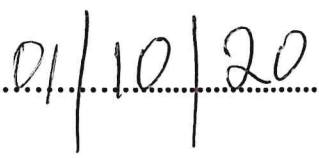
ANY OTHER BUSINESS

MIN No. 06/2020:

ADJOURNMENT

The meeting was adjourned at 4:15 p.m. Next meeting will be held on 11/9/2020 at 10.00 a.m.

Signed.....

Chairperson

Date.....

 01/10/20

ANNEXURE 2
ADOPTION LIST

KENYA NATIONAL ASSEMBLY

Annexure 2



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


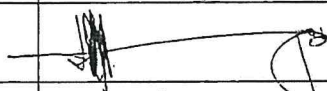
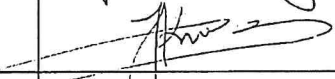

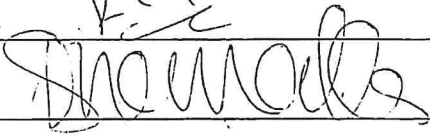
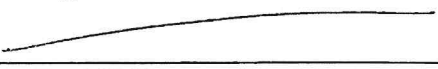

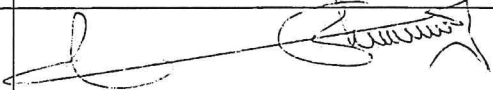

ATTENDANCE REGISTER FOR MEMBERS

DATE 10/09/2020 START TIME 2:30 p.m. END TIME 4 p.m.

VENUE WINDSOR GOLF HOTEL

AGENDA Consideration and adoption of the ^{Report} HEBC on the HEBC Bill, 2019

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - Chairperson	
2.	Hon. (Dr.) Paul Otiende Amollo, M.P - Vice-Chairperson	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
5.	Hon. Roselinda Soipan Tuyu, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	
10.	Hon. Josephine Naisula Lesuuda, M.P.	

11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	
19.	Hon. Robert Gichimu Githinji, M.P.	

COMMITTEE CLERK



 16/08/20

DIRECTOR COMMITTEE SERVICES

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ANNEXURE 3

SENATE AMENDMENTS

REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke

Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT

OFFICE OF THE CLERK OF THE SENATE

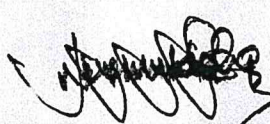
SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2019)

The following amendment to the Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill (National Assembly Bill No. 35 of 2019) was passed by the Senate on Thursday, 23rd July, 2020-

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in paragraph (a) by deleting the word “eleven” appearing immediately after the words “therefor the words” and substituting therefor the word “seven”;
- (b) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) by deleting paragraph 1(2) and substituting therefor the following new subparagraph—
 - (2) The selection panel shall consist of—
 - (a) two men and two women nominated by the Parliamentary Service Commission;
 - (b) one person nominated by the Law Society of Kenya; and
 - (c) two persons nominated by the Inter-religious Council of Kenya.
- (c) by inserting the following new paragraph immediately after paragraph (b)—
 - (ba) by inserting the following new paragraph immediately after paragraph 1(2)—
 - (2A) A person is qualified for appointment as a member of the selection panel if such person—
 - (a) is a citizen of Kenya;
 - (b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and
 - (c) holds a degree from a university recognised in Kenya.


Dated: 28th July, 2020

