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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION



THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

REPORT ON THE PETITION BY HON. SIMON LENGUIYIA
CONCERNING THE ACADEMIC QUALIFICATIONS REQUIRED FOR
ONE TO BE A SPEAKER OF A COUNTY ASSEMBLY, THE SENATE,
OR THE NATIONAL ASSEMBLY

PAPERS Laid	
DATE	29/11/2023
TABLED BY	Sen. Fatuma Dullo, MP
COMMITTEE	JRAHRC
CLEAR OF THE TABLE	A. Macharia

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

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November, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

APSEA	Association of Professional Societies in East Africa
CAF	County Assemblies Forum
IEBC	Independent Electoral and Boundaries Commission
KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 228 of the Senate Standing Orders and is mandated *'to consider all matters relating to constitutional affairs, the organisation 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.'*

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Ali Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Nduati, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

The Minutes of the Committee in considering the Petition by Hon. Simon Lenguiyia concerning the academic qualifications required for one to be a Speaker of a County Assembly, the Senate, or the National Assembly, are attached to this Report as ***Annex I***.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The Petition by Hon. Simon Lenguiya proposing the setting of academic qualifications for one to be a Speaker of a county assembly, the Senate or the National Assembly was reported in the Senate on Thursday, 2nd November, 2023, following which it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

In the Petition, Hon. Lenguiya observed that the Speaker plays a critical role in the leadership of the respective House and that, in the absence of any academic or professional qualifications for the position, many county assemblies were going through challenging times due to the inadequacies of the holders of the position of Speaker in those assemblies. The Petitioner therefore prayed that Parliament amends legislation to include a degree requirement for one to be elected as Speaker of a county assembly, the Senate, or the National Assembly.

Honourable Speaker,

Upon committal of the Petition, the Committee invited the Petitioner who presented his arguments before the Committee, after which it invited responses and submissions from key stakeholders who the Committee felt would enrich its consideration of the Petition.

Following this call, the Committee received submissions from the Independent Electoral and Boundaries Commission, Kenya National Commission on Human Rights, Kenya Law Reform Commission, County Assemblies Forum, the Association of Professional Societies in East Africa, and Mr. Elijah Rottok, an Advocate. The Committee further invited and received a response from the Petitioner to the said submissions.

Honourable Speaker,

The Committee has extensively considered this matter, and its findings and observations are set out at Chapter Three of the Report, while its Recommendations are contained at Chapter Four thereon. In principle, the Committee finds merit in the Petition and observes that –

- a) the position of Speaker of a county assembly, the Senate or the National Assembly is a critical role in the democratic architecture of the state for which care must be taken in how it is filled, including the qualifications that one must meet to occupy such a position;

- b) while the Speaker of a legislature serves as an *ex-officio* member of that House, the roles, functions, powers, and responsibilities of the Speaker differ significantly from those of the members, as does the mode of election and vacation from office; and
- c) there has been no judicial pronouncement specific to the academic and other qualifications for one to be elected as Speaker of a county assembly, the Senate or the National Assembly. Instead, the decisions emanating from the Courts have focused on the academic qualifications for one to be elected as a member of the respective House, which have, in effect, included the Speaker.

The Committee noted that this situation arises because both the Constitution and the Elections Act tie the qualifications for one to be a Speaker of a county assembly, the Senate or the National Assembly to those of the members of the respective House. Consequently, the Committee recommends that Parliament initiates legislation to –

- i) amend Article 106 (1) (a) of the Constitution, to delink the qualifications for one to be a Speaker of a House of Parliament from those of the members;
- ii) amend Section 21(1) of the Elections Act (No. 24 of 2011), to delink the qualifications for one to be a Speaker of a county assembly, from those of its members; and
- iii) legislate the qualifications required for one to be a Speaker of a county assembly, the Senate or the National Assembly.

This will enable Parliament to discharge its mandate under Article 178 (3) of the Constitution, which requires Parliament to enact legislation providing for the election and removal from office of speakers of the county assemblies, without interfering with the provisions on academic qualifications for members of county assemblies.

In setting the qualifications for one to be a Speaker of a county assembly, the Senate or the National Assembly, there will be need to ensure that the provisions meet the requirements of Article 24 of the Constitution on the limitation of rights and fundamental freedoms. Additionally, the legislation should take into account alternative qualifications as provided for in the Kenya National Qualifications Framework Act (No. 22 of 2014).

Honourable Speaker,

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty which made the consideration of the Petition successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

Honourable Speaker,

It is now my pleasant duty, pursuant to Standing Order 238(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human rights on the Petition by Hon. Simon Lenguiya concerning the academic qualifications required for one to be a Speaker of a County Assembly, the Senate, or the National Assembly.

Signed



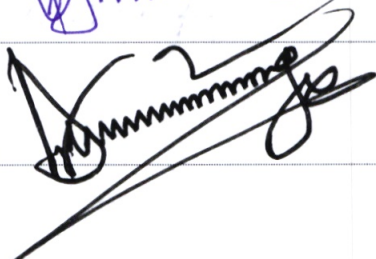
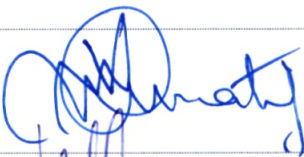
Date.....

25/11/2023

**SEN. WAKILI HILLARY SIGEL, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

ADOPTION OF THE REPORT ON THE PETITION BY HON. SIMON LENGUIYIA CONCERNING THE ACADEMIC QUALIFICATIONS REQUIRED FOR ONE TO BE A SPEAKER OF A COUNTY ASSEMBLY, THE SENATE, OR THE NATIONAL ASSEMBLY

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP (Chairperson)	
2.	Sen. Raphael Chimera Mwinzagu, MP (Vice-Chairperson)	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Nduati, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	Signed Minority Report

CHAPTER ONE: INTRODUCTION

1.0 Summary of the Petition

1. The right to present petitions to public authorities is provided for at Article 37 of the Constitution. Article 119(1) further provides that *‘Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’*
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Standing Orders of the Senate also makes provision of how this right may be exercised.
3. Pursuant to the said provisions, at the sitting of the Senate held on Thursday, 2nd November, 2023, the Speaker of the Senate reported to the Senate that a Petition had been submitted by Hon. Simon Lenguiya, a resident of Narok and Member of the County Assembly of Narok, concerning the academic qualifications required for one to be a Speaker of a County Assembly, the Senate or the National Assembly. A copy of the Petition is attached to this Report as *Annex 2*.
4. The salient issues contained in the Petition were –
 - a) That any state or public officer must be equipped with knowledge and understanding on what the law provides, how to apply it and the idea of constitutionalism. Lack of deep knowledge in law, governance and general issues of life, prosperity, vision, cohesion, development, and social equality can lead to unconstitutional legislations, low quality decisions, governance without qualitative consultation, wrong judgments and chaotic debates before the floor of the house.
 - b) That the Speaker is the center of democratic engagements, debate, sobriety in the house, constitutionalism, and fairness, and like the wise Solomon he ought to be, a law should be enacted to protect his throne from incompetence.
 - c) That the Speaker makes critical decisions in the legislation process. The speaker guides debate in the chambers, rules on objections, guides the legislation process, settles contentious matters. He is the ‘judge’ of the assembly, and his ruling is final as provided for in the standing orders.

- d) Therefore, as the ‘judge’, the speaker, his deputy and people who act as speakers in his absence – like any other arbiter – ought to be someone who is deeply knowledgeable on matters of law, law-making process, application and interpretation of the law.
 - e) That the Speaker’s knowledge of law plays an even bigger role at the county level. The devolved unit is where critical legislations are passed affecting the unique aspects of the people of the concerned county.
 - f) Most county assemblies have speakers who are not well abreast of the law including the import of standing orders, the law-making process, interpretation, and application of the law. Most speakers are not learned in law and grapple with very minor issues when the debate is on. Some cannot appreciate basic principles of law and are unable to contextualize issues and address them by applying the standing orders, constitutional provisions, or national legislations to it.
5. The Petitioner therefore prayed that the Senate amends section 21 (1) and section 22 (1) (b) of the Elections Act by adding academic qualifications of the Speakers of both Houses of the Parliament and County Assembly to be a person who ‘holds a bachelor’s degree in laws from a recognized University’.
 6. The Petitioner further prayed that the standing orders of the respective houses be amended to provide that powers of members of the Speaker’s Panel during house proceedings be limited to facilitation of debates and that matters requiring ruling be deferred to the date the substantive Speaker or Deputy Speaker is available to make a decision.

1.1 Legal Provisions on the Election of Speakers

7. The election of Speakers of the National Assembly, Senate and the County Assemblies is provided for in the Constitution and in the Elections Act, No. 24 of 2011.
8. Article 97(1)(d) and 98(1)(e) of the Constitution creates the Offices of the Speaker of the National Assembly and the Senate respectively, while Article 177 (1)(d) creates the Office of the Speaker of the County Assembly.

9. Article 106 of the Constitution provides that there shall be;
- (a) *a Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members.*
 - (b) *a Deputy Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among the members of that House.*
10. Article 178 provides that;
- (a) *Each county assembly shall have a speaker elected by the county assembly from among persons who are not members of the assembly.*
 - (b) *Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies.*
11. According to the Constitution, the qualifications to be elected as the Speaker of either House, are in tandem with the qualifications an individual must fulfil to be eligible to be elected as a Member of Parliament.¹
12. Article 99 prescribes that a person is eligible for election as a member of Parliament if the person-
- (a) *is registered as a voter*
 - (b) *satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and*
 - (c) *is nominated by a political party, or is an independent candidate who is supported—*
 - (i) *in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or*
 - (ii) *in the case of election to the Senate, by at least two thousand registered voters in the county.*
13. The qualifications for election as Speaker of the County Assembly are left at the discretion of Parliament to legislate.²
14. Section 21(1) of the Elections Act, No. 24 of 2011, provides that the Speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.

¹ Article 106, Constitution of Kenya

² Article 178, Constitution of Kenya

15. Section 21 (3) of the Act provides that the deputy speaker of a county assembly shall be elected from among persons who are members of that county assembly.
16. Section 25 of the Act provides for the qualifications necessary for an individual to be nominated as a candidate vying to be a member of County assembly. Additionally, it gives the grounds that would disqualify an individual from vying.
17. The qualifications are as follows;
 - (a) *is registered as a voter;*
 - (b) *satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and is either—*
 - (i) *nominated by a political party; or*
 - (ii) *an independent candidate supported by at least five hundred registered voters in the ward concerned*
18. While the grounds for disqualification are:
 - (a) *is a State officer or other public officer, other than a member of Parliament*
 - (b) *has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;*
 - (c) *has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;*
 - (d) *is of unsound mind;*
 - (e) *is an undischarged bankrupt;*
 - (f) *is serving a sentence of imprisonment of at least six months; or*
 - (g) *is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.*

1.2 Legislative history on academic qualifications in Kenyan elections

19. The Elections Act was enacted in 2011, and at the time, required, in section 22(1)(b), that persons vying for any position “*hold a certificate, diploma or other post-secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act*”.
20. One of the initial judicial challenges to this provision was in the case of ***Johnson Muthama v Minister for Justice and Constitutional Affairs and Another (2012)***

eKLR. Justice Mumbi Ngugi, while considering the issue of educational qualifications for Members of Parliament stated as follows—

By excluding everyone who does not have a 'post secondary qualification,' a term which is not defined in the Act, from running for any elective office established under the Constitution, the Act discriminates directly on the basis of status and social origin, for almost invariably, and as noted from the analysis of the socio-economic context above, it is the poor in society, those 18 million Kenyans living in poverty, who will not get an opportunity to acquire an education, let alone a post secondary education....The provision also violates the Constitution and international law by limiting the exercise of the rights set out under Article 38 (2)(c) to 'be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to 'hold office.

21. As to whether the limitation to Article 38(2)(c) fulfilled the requirements of Article 24 of the Constitution, the Court held that—

The next issue to consider is whether the provision makes a differentiation that bears a rational connection to a legitimate purpose, and whether it can be justified under the limitations provision of the Constitution. My view with regard to Section 22(1) (b) is that it fails on both accounts. Looked at from the functions that members of the legislature perform in representing their constituency, and the harm and concern that the citizenry has had with regard to poor governance, the differentia does not meet the test set out above. Further, it is common knowledge that the problem that bedevils elections in Kenya and which elections law needed to address as the bane of the citizenry has been, not uneducated elected leaders, but corrupt and unethical leaders. By requiring post secondary educational qualifications and omitting to make more explicit provisions with regard to moral and ethical qualifications required under the Constitution, the legislature missed what has for long been the real case of the problem in Kenya's governance. I agree with the petitioners that the harm that the legislature seeks to address in enacting legislation as required under the Constitution is lack of leaders with integrity. That is why the Constitution requires the legislature to enact legislation that sets moral, ethical and educational qualifications. A requirement for a post secondary qualification does not address the real concern of the citizenry; indeed it violates the provisions of the Constitution by excluding many who may not, through no fault of their own, have been able to achieve post secondary education. The provisions of Section 22(1)(b) also fail the test of constitutionality as they do not accord with the national values and principles, and usurp the sovereign

powers of the people of Kenya. They cannot also meet the provisions of Article 24 as being 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.'

22. In ***John Harun Mwau v Independent Electoral and Boundaries Commission & another [2013] eKLR***, the petitioner sought to vie for election as a member of Parliament and he sought to challenge the educational requirements contained in section 22(1)(b) of the Elections Act.
23. Justice Lenaola relied on Justice Mumbi's reasoning in the *Muthama case* to come to a conclusion contrary to that of the *Muthama case* by finding that the requirement that persons vying for the position of member of Parliament "*hold a certificate, diploma or other post-secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act*" was not unconstitutional. He noted that—

First, the nature of the duties and functions performed by the National Assembly and the Senate in my view require higher educational qualifications, skills and wide exposure which is gained through higher education. It is important that a representative to either of the House understands the proceedings, nature of business being carried out and most important be in a position to make his/her contribution to the various and many at times complex motions and debates in Parliament. It must also be understood that the elected persons represent the people who appointed them and they should therefore be able to execute that duty without any difficulties.

24. As regards the question whether Parliament had the power to pass legislation prescribing educational requirements in respect of persons vying for office, the Court held that—

*At Article 99(2)(b), the people of Kenya have envisaged, in passing the Constitution, that a person would not be eligible to run for certain offices if they did not meet the criteria set by Parliament. While the Constitution does not set an educational criteria, it imposes a duty on Parliament to enact legislation setting that criteria, and this is what has now been done in the Elections Act. In my view, the provisions of **Section 22** of the **Election Act** were enacted by Parliament pursuant to the provisions of **Article 99(1)(b)** of the Constitution. This Article envisages a situation where Parliament prescribes an educational threshold for those who seek to be elected as Members of*

*Parliament. In its wisdom, Parliament prescribed the provision of a post secondary qualification. I do not think this qualification is unreasonable or unattainable by all in Kenya. I am alive to the fact that each year, the tax payer spends billions of shillings in both free primary and secondary education. Every Kenyan from all walks of life there has in my view opportunity to gain this qualification. I therefore find the argument that any other academic qualification would be sufficient to even include Primary education cannot hold water. In any event, it does not reflect the ultimate will of the people of Kenya as can be seen from the requirements of **Article 99(1)(b)**. I therefore find that post-secondary education as enshrined under **Section 22 (1) (b)** of the **Elections Act** is attainable, sufficient and constitutional. To hold otherwise would be absurd 50 years after independence.*

25. The Elections Act was amended in 2012 to defer application of the educational requirements in section 22(1)(b) by providing that—

2A. For the purposes of the first elections under the Constitution, section 22(1)(b) and section 24 (1)(b), save for the position of the President, the Deputy President, the Governor and the Deputy Governor, shall not apply for the elections of the offices of Parliament and County assembly representatives.

26. In 2017, the Elections Act was amended in section 22(1)(b) to provide that a person would be qualified for nomination for election if the person—

(b) holds—

- (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or*
- (ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.*

27. However, Parliament also enacted section 22 (1A) which deferred application of the above educational requirements to the general elections held after the 2017 general elections. The petitioner in **Musyoka v Returning Officer, Independent Electoral and Boundaries Commission, Machakos County & 3 others (Constitutional Petition E004 of 2021) [2022] KEHC 160 (KLR) (11 February 2022) (Judgment)** sought to have these academic requirements apply to one of the aspirants in the Machakos County senatorial by-elections, but the court upheld the application of section 22(1A) which deferred the requirements to candidates vying in the 2022 general elections.

28. The application of section 22(1)(b)(ii) of the Elections Act on the requirement to hold a degree for candidates for the position of member of county assembly was challenged in ***County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party)*** [2021] eKLR. The court held that the provision does not pass the test of limitation in article 24 of the Constitution and hence, is an affront to the Constitution.

29. Further, the court noted as follows—

The impugned provision offends article 27 of the Constitution to the extent that it, unfairly and without justification, discriminates on the basis of educational qualifications. It also fails to treat every person equal before the law. I say so in view of the position that whereas the law recognises equivalent qualifications, the impugned provision outrightly disregards that and firmly settles for only convectional university degrees. The impugned provision also fails to take into account the category of the people who, while already admitted into the university, cannot graduate before 2022 as a result of the effects of the global COVID-19 pandemic.

Article 38(3) of the Constitution is also infringed to the extent that the impugned provision places unreasonable restrictions to the exercise of political rights. I have already demonstrated that there exists legislation that accords a less restrictive means to achieve the very purpose aimed at by the impugned provision. The impugned provision likewise failed to take into account the dictates in article 56 of the Constitution regarding the rights of the minority and marginalised groups.

30. The learned judge pointed out that he was not fronting the position that university educational qualifications or their equivalent are not necessary for those seeking election, as a time is soon catching up with us when the dictates of global demands and trends will make a university degree qualification or its equivalent an inevitable necessity in every elective position.

31. He however observed as follows—

...at the moment, I do not think that the impugned provision was well thought out. To equate the academic qualifications of all elective positions in Kenya at par, without any differentiation, without regard to the different attending responsibilities and by disregarding the different remuneration and benefits, the impugned provision runs contra several provisions of the Constitution.

There is, therefore, the need for the impugned provision to be relooked at, at least with a view of taking into account the need for differentiated qualifications and in keeping with the prevailing and targeted social, economic and educational realities in Kenya.

32. A similar challenge was also brought in ***Paul Macharia Wambui & 10 others v Speaker of the National Assembly & 6 others* [2022] eKLR** against section 22(1)(b)(i) of the Elections Act on the requirement to hold a degree for candidates for the position of member of Parliament, and the court declared the section to be unconstitutional on identical grounds as the *County Assembly Forum* case above.
33. In 2021, during the 12th Parliament, and while the two consolidated cases above were ongoing at the High Court, a Bill amending section 22 of the Elections Act, which deals with education qualifications of aspirants, was published in the Senate as the Elections (Amendment) Bill, Senate Bills No. 42 of 2021. The Bill was sponsored by Hon Kipchumba Murkomen, the then Senator for Elgeyo Marakwet.
34. The Bill sought to amend section 22 (1)(b) of the Act by scrapping the university degree requirement for aspirants seeking elective posts and instead provide that a candidate should be able to read and write in the English or Kiswahili language or, in the case of a person who is deaf or hard of hearing, is literate in the Kenya sign language.
35. The Bill was passed by the Senate on 23rd February 2022 and was referred to the National Assembly for consideration where it lapsed upon the end of the term of the 12th Parliament.

1.3 The Law and Practice in Comparative Jurisdictions

a) United States of America

36. The Speaker of the United States House of Representatives, commonly known as the Speaker of the House, is the presiding officer of the United States House of Representatives. The office was established in 1789 by Article I, Section II, of the U.S. Constitution.
37. By custom and House rules, the speaker is the political and parliamentary leader of the House and is simultaneously its presiding officer, *de facto* leader of the body's majority party, and the institution's administrative head. Speakers also perform various other administrative and procedural functions. Given these

several roles and responsibilities, the speaker usually does not personally preside over debates—that duty is instead delegated to members of the House from the majority party—nor regularly participate in floor debates.³

38. The Constitution *does not* explicitly require the speaker to be an incumbent member of the House of Representatives, although every speaker thus far has been, and as a member the speaker also represents their district and retains the right to vote.
39. The consequence of this therefore, is that the qualification required for an individual to be elected as the Speaker, are the requirements necessary to be elected as a member of the House of Representatives. The U.S. Constitution has only three requirements that you must meet to become a U.S. Representative⁴:
 - (a) *You must be at least 25 years old.*
 - (b) *You must have been a U.S. citizen for at least the past 7 years.*
 - (c) *You must be a resident of the state (though not necessarily the district) that you want to represent.*
40. The framers designed these minimal requirements to give people freedom to choose the person who would best represent their interests in Congress. Explaining the impetus behind the adoption of these requirements at the Constitutional Convention, the writer of the *Federalist No. 52* commented: Under these reasonable limitations, the door of this part of the federal government is *open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.*⁵
41. There are no educational requirements to become a Congressman or Congresswoman. Although you'll see a lot of people in Congress with degrees in political science, law, or business, you'll also find Representatives with various other degrees including education and sociology.

b) Philippines

42. Similar to the Kenyan bicameral structure of government, the Philippines has a House of representatives as well as a Senate. The Speaker, in the hierarchical order of political leadership, is the fourth highest official in the Philippine government.

³ United States. (1997) Speaker of the United States House of Representatives. United States. [Web Archive] Retrieved from the Library of Congress, <https://www.loc.gov/item/lcwaN0015401/>.

⁴ ArtI.S2.C2.1 Overview of House Qualifications Clause

⁵ Retrieved from <https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493428>

He presides over the session; decides on all questions of order, subject to appeal by any member; signs all acts, resolutions, memorials, writs, warrants and subpoenas issued by or upon order of the House; appoints, suspends, dismisses or disciplines House personnel; and exercise administrative functions.

43. The Speaker is elected by a majority vote of all the Members at the commencement of each Congress.⁶
44. By convention, the Speaker is an incumbent member of the House of Representatives.⁷ To qualify for election as a Representative, you have to be;
 - (a) *a natural-born citizen of the Philippines,*
 - (b) *a registered voter in the district in which you seek to be elected, a resident therein for not less than one (1) year before the day of the election and*
 - (c) *at least twenty-five (25) years of age.*
45. To qualify for election as a Senator, you also have to be;
 - (a) *a natural-born Filipino citizen,*
 - (b) *a registered voter,*
 - (c) *a resident of the Philippines for at least two (2) years before the day of the election and*
 - (d) *at least thirty-five (35) years old.*

c) South Africa

46. The bicameral Parliament comprises a National Assembly and a National Council of Provinces. The Speaker of the National Assembly presides over the National Assembly of South Africa, the lower house of the Parliament of South Africa. The speaker is chosen from among the Members of the Assembly at its first sitting following a general election and whenever the office is vacant. The Speaker acts as a "referee", taking charge of debates to make sure that the MPs can participate freely while keeping to the rules. The Speaker also has managerial duties to ensure that Parliament runs smoothly.⁸
47. Article 47 of the Constitution sets out the requirements necessary for an individual to be elected into the membership of the National Assembly as follows;
 - a) *Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except;*

⁶ Congress of the Philippines website. Retrieved from <https://econgress.gov.ph/house-leaders/>

⁷ Article VI, Section 7 of the Constitution of the Philippines

⁸ Article 52 Constitution of South Africa 1996

- i) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service
- ii) permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council
- iii) unrehabilitated insolvents;
- iv) anyone declared to be of unsound mind by a court of the Republic
- v) anyone who, after this section took effect, is convicted of an offense and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offense would have been an offense in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

CHAPTER TWO: CONSIDERATION OF THE PETITION

2.0 Introduction

48. Upon committal of the Petition to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration, the Committee proceeded to invite the Petitioner who presented his arguments in favour of the prayers contained in the Petition.
49. The Committee further invited responses and submissions from key stakeholders, following which it received written comments from the Independent Electoral and Boundaries Commission, Kenya National Commission on Human Rights, County Assemblies Forum, Association of Professional Societies of East Africa and one individual, Mr. Elijah Rottok.
50. These comments were shared with the Petitioner who further submitted a response to the said submissions.

2.1 Submissions by the Independent Electoral and Boundaries Commission

51. The Independent Electoral and Boundaries Commission (IEBC) submitted comments on the Petition vide a letter dated 16th November, 2023 (*Annex 3*). The Commission submitted that –
 - a) There is sufficient legislation concerning the qualifications required for an individual to be appointed as Speaker in the National Assembly, the Senate and County assemblies, citing the Constitutional provisions and the Elections Act.
 - b) The issue of section 22 of the Elections Act on academic requirements for members of parliament has been adjudicated on in various Petitions namely: *Petition 28 of 2021, Petition E549, E037, & E065 of 2021 and Petition E077 of 2022*. The rulings in these petitions declared Section 22 unconstitutional for being exclusionary towards individuals who may not hold degrees due to various factors.
 - c) Article 146 (2) of the Constitution places the Speaker of the National Assembly third in line for the presidency in the instance a vacancy arises. While Article 182 (4) places the Speaker of the County assembly third in line for the Office of the Governor in the instance a vacancy arises. It would

therefore be prudent for individuals elected as Speakers to have the academic qualifications prescribed for presidential candidates.

- d) The role of the speaker is quasi-judicial as the regulator of debates in the Houses. Speakers therefore have a higher responsibility, hence their qualifications should be separate from Members by including the requirement for an individual with expertise in political science, law and other relevant social sciences.

52. The Commission therefore recommended that:

- i) Article 106 (a) of the Constitution be amended to separate the conjoined requirements of Speakers with that of members. Additionally, it should outline that the requirements should be the same as those for presidential candidates; and
- ii) Article 21 (1) of the Elections Act be amended to require the qualifications of the Speaker to be the same as that of candidates for governorship.

2.2 Submissions by the Kenya Law Reform Commission.

53. The Kenya Law Reform Commission submitted its comments on the Petition by a letter dated 16th November, 2023 (*Annex 4*). The Commission submitted that –

- a) The courts have sufficiently dealt with the issue concerning university degree qualifications for elective positions in the run up to the 2022 General election. This resulted in the standing opinion that any form of limitation on human rights including article 38 on political rights must pass the test of limitation in Article 24.
- b) It should be considered whether the required Bachelor's degree in Law would be discriminatory to other professions, whether it limits/restricts political rights of individuals who do not hold a degree in law as well as whether the number of lawyers in Kenya and their distribution is sufficient across all counties.
- c) It is possible for Parliament to legislate for different qualifications for Speakers of legislative assemblies, separate from those of elected members.

2.3 Submissions from the Kenya National Commission on Human Rights.

54. The Kenya National Commission on Human Rights submitted its comments on the Petition by a letter dated 15th November, 2023 (*Annex 5*). The Commission submitted that—

- a) A comparative global analysis of various jurisdictions shows that the common criteria adopted focuses more on legislative experience, integrity, impartiality, communication skills and an understanding of parliamentary procedures. The academic requirements may not be mandatory however a strong background in law, political science or public administration is beneficial.
- b) That the proposal in the Petition locks out a majority of Kenyans especially vulnerable groups and marginalised communities. The statistics from the Law Society of Kenya shows it has registered a little over 20,000 lawyers which happens to be 0.04% of the population. This results in a situation whereby the Office of the Speaker becomes a preserve of the few.
- c) On human rights considerations, the eligibility criteria must be reasonable, proportionate and not arbitrary in order to allow diverse individuals to engage in the democratic process.

55. The Commission therefore submitted that Parliament should refrain from strictly prescribing a law degree as the qualification of Speakers of legislative assemblies but embrace a selection process that is transparent and meets the requirements found in Chapters 10 and 27 of the Constitution.

2.4 Submissions by the Association of Professional Societies in East Africa.

56. The Association of Professional Societies in East Africa submitted their comments on the petition in a letter received on 16th November, 2023 (*Annex 6*). The Association submitted that -

- a) The proposal by the Petitioner is discriminatory and precluded other Kenyan professionals who may have the competence to discharge the duties of Speakers in legislative assemblies. Additionally, the petitioner failed to provide empirical evidence that the lack of bachelor's degree in law has had any detrimental effect in the assemblies.

- b) There are adequate checks and balances provided in the Constitution, Elections Act, County Government Act and the Standing Orders to support the Speaker in the conduct of their roles. Additionally, the holders are subjected to induction training and orientations as well as having the support from the Speakers panel, Legal departments and technical assistants who aid in the carrying out of their roles.

2.5 Submissions by the County Assemblies Forum.

57. The County Assemblies Forum submitted its comments on the Petition by a letter dated 16th November, 2023 (*Annex 7*) and further appeared before the Committee on the same date. The Forum submitted that -

- b) They vehemently oppose the petition citing inconsistencies in the proposed prayers, lack of similar requirements for other state officers and potential negative impact on diversity and inclusivity in leadership roles.
- c) If academic qualifications are deemed necessary, they should be uniform across all public offices.
- d) The requirement for a law degree could shrink the pool of candidates and limit the legislators' will to choose their representatives thereby violating principles of democracy and justice.
- e) The judgment in the case of *County Assembly Forum & 6 others v Attorney General & 2 others (2021) KEHC 304* underscored the importance of recognising alternative qualifications. The impugned provisions' exclusive focus on conventional university degrees was irrational and unjustifiable. The court suggested that other qualifications, as recognised by the National Qualifications Act, should be considered to allow for more inclusive representation.

58. The Forum submitted that the principle of constitutional equality should be maintained across all elective positions and a uniform standard for academic qualifications should be established. Additionally, the Forum was of the view that instead of focusing on academic qualifications, it advocated for comprehensive solutions such as improved training, capacity building programmes and mentorship opportunities for Speakers to enhance their effectiveness.

2.6 Submissions by Elijah Rottok

59. Mr. Elijah Rottok, an Advocate of the High court of Kenya, submitted his comments on the Petition by a letter dated 9th November, 2023 (*Annex 8*). He submitted that -

- a) Judicial precedent in the case of *Johnson Muthama v minister for Justice & Constitutional Affairs & Another (2012)* held that excluding a person from running for an elective seat on account of not having post-secondary education was discriminatory and unconstitutional.
- b) Only 3.5% of Kenyans hold university degrees due to the challenges that many face in accessing higher education. Further, that the degree qualification does not guarantee that the candidate will have knowledge on the intricate procedures, roles and responsibilities for the position of Speaker. This is evidenced by the fact that the individuals appointed still undergo inductions, training, capacity building and benchmarking sessions.
- c) Globally, numerous jurisdictions have low requirements for qualifications of individuals who wish to participate in elective politics.
- d) Judicial precedent has shown that attempting to prescribe degree requirements for elective posts has resulted in the courts finding it unconstitutional. It would therefore be a concern that attempting to do so without consideration of the relevant qualifications necessary to be elected as Speaker of the Senate, National and County assemblies would suffer the same fate.

60. Mr. Rottok therefore submitted that an amendment ought to be developed by the legislature that takes into account the provisions of the National Qualifications Act, which widens the requirements to provide for any other relevant qualifications that may be attained as opposed to conventional degrees.

2.7 Response by Hon Simon Lenguiya, the Petitioner

61. The Petitioner submitted a response to the comments by the various stakeholders by a letter dated 20th November, 2023 (*Annex 9*). He submitted that -

- a) The net effect of the invalidation of Section 22(1)(b) (i) and (ii) of the Elections Act by the courts in the various Petitions adjudicated on the subject

matter, is that indeed there exists a lacuna such that there is no statute currently that prescribes academic requirements for Speakers of legislative assemblies.

- b) The petition is not an appeal on the court's decisions in the various cases alluded to above. The fallacy is that the court declared everything to do with degree qualifications for elective seats, unconstitutional. The court was of the view that degree requirement alone without the consideration of other modes of learning is discriminatory. Additionally, the court was dealing with questions regarding the election of MPs and MCAs which have many seats as opposed to the seats for Speakers which is a small number with bigger responsibilities.
 - c) Parliament would be within its mandate to prescribe that, for the position of Speaker, the academic qualification of a degree would be valid. While informal education is admirable, the issues the Speaker grapples with in their daily assignments require knowledge of law, governance, politics, economics and administration and this knowledge is acquired in institutions of higher learning.
 - d) The comparative studies submitted by stakeholders relying on countries such as India and South Africa were unreasonably juxtaposed considering that Kenya is a young democracy with a relatively new Constitution. That there are high levels of literacy in those countries, therefore very low risk levels of appointing an illiterate Speaker, as is the case in Kenya where this threat is real.
 - e) In order to increase the proposal's chances of success in the courts, the Committee should add to the amendment: 'a university degree or its equivalent as certified by the National Qualifications Authority in accordance with the Kenya National Qualifications Act'.
62. The Petitioner further indicated his wish to amend the petition by substituting the requirement for a bachelor's degree in law with a bachelor's degree in any discipline.

CHAPTER THREE: FINDINGS AND OBSERVATIONS

63. Having considered the Petition and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights finds and observes that –

a) Roles and Functions of the Speaker

64. The Committee observes that the Speaker of a County Assembly, the Senate and the National Assembly plays critical role in the democratic process and governance of a country or county. The Speaker directs all activities of the House and its committees, administers the oath of affirmation or allegiance to Members, issues writs for vacant seats as and when they arise, presides over the proceedings of the House, interprets all matters touching on the application of the procedure and practice of the legislature and acts as the final authority as provided in the standing orders, examines and rules on admissibility or inadmissibility of documents, and examines and approves all legislative business before its introduction in the House.⁹
65. In the case of the National Assembly, the Speaker chairs the Parliamentary Service Commission while, at the county level, the Speaker chairs the respective County Assembly Service Board. The Commission and the Boards are mandated to, among others, providing services and facilities to ensure the efficient and effective functioning of the legislatures, constituting offices in the respective service and appointing and supervising office holders, preparing annual estimates of expenditure of the service and submitting them for approval, and exercising budgetary control over the respective legislature.
66. The Speaker further –
- i) chairs key House committees, including the House Business Committee, the Powers and Privileges Committee, the Procedure and Rules Committee and, in some legislatures, the Committee on Appointments, and the Liaison Committee;
 - ii) is the Spokesperson of the House on all matters; and
 - iii) plays a key role in enhancing parliamentary diplomacy and improving parliamentary relations.

⁹ Parliament of Kenya (2022), *Factsheet No. 10: The Speaker and Other Presiding Officers*, 2nd Edition

67. It is observed that, while the Parliamentary Service Commission is one of the Commissions and Independent Offices at Chapter 15 of the Constitution, academic and professional qualifications exist for chairpersons of all the other constitutional commissions and independent offices, which is not the case for the Parliamentary Service Commission.
68. Equally, at the county level, section 58A of the County Governments Act (No. 17 of 2012) sets out extensive academic and professional requirements for the chairperson, vice chairperson, and members of the county public service board, which is not the case for the chairperson and members of the county assembly service boards.
69. Importantly, the Speaker of the National Assembly is the third in the line of succession at the national level, while the Speaker of a county assembly is third in the line of succession at the county level.
70. **The Committee therefore finds that the position of Speaker of a county assembly, the Senate or the National Assembly is a critical role in the democratic architecture of the state for which care must be taken in how it is filled, including the qualifications that one must meet to occupy such a position.**

b) Distinction between the Speaker and Members of a Legislature

71. The Committee observes that, while the roles of Members of Parliament and of the County Assemblies include representation, legislation and oversight, these roles differ significantly from the roles and functions of the Speaker, as outlined at part a) hereinabove.
72. Notably, while the Members of Parliament and the County Assemblies are either directly elected by the people or specially elected through party lists, the Speaker of a county assembly, the Senate or the National Assembly is elected solely by the members of the respective legislature.
73. The removal processes in respect of the two offices also differ significantly.
74. **The Committee therefore finds that, while the Speaker of a legislature serves as an *ex-officio* member of that House, the roles, functions, powers, and responsibilities of the Speaker differ significantly from those of the members, as does the mode of election and vacation from office.**

c) Qualifications required for one to be a Speaker of a Legislature

75. The Committee observes that the constitutional and statutory requirements for one to be the Speaker of a county assembly, the Senate or the National Assembly are similar to the qualifications for election as a member of the respective legislature. This also reflects the law and practice in comparative jurisdictions.
76. The Committee notes that there have been twelve Speakers of the National Assembly and the Senate since Kenya gained independence and that, despite the absence of academic and professional requirements for the position, all twelve Speakers have been persons holding a minimum of a bachelor's degree, with six of them holding a minimum of a bachelor's degree in law.
77. The Committee further observes that –
- i) although the speakers' duties would require someone with the necessary expertise and qualifications to competently perform them, the Constitution and statutes tie the qualifications of the speakers with those for election into the specific legislature;
 - ii) there have been various attempts by Parliament to legislate on the educational requirements of persons vying for election, and these have been met with judicial challenges, whereby the qualifications imposed by legislation have been declared to be unconstitutional;
 - iii) the legislative attempts which have since been quashed by the Courts sought to set academic and other qualifications for election of members of Parliament and members of the county assemblies, as well as county governors and deputy governors;
 - iv) in the case of the impugned provisions relating to election of members of Parliament and members of the county assemblies, none of them sought to distinguish or legislate separately the academic and other qualifications for one to be a Speaker of a county assembly, the Senate, or the National Assembly; and
 - v) instead, the said qualifications for members of Parliament and members of county assemblies would equally apply to the Speakers of the respective Houses and, by being declared unconstitutional, this also left the positions of Speaker without any academic or other qualifications.

78. **The Committee therefore observes that there has been no judicial pronouncement specific to the academic and other qualifications for one to be elected as Speaker of a county assembly, the Senate or the National Assembly. Instead, the decisions emanating from the Courts have focused on the academic qualifications for one to be elected as a member of the respective House, which have, in effect, included the Speaker.**
79. To address this, the Committee finds that there is need to –
- i) amend Article 106 (1) (a) of the Constitution, to delink the qualifications for one to be a Speaker of a House of Parliament from those of the members;
 - ii) amend Section 21(1) of the Elections Act (No. 24 of 2011), to delink the qualifications for one to be a Speaker of a county assembly, from those of its members; and
 - iii) legislate the qualifications required for one to be a Speaker of a county assembly, the Senate or the National Assembly.
80. In setting the qualifications for one to be a Speaker of a county assembly, the Senate or the National Assembly, there would be need to ensure that the provisions meet the requirements of Article 24 of the Constitution and that they do not unfairly and without justification discriminate on the basis of educational qualifications, infringe on the rights of minorities and marginalised groups, or make the positions the preserve of a small, selected class of persons.
81. Additionally, the qualifications should take into account the National Qualifications Framework as provided for in the Kenya National Qualifications Framework Act, No. 22 of 2014.
82. On the prayer that the standing orders of the respective houses be amended to provide that powers of members of the Speaker’s Panel during house proceedings be limited to facilitation of debates, and that matters requiring ruling be deferred to the date the substantive Speaker or Deputy Speaker is available to make a decision, the Committee finds that this matter remains within the domain of each legislature to determine administratively and within its standing orders.

CHAPTER FOUR: RECOMMENDATIONS

83. Arising from its observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that Parliament –
- a) amends Article 106 of the Constitution, to delink the qualifications for one to be a Speaker of a House of Parliament from those of the members;
 - b) amends Section 21(1) of the Elections Act, No. 24 of 2011, to delink the qualifications for one to be a Speaker of a county assembly, from those of its members; and
 - c) legislates the qualifications required for one to be a Speaker of a county assembly, the Senate or the National Assembly.
84. In legislating the qualifications for one to be a Speaker of a county assembly, the Senate or the National Assembly, the Committee recommends that one be required to be the holder of a degree recognised by the Commission for University Education, or equivalent qualifications as recognised by the Kenya National Qualifications Authority.

LIST OF ANNEXES

- Annex 1:* Minutes of the Committee in Considering the Petition
- Annex 2:* Copy of the Petition
- Annex 3:* Submissions by Independent Electoral and Boundaries Commission
- Annex 4:* Submissions by Kenya Law Reform Commission
- Annex 5:* Submissions by Kenya National Commission on Human Rights
- Annex 6:* Submissions by Association of Professional Societies in East Africa
- Annex 7:* Submissions by County Assemblies Forum
- Annex 8:* Submissions by Mr. Elijah Rottok
- Annex 9:* Response by the Petitioner
- Annex 10:* Minority Report by Sen. Andrew Omtatah Okoiti, MP

Annex 1: Minutes of the Committee in
Considering the Petition



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-SIXTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 16TH NOVEMBER, 2023 AT 10.15 A.M. IN THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Karen Njeri Nyamu, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|--|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Mr. Javan Loriko | - Senior Serjeant-at-Arms |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Ngesa Rosebella | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

IN ATTENDANCE

- | | |
|-------------------------|---|
| 1. Hon. Simon Lenguiyia | - MCA, County Assembly of Narok/ Petitioner |
| 2. Mr. James Odhiambo | - Advocate for the Petitioner |
| 3. Hon. Josiah Thiriku | - Speaker, County Assembly of Embu/ CAF |
| 4. Mr. Austine Munene | - Secretariat, CAF |

IN ATTENDANCE

- | |
|--|
| 1. Visiting delegation from the County Assembly of Nakuru (<i>Annex 1</i>) |
| 2. Visiting delegation from the County Assembly of Nandi (<i>Annex 2</i>) |

MIN. NO. 474/2023

PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past ten O'clock and opened with a word of prayer.

This was followed by introductions by the Senators present, Secretariat, the Petitioner and his Advocate, and the delegation from the County Assemblies Forum.

MIN. NO. 475/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Okoit Omtatah, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

MIN. NO. 476/2023

**PETITION BY HON. SIMON LENGUIYIA
CONCERNING ACADEMIC QUALIFICATIONS
FOR ELECTION AS SPEAKER OF A COUNTY
ASSEMBLY, THE SENATE, OR THE NATIONAL
ASSEMBLY**

The Committee commenced consideration of the Petition by Hon. Simon Lenguiyia, a resident of Narok County and a Member of the Narok County Assembly, concerning academic qualifications for election as Speaker of a County Assembly, the Senate, or the National Assembly.

a) Hon. Simon Lenguiyia, MCA – Petitioner

The Petitioner, upon invitation by the Chairperson, took the Committee through the Petition, where he observed that a number of county assemblies were facing challenges in the manner proceedings in plenary were conducted as well as the operations of the assemblies and the respective county assembly service boards were run. This was attributed to the absence of academic qualifications for election as Speaker, which he submitted that this was inconsistent with the functions and responsibilities assigned to that office.

He further informed the Committee that, while in the Petition he had prayed for the requirement to be for one to hold a degree in law, he had since reconsidered this in favour of a requirement to hold a relevant degree.

b) Hon. Josiah Thiriku, MCA – Speaker, County Assembly of Embu/ CAF

The Speaker of the County Assembly of Embu took the Committee through the submissions by the County Assemblies Forum, where the forum urged the Committee to not grant the prayers contained in the Petition.

CAF noted that the qualifications for election as speaker of a county assembly were well provided for and mirrored those of members of the county assemblies. CAF further submitted that educational qualifications did not necessarily refer to academic qualifications and that, in assessing suitability of a person for election as speaker, members of county assemblies consider the skills and experience of the person proposed for election.

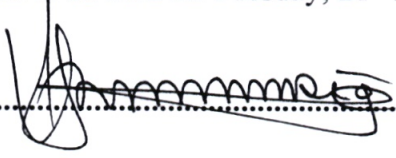
Due to lapse of time, the Committee –

- i) resolved that copies of the submissions received be shared with the Petitioner to enable him to respond;
- ii) resolved to resume consideration of the Petition at a subsequent date; and
- iii) directed the Secretariat to, in the meantime, commence drafting of the Report based on the submissions received.

MIN. NO. 477/2023

ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past eleven O'clock. The next meeting was scheduled to be held on Tuesday, 21st November, 2023 at eight O'clock.

SIGNED: 

DATE: 23/11/2023

**ANNEX 1: COUNTY ASSEMBLY OF NAKURU SECTORAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS**

- | | | |
|-----|----------------------|--------------------|
| 1. | Hon. Antony Kanyere | - Chairperson |
| 2. | Hon. David Wathiai | - Member |
| 3. | Hon. David Muraya | - Member |
| 4. | Hon. Bernard Langat | - Member |
| 5. | Hon. Ann Wamaitha | - Member |
| 6. | Hon. Dorcas Gatherer | - Member |
| 7. | Hon. Loise Kagecha | - Member |
| 8. | Hon. Paul Warege | - Member |
| 9. | Hon. Francis Kuria | - Member |
| 10. | Hon. Paul Langat | - Member |
| 11. | Hon. Elijah Mwangi | - Member |
| 12. | Ms. Ann Kahunga | - Committee Clerk |
| 13. | Ms. Sharon Cherutich | - Hansard Reporter |
| 14. | Mr. George Gachie | - Sergeant at Arms |
| 15. | Ms Agnes Wambui | - Hansard Reporter |

**ANNEX 2: COUNTY ASSEMBLY OF NANDI SECTORAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS**

- | | | |
|----|-----------------------|--------------------|
| 1. | Hon. Richard K. Bett | - Chairperson |
| 2. | Hon. Susan Jeptoo | - Vice Chairperson |
| 3. | Hon. Hassan Kajoni | - Member |
| 4. | Hon. Raymond Chelule | - Member |
| 5. | Hon. Lucy T. Jepkemei | - Member |
| 6. | Victor Siele | - Committee Clerk |
| 7. | Nancy J. Tarus | - Hansard Officer |
| 8. | Rodgers Kiprop | - ICT Officer |



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-SEVENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 21ST NOVEMBER, 2023 AT 8.00 A.M. IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Hamida Ali Kibwana, MP | - Member |
| 5. Sen. Catherine Muyeka Mumma, MP | - Member |
| 6. Sen. Veronica W. Maina, MP | - Member |
| 7. Sen. Karen Njeri Nyamu, MP | - Member |
| 8. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
|--|----------|

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Ngesa Rosebella | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 478/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty-nine minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 479/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah, MP and seconded by Sen. Catherine Muyeka Mumma, MP.

- a) The Minutes of the 83rd Sitting held on Wednesday, 18th October, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- b) The Minutes of the 84th Sitting held on Tuesday, 31st October, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- c) The Minutes of the 85th Sitting held on Wednesday, 1st November, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- d) The Minutes of the 86th Sitting held on Thursday, 2nd November, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- e) The Minutes of the 87th Sitting held on Friday, 3rd November, 2023 at 10.00 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- f) The Minutes of the 88th Sitting held on Friday, 3rd November, 2023 at 2.00 p.m. were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- g) The Minutes of the 89th Sitting held on Thursday, 9th November, 2023 at 8.00 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Catherine Muyeka Mumma, MP.
- h) The Minutes of the 90th Sitting held on Thursday, 9th November, 2023 at 9.30 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- i) The Minutes of the 91st Sitting held on Friday, 10th November, 2023 at 9.00 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

- j) The Minutes of the 92nd Sitting held on Friday, 10th November, 2023 at 2.00 p.m. were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Catherine Muyeka Mumma, MP.
- k) The Minutes of the 93rd Sitting held on Tuesday, 14th November, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- l) The Minutes of the 94th Sitting held on Wednesday, 15th November, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Raphael Chimera Mwinzagu, MP.
- m) The Minutes of the 95th Sitting held on Thursday, 16th November, 2023 at 8.30 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Catherine Muyeka Mumma, MP.
- n) The Minutes of the 96th Sitting held on Thursday, 16th November, 2023 at 10.00 a.m. were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 481/2023

**MATTERS ARISING FROM MINUTES OF THE
PREVIOUS MEETINGS**

Under Min. No. 476/2023 – Petition by Simon Lenguiya on academic qualifications to be a Speaker of a County Assembly, the Senate, or the National Assembly

The Committee was informed that, following the meeting with the Petitioner and the County Assemblies Forum held on Thursday, 16th November, 2023, additional submissions had been received from the Kenya National Commission on Human Rights, the Kenya Law Reform Commission, the Independent Electoral and Boundaries Commission and the Association of Professional Societies in East Africa. The Petitioner had also submitted a written response to the submissions received.

The Committee was further informed that drafting of the Committee report on the Petition was underway.

MIN. NO. 482/2023

**CONSIDERATION OF A STATEMENT SOUGHT BY
SEN. MOHAMED CHUTE, MP, ON THE STATUS OF
COURT CONSTRUCTION PROJECTS IN KENYA**

The Committee was taken through the brief on the Petition, as contained in Committee Paper No. 35.

During deliberations, Members observed that there was need for clarity on –

- i) the status of various court construction projects across the country, including the terms of contract, the completion status, and legal implications where projects had been abandoned by contractors either due to lack of funding or due to escalation of costs;
- ii) the status of projects previously funded by development partners, including the reasons for discontinuation of such funding, and whether the Kenyan government would provide funding to complete the said projects; and
- iii) efforts that the Judiciary was putting in place to ensure equitable access to court infrastructure and to judicial services by all Kenyans,

Thereupon, the Committee resolved to –

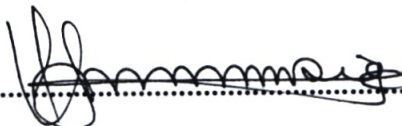
- 1) invite the Chief Registrar of the Judiciary to appear before the Committee to respond to the issues raised in the Statement and, additionally, to submit a detailed Report on the status of all the pending court construction projects in Kenya; and
- 2) following the said meeting, identify selected court construction projects where the Committee may undertake inspection visits.

MIN. NO. 483/2023

ADJOURNMENT

The Chairperson adjourned the meeting at nine minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 22nd November, 2023 at eight O'clock.

SIGNED:



DATE:

23/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-EIGHTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 22ND NOVEMBER, 2023 AT 8.00 A.M. IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 484/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty-nine minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 485/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

MIN. NO. 486/2023

**CONFIRMATION OF MINUTES OF THE
PREVIOUS MEETINGS**

The Minutes of the 97th Sitting held on Tuesday, 21st November, 2023 were confirmed as a true record of proceedings, after being proposed by, Sen. Hamida Ali Kibwana, MP and seconded by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 487/2023

**PETITION BY HON. SIMON LENGUIYIA
CONCERNING ACADEMIC QUALIFICATIONS
FOR ELECTION AS SPEAKER OF A COUNTY
ASSEMBLY, THE SENATE OR THE NATIONAL
ASSEMBLY**

The Committee taken through and considered the draft Report on the Petition by Hon. Simon Lenguiyia concerning Academic qualifications for election as Speaker of a County Assembly, the Senate or the National Assembly.

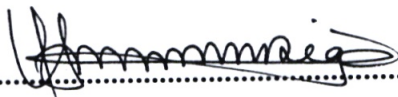
Thereupon, Members deliberated on the draft Report and made proposals to be incorporated as observations and recommendations at Chapters Three and Four of the Report, following which the report would be scheduled for adoption.

MIN. NO. 488/2023

ADJOURNMENT

The Chairperson adjourned the meeting at eighteen minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 23rd November, 2023 at eight O'clock.

SIGNED:



DATE:

23/11/2023.



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-NINTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 23RD NOVEMBER, 2023 AT 8.00 A.M. IN COMMITTEE ROOM 4, 1ST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwanzagu, MP | - Vice-Chair |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. David Barasa | - Assistant Sergeant at Arms |

MIN. NO. 489/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty-five minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 490/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Hamida Ali Kibwana, MP.

MIN. NO. 491/2023

**CONFIRMATION OF MINUTES OF THE
PREVIOUS MEETINGS**

The Minutes of the 98th Sitting held on Wednesday, 22nd November, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Hamida Ali Kibwana, MP.

MIN. NO. 492/2023

**PETITION BY HON. SIMON LENGUIYIA
CONCERNING ACADEMIC QUALIFICATIONS
FOR ELECTION AS SPEAKER OF A COUNTY
ASSEMBLY, THE SENATE OR THE NATIONAL
ASSEMBLY**

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by the Members. Thereupon the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Hamida Ali Kibwana, MP.

The Report having been adopted by a majority of the Members, Sen. Okiya Omtatah, MP informed the Committee that he did not concur with the findings and determination of the Committee on the Petition and would, pursuant to standing order 223(5) of the Senate Standing Orders, append a Minority Report.

MIN. NO. 493/2023

ANY OTHER BUSINESS

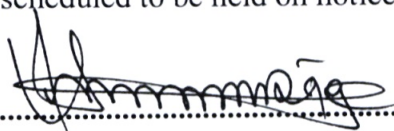
Members were informed that five (5) Committee Reports were scheduled in the Order Paper for tabling that afternoon, including four (4) Reports on Petitions. The Chairperson urged Members to be present in plenary to make comments once the Reports were tabled.

MIN. NO. 494/2023

ADJOURNMENT

The Chairperson adjourned the meeting at fourty-eight minutes past eight O'clock. The next meeting was scheduled to be held on notice.

SIGNED:



DATE:

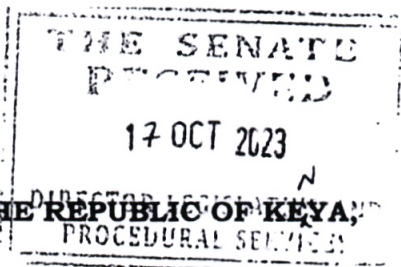
23/11/2023

Annex 2: Copy of the Petition

① ps deal.

TO:

THE SENATE OF THE REPUBLIC OF KENYA,
C/O, THE CLERK,
THE SENATE,
PARLIAMNT BUILDING,
PALIAMENT ROAD,
TEL: (254-2) 2221291 or 2848000,
E-mail: clerk.senate@parliament.go.ke



② No. change
please deal.

204
17/10/23

Cc:

HON. Sen. HILLARY KIRPROTICH SIGEI,
CHAIRPERSON,
THE COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS, SENATE.

RE: PETITION TO THE SENATE UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA 2010, THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING ORDERS 223 AND 225 OF THE SENATE ON THE ACADEMIC QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY, SENATE AND NATIONAL ASSEMBLY

I the undersigned,

A citizen of the Republic of Kenya, a Resident of Narok County and a member of the Narok County Assembly wish to state that it is in public interest that I formally lodge this Petition before this Honorable House concerning the disturbing question of academic qualification for one to be a speaker of the county assembly, senate and national assembly which goes to the issues of knowledge and compétnce of the speakers to fairly, justly and with authority decide contentious matters in the house as well as make decisions that are sound and in accordance with the law.

This Petition seeks to safeguard the honour and respect that the speaker's seat ought to attract as well as to promote good governance by ensuring quality decision-making in the house. This can only be achieved if the speaker's seat is protected from incompetence and ineptitude.

③ Ms. Mwangeli
You had dealt with an
earlier Petition on this
matter. Kindly review and
facilitate as per the S.O.
D. Chandra
18/10/2023.

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010, THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING ORDERS 223 AND 225 OF THE SENATE ON THE ACADEMIC QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY, SENATE AND NATIONAL ASSEMBLY

I HUMBLY draw the attention of the House to the following:

A. The Problem

1. Article 10 (2) of the Constitution of Kenya (hereinafter 'CoK') outlines principles of governance to include sharing and devolution of power, the rule of law, democracy and participation of the people, equity, social justice, inclusiveness, equality, human rights, non-discrimination, good governance, integrity, transparency and accountability; and sustainable development. CoK provides under article 10 (1) that the above highlighted principles of governance binds all state and public officers whenever they are applying or interpreting this Constitution, enacting, applying or interpreting any law; or making or implementing public policy decisions.
2. It follows, therefore, that any state or public officer must be equipped with knowledge and understanding on what the law provides, how to apply it and the idea of constitutionalism. Lack of deep knowledge in law, governance and general issues of life, prosperity, vision, cohesion, development and social equality can lead to unconstitutional legislations, low quality decisions, governance without qualitative consultation, wrong judgments and chaotic debates before the floor of the house.
3. While it can be argued that the law is at the disposal of everyone and that the general public has an idea what the law says, a rough idea of the law is not what one wants at the coveted speaker's seat. The speaker is the center of democratic engagements, debate, sobriety in the house, constitutionalism, and fairness, and like the wise Solomon he ought to be, a law should be enacted to protect his throne from incompetence.
4. The speaker makes critical decisions in the legislation process. The speaker guides debate in the chambers, rules on objections, guides the legislation process, settles contentious matters. He is the 'judge' of the assembly and his ruling is final as provided for in the standing orders.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING
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QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

5. As the 'judge', the speaker, his deputy and people who act as speakers in his absence – like any other arbiter – ought to be someone who is deeply knowledgeable on matters law, law-making process, application and interpretation of the law.
6. The speaker's knowledge of law plays an even bigger role at the county level. The devolved unit is where critical legislations are passed affecting the unique aspects of the people of the concerned county. The laws made at the county assemblies are therefore vital to the growth of the economy and at the heart of it is the speaker as the arbiter in the assembly. Thus, the country can economically and socially grow or collapse depending on how much knowledge the speaker possesses on matters law. An unconstitutional decision will be voided by the courts and may cause disharmony in administration. This will inevitably cause delay in service delivery and jeopardize the aspirations of the people of the concerned county expressed during budget-making process may as well turn into a dream deferred.
7. A law that conflicts with national legislation or one enacted without public participation stands to be invalidated. A legislation that does not conform with the constitutional edicts of principles of governance is a candidate for nullification. And the process of law-making must be as good as the output. If the speaker is not well informed and makes bad decisions, certainly the end product will be a poor product that may even be quashed by the court. Who loses? The people.
8. Currently, most county assemblies have speakers who are not well abreast of the law including the import of standing orders, the law-making process, interpretation and application of the law. Most speakers are not learned in law and grapples with very minor issues when the debate is on. Some cannot appreciate basic principles of law and are unable to contextualize issues and address them by applying the standing orders, constitutional provisions or national legislations to it.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
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SENATE AND NATIONAL ASSEMBLY**

9. They are swayed by radio/TV talks, political rhetoric, opinions of biased commentators or the noise of the majority in the assembly. In the end, the assemblies end up with poor legislations, some unconstitutional and have been vitiated by our courts.
10. The above is the problem I seek to have a solution for through this petition.

B. The academic qualifications to be speaker

11. Article 43 (1) of the 1963 Constitution provided that the speaker of the senate shall be elected from among the Senators themselves or persons who were qualified to be elected as senators. Article 45 (1) of the same Constitution applied *mutatis mutandis* to the position of speaker of the House of Representatives. The law did not prescribe academic qualifications to be elected to either of the two houses save that article 40 (1) (b) provided that one had to be able to speak and read the English language supposedly to be able to actively take part in the proceedings.
12. The 1969 Constitution at section 37 provided in almost similar terms as its predecessor that the speaker of the National Assembly was to be elected from members of the house or any person who qualified to be elected to the august house.
13. At article 106 of the 2010 Constitution, the qualification of the speaker is similar to that of a member of parliament. The new dispensation noted the problem the previous legislations had and brought in the aspect of education qualification. Article 99 (1) (b) provides that one is qualified to be elected as a member of parliament if he satisfies the educational requirement prescribed by the legislation.
14. With respect to County Assembly, CoK at article 178 (3) leaves it to the parliament to enact legislation prescribing qualifications for election to the position of county assembly speaker.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING
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QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

15. The above summary takes us to the Elections Act.
16. Section 22 (1) of the Elections Act provides that one must have a degree from a recognized University for him to contest elections as a Member of Parliament or County assembly. It follows therefore that speakers of both houses of parliament must have degrees as a prerequisite qualification. The law talks of a degree which implies a Bachelor's degree on any course.
17. Section 21 (1) of the Elections Act provides that a speaker of the County shares the same qualifications as members of the County Assembly. This means a speaker of the county assembly must also have a degree from a recognized University. Again, the course is not specified.
18. I am aware of the decisions of the court in which the issue of academic requirement have been litigated. I am aware of the judgment by Justice Mirima in **County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) (Constitutional Petition E229, E225, E226, E249 & 14 of 2021 (Consolidated)) [2021] KEHC 304 (KLR) (Constitutional and Human Rights) (15 October 2021) where the court declared section 22 (1) (b) (ii) of the Elections Act unconstitutional and for being in violation of articles 24, 27, 38(3) and 56 of the Constitution. The court declared the said provision in operational, of no legal effect and void *ab initio*. Simply put, the judge held that MCAs shall not be required to have degrees to contest for the seats.**
19. The invalidation of the said provision has the net effect of doing away with the degree requirement for one to be elected as speaker of County assembly. I say so because the qualifications for the position of speaker County Assembly are inseparable twins with those of being elected as MCAs by dint of section 21 (1) of the Elections Act.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING
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QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

20. In the judgment referred to above, Justice Mrima made reference to Kenya National Qualifications Framework Act which the judge said recognizes other modes of qualifications besides convectional ones. The judge said the law establishes the manner in which relevant qualifications may be awarded to a person and that such qualifications may, in appropriate instances, be equated to convectional degrees. The judge posited that the impugned provisions of the Elections Act were unconstitutional in so far as they focused on the University Degree as opposed to other forms of recognized academic qualifications.
21. While I do not disagree with the above findings of the court, there is a critical question of whether academic qualifications of the position of speaker should remain amorphous, undefined, left to other forms of recognized qualifications such that any form of education, course, and training fits, anything and everything goes. What becomes of a rudimentary mind that politics his ways to the speaker's seat?
22. As explained above, the speaker is the judge of the county assembly, he presides over assembly proceedings, makes decisions, rules on matters and his decision is final. Is his office not equivalent to a quasi-judicial body? Is he not the equivalent of a judge of the legislature (sic)? How can such a position be left open to any category and class of training and education? Are we not to be concerned about the quality, legality and constitutionality of the enacted legislations?

C. The proposal

23. From the above elucidation, it is evident the speaker of both houses of parliament as well as the County assemblies are critical to the development of the country. Further, it is evident that such positions ought to be occupied by characters who are knowledgeable in law and who can make informed decisions on various matters before them.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
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QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

24. For the above reasons, I propose that section 21 (1) and section 22 (1) (b) of the Elections Act be amended by adding academic qualifications of the speakers of both houses of the parliament and County Assembly to be a person who 'holds a Bachelor's degree in Laws from a recognized University'.
25. A concern may be raised as to whether this amendment will meet the same fate met by the requirement for degree for MCAs. This is highly unlikely for the reasons espoused below:
- i. The position of the speaker is to be distinguished from those of MCAs/MPs. The speaker does not represent constituencies/counties/wards but acts as an arbiter and preside over proceedings in the house. Therefore, the requirement is not discriminatory as the positions are inherently different. I will give two examples. One of the Chairperson of the Kenya National Commission on Human Rights who section 10 (1) (a) of the Kenya National Commission on Human Rights Act, 2011 requires to be a person with knowledge in law and experience of 10 years in matters relating to law and human rights. Two, the Attorney General who must be an advocate of 15 years' experience in line with article 156 (3) of CoK. The requirement for knowledge in law is premised on the unique inherent requirements of the offices. So why not the speaker's office who interacts with law and interpretation of the law on his daily assignments?
 - ii. The position of speaker requires a legal mind who understands the law and appreciates constitutionalism. This will ensure that the county assemblies and parliament passes quality laws that are also in conformity with the constitution. This will save the counties and parliament the time and resources wasted in litigation and the consequences of a negative outcome in court. It will also save in case backlog in court.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING
ORDERS 223 AND 225 OF THE SENATE ON THE ACADEMIC
QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

26. It could be argued that a speaker needs to be someone who understands a wide range of issues not limited to legal issues. It could also be argued that one does not have to be a lawyer to understand the law or make sound decisions. But again, I pose the question: what are the chances of getting it wrong with someone who is not learned in law? If the attorney-general, chairperson of the Commission on Human Rights, judges of our courts and members of tribunals must have degrees in laws because they decide legal questions why shouldn't the same apply to speakers who equally rule on law-making questions?

D. The question of amendment of the Constitution

27. For avoidance of doubt and to address a question that may illicit a debate, I wish to clarify that the above proposal does not require a constitutional amendment.
28. As pointed out above, Article 99 (1) (b) of CoK provides that one is qualified to be elected as a member of parliament if he satisfies the educational requirement prescribed by the legislation. It reads:

99

(1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament (read Speaker of the National Assembly and Senate) if the person –

(a).....

(b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament

29. Article 178 (3) which leaves it to the parliament to enact legislation prescribing qualifications for election to the position of county assembly speaker reads as follows:

178

(1)

(2)

(3) Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER
ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010,
THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING
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QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY,
SENATE AND NATIONAL ASSEMBLY**

30. I wish to make it clear that I do not have any problem with the above provisions. They are specific that Parliament is the body to enact laws on academic qualifications and election of speakers which the Parliament did by enacting the Elections Act. It is this statute that I propose be amended, AND NOT THE CONSTITUTION.

THAT

31. To the best of my knowledge this matter has been initiated before the Parliament and is only being considered by this House through the relevant committee.

THAT

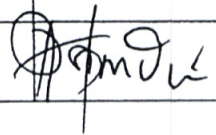
32. To the best of my knowledge there is no matter before the courts.

The Petitioner Humbly Requests that:

33. This petition be dealt with as soon as possible in view of the urgency and seriousness of the issues raised to avoid political interest that may collapse it during the 2027 electioneering.
34. Section 21 (1) and section 22 (1) (b) of the Elections Act be amended by adding academic qualifications of the speakers (and their deputies) of both houses of the parliament and County Assembly to be a person who 'holds a Bachelor's degree in Laws from a recognized University'.
35. The standing orders of the houses to be amended to provide that powers of members of the speakers' panel during house proceedings to be limited to facilitation of debate and that matters requiring ruling to be deferred to the date the speaker or his deputy shall be available to make a decision.

AND Your Humble Petitioner will ever Pray.

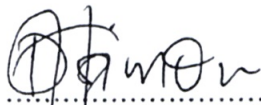
PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, 2010, THE PETITION TO PARLIAMENT (PROCEDURE) ACT, STANDING ORDERS 223 AND 225 OF THE SENATE ON THE ACADEMIC QUALIFICATIONS TO BE A SPEAKER OF THE COUNTY ASSEMBLY, SENATE AND NATIONAL ASSEMBLY

No.	PETITIONER'S NAMES	ADDRESS	IDENTIFICATION NO.	SIGNATURE
	Simon Lenguiyia	19 Narok	31068471	

PETITION concerning the academic qualification for one to be a speaker of the county assembly, senate and national assembly.

Name of Petitioner: Hon. Simon Lenguiyia **alias** SK Lenguiyia, Member Narok County Assembly.

Signature/Thumb



Impression

.....

Hon. Simon Lenguiyia alias SK Lenguiyia

Mobile No: +254720893562

Email: simonkilonga@gmail.com

Annex 3: Submissions by Independent
Electoral and Boundaries
Commission

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



OUR REF: IEBC/DLS/CORR/11/2023

16th November, 2023

YOUR REF: SEN/DGAC/JLAHRC/2023(157)

Office of the Clerk,
The Senate
P.O. Box 41842-00100
NAIROBI

Dear Mr. Nyegenye,

RE: SUBMISSIONS ON THE PETITION REGARDING THE ACADEMIC QUALIFICATIONS
FOR ELECTION AS SPEAKER OF THE SENATE, THE NATIONAL ASSEMBLY OR A
COUNTY ASSEMBLY

Reference is made to the above and your letter dated 7th November, 2023.

As requested, the Commission hereby forwards its memorandum on the petition regarding the academic qualifications for election as speaker of the senate, the national assembly or a county assembly.

Kindly find attached the Commission's submissions on the Petition as requested.

Yours Sincerely,

Marjan Hussein Marjan, MBS
Commission Secretary/ CEO

Encl. (1) Submissions on the academic qualifications for election as speaker of the Senate,
the National Assembly or a County Assembly

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

**SUBMISSION ON THE PETITION REGARDING THE ACADEMIC
QUALIFICATIONS FOR ELECTION AS SPEAKER OF THE SENATE, THE
NATIONAL ASSEMBLY OR A COUNTY ASSEMBLY**

Dated 16th November, 2023

Independent Electoral & Boundaries Commission (IEBC)

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A. INTRODUCTION

1. The Independent Electoral and Boundaries Commission (IEBC) is a constitutional Commission established under Article 88(1) of the Constitution and its mandate is provided for under Article 88(4) of the Constitution and functions in Section 4 of the IEBC Act, 2011. It is responsible for supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.
2. Article 106 of the Constitution of Kenya, 2010 outlines that there shall be-
 - a. a Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members; and
 - b. a Deputy Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among the members of that House.
3. This means that the qualifications for one to be elected as a speaker of any of the two houses of Parliament is to have qualifications like those of a candidate intending to vie as a Member of Parliament.
4. Previously, this would mean that for one to be elected as a Speaker of any of the two (2) houses of Parliament, they would need to have a University Degree from a recognized University pursuant to Section 22 (1) b (i) of the Elections Act before the Justice Anthony Mrema in High Court of Kenya at Nairobi, Constitutional Petition 28 of 2021 & Petition E549, E037 & E065 of 2021 & E077 of 2022 (Consolidated) [2022] (KLR) Paul Macharia Wambui & 10 others v Speaker of the

National Assembly & 6 others declared section 22 (1) b (i) of the Elections Act to be unconstitutional.

5. Standing Order Number 4 of the Standing Orders of the National Assembly outlines that a Speaker shall be elected when the House first meets after a General Election and before the House proceeds with the dispatch of any other business, except the administration of the Oath or Affirmation of Office to Members-elect present.
6. Article 178 of the Constitution of Kenya, 2010 provides for a County Assembly Speaker. It outlines that each County Assembly shall have a speaker elected by the County Assembly from among persons who are not members of the assembly.
7. Section 21 of the Elections Act provides for the election of a County Assembly Speaker;
 - (1) The speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.
 - (2) For the purpose of the election of the speaker of the county assembly after the first election under the Constitution, the procedure set out in the First Schedule shall apply.
 - (3) The deputy speaker of a county assembly shall be elected from among persons who are members of that county assembly.
 - (4) The First Schedule shall, with necessary modifications, apply to the election of the deputy speaker after the first election under the Constitution.
8. Pursuant to Section 22 (1) b (ii) of the Elections Act, the position previously was that, for one to be elected as a Speaker of a County Assembly, they would need to have a University Degree from a recognized University. The position was departed

by Justice Anthony Mrema in High Court of Kenya at Nairobi, Petition E317 of 2022 Philip K. Langat v Independent Electoral and Boundaries Commission; Attorney General & 4 others (Interested Party) [2022] after declaring section 22 (1) b (ii) of the Elections Act to be unconstitutional.

9. Administratively, the Commission is involved in the clearance of the candidates who intend to vie as Speakers of County Assemblies. This is by way of ensuring the Candidates have the requisite qualifications besides the educational ones in line with Section 21 (1) of the Elections Act. This is done at the County level.

HISTORICAL BACKGROUND OF ACADEMIC QUALIFICATIONS FOR ELECTIVE OFFICE

10. Before 2012, Section 22 (1) of the Elections Act provided as follows:

(1) A person may be nominated as a candidate for an election under this Act only if that person—

- (a) is qualified to be elected to that office under the Constitution and this Act; and
- (b) holds a post-secondary school qualification recognised in Kenya.

11. The above provision applied to those who seek to be elected as Members of Parliament and Members of the County Assemblies. Further, section 2 (2) provided that a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.'

12. In the High Court of Kenya at Nairobi Petition 198 Of 2011 Johnson Muthama v Minister for Justice & Constitutional Affairs & another [2012] eKLR, Justice Mumbi Ngugi declared section 22(1) on the post-secondary qualification to be unconstitutional owing to various factors, one being that it violates the provisions of the Constitution by excluding many who may not, through no fault of their own,

have been able to achieve post-secondary education. The Court also stated that the provisions of the said section fail the test of constitutionality as they do not accord with the national values and principles and usurp the sovereign powers of the people of Kenya. They cannot also meet the provisions of Article 24 as being *'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.'*

13. The Court continued to uphold the provisions of Section 22(2) on the degree qualification for persons seeking to be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor stating that the educational requirements for the positions are reasonable and justifiable. The number of positions required is reasonably small, the nature of the duties and functions to be performed by those holding the positions is such as would require higher educational qualifications and skills and wider exposure which higher education allows a person to acquire.
14. Prior to the 2017 General Election, a Multi-Sectoral Working Group under the Office of the Attorney General was formed. The group brought together various agencies in the political arena including the Independent Electoral and Boundaries Commission (IEBC), the Ethics and Anti-Corruption Commission (EACC), and the Office of the Registrar of Political Parties.
15. The working group was tasked with creating awareness on the leadership and integrity requirements for candidates seeking election to various elective posts in the 2017 general elections; clarify the roles and responsibilities of various actors in terms of ensuring compliance with leadership and integrity provisions under the CoK6 , Elections Act, the Leadership and Integrity Act, and the Political Parties Act ;to promote collaboration in the enforcement of chapter six of the Constitution of Kenya, 2010 (on leadership and integrity) and other relevant laws and to provide

an effective mechanism for ensuring issues of leadership and integrity are resolved expeditiously in order to support the electoral process.

16. Chapter Six of the Constitution of Kenya, 2010 and the Leadership and Integrity Act, outline that State officers should exhibit highest level of responsibility in the administration of public affairs tasking them to have conduct that is beyond reproach. Taking these provisions into consideration, the Elections Act had provided the President, Deputy President, Governors, and Deputy Governors to be required to hold a degree from a recognized institution.
17. The working group came up with proposals to have this requirement replicated to other elective positions particularly those of the member of national assembly as well as a mandatory post-secondary school diploma for individuals seeking office as members of county assemblies.
18. The working group in coming up with the proposal outlined that they were necessitated by a great need to improve the quality of leadership in the Country.
19. The amendment was enacted by where it substituted the requirement of a post-secondary qualification as a criterion for eligibility to vie for parliamentary seats with that of holding of a degree from a university recognized in Kenya. Having passed the said amendment, Parliament proceeded to suspend its operation till the general election to be held after the 2017 general election. This essentially meant that the provision would be use during the 2022 General Election.
20. The interpretation of “general election to be held after the 2017” general election was the subject of interpretation in the High Court of Kenya at Machakos Constitutional Petition E004 Of 2021 Wilfred Manthi Musyoka v Returning Officer, Independent Electoral & Boundaries Commission, Machakos County & 4 others where the Court was invited to interpret whether a by-election constituted the meaning of a “general election to be held after the 2017” This petition was

challenging the candidacy of Agnes Kavindu Muthama whom the petitioner claimed she lacked the requisite qualifications to vie for the position of Senate.

21. In the end, the Court dismissed the petition.

22. Prior to the 2022 General Election, the Courts removed the degree qualification for Members of Parliament and Members of County Assemblies. The same has been extended to the positions of County Governors and the President.

PARLIAMENTARY AND COUNTY ASSEMBLY SPEAKERS

23. Each house of Parliament and County Assembly has a Speaker who is an *ex-officio* member as has been captured in various paragraphs above. Ideally, the Speaker should be a neutral person devoid of any political influence and is elected by the members of the respective house of Parliament or County Assembly.

24. The fact that the Speaker is elected by the members of the respective house of Parliament or County Assembly, shows that he/she has a seniority aspect higher than the members who have elected him/her.

25. Article 146 (2) of the Constitution of Kenya, 2010 encapsulates the procedure when a vacancy occurs in the Office of the President. It outlines that, the Deputy President shall assume the Office of the President for the remainder of the term of the President.

26. Article 146 (2) b outlines that, if the Office of the Deputy President is vacant or the Deputy President is unable to assume the office of the President, *then the Speaker of the National Assembly shall act as President* (emphasis ours) and an election to the Office of the President shall be held within sixty days after the vacancy arose in the Office of the President.

27. This underscores the fact that under certain circumstances, the Speaker of the National Assembly can be a head of state albeit temporarily.
28. Article 182 of the Constitution of Kenya, 2010 is similar to Article 146 only that 182 applies to Counties. Article 182 encapsulates the procedure when a vacancy occurs in the Office of County Governor. It outlines that, the Deputy Governor shall assume the Office of the County Governor for the remainder of the term of the County Governor.
29. Article 182 (4) states; If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, *the speaker of the county assembly shall act as county governor* (emphasis ours).
30. Under certain circumstances, the Speaker of a County Assembly can be a County Governor, albeit temporarily.
31. The president can be equated to being the Chief Executive Officer of the country while County Governors are the CEOs of Kenya's 47 County governments. These positions require governance experience and a visionary leadership that is partly the product of a mind broadened by education.
32. From the reading of Article 146, it would be correct to conclude that any person who wishes to vie for the position of Speaker of any house of Parliament should in fact possess the qualifications similar to those of a Presidential Candidate except for aspects such as the signatures of supporters and further specify that he/she should be a holder of a Degree from a recognized University.
33. The same should apply to those intending to vie for the position of a County Assembly where they should possess the qualifications similar to those of a County

Governor with necessary modifications and further specify that he/she should be a holder of a Degree from a recognized University.

AN OVERVIEW OF THE FUNCTIONS OF PARLIAMENTARY AND COUNTY ASSEMBLY SPEAKERS

34. Zooming in to the specific functions and duties of the Speakers of both Parliament and County Assemblies, it is not in contention that a Speaker has to understand the different laws and the standing orders of the respective houses.
35. The legislature is the law-making arm of the Government. These laws are meant to impact and be in use throughout the Country. This is the same scenario in the County Assemblies. It therefore means that the Speaker has to take charge of the whole legislative process.
36. It would be paramount to have a Speaker well versed with matters policy, law, political science and other related fields to guide the members on the legislation process.
37. As enumerated in the Petition, the Office of the Speaker has a 'quasi-judicial' status. The Speaker has to make a ruling on a lot of matters ranging from points of order during debates, the motions to be introduced on the floor of the House, eventuality on conduct of members e.g., suspension of a member pursuant to standing orders due to erratic behavior, among other things.
38. It is important for the office holder of the office of the Speaker to have a good grasp and pool of experience in the fields of law, political science, public policy among others.
39. The functions of a Speaker are not comparable to those of the members of the respective assembly. The Speaker has a higher responsibility and the same is reflected even in terms of their remuneration and other perks that accompany the office. It

is therefore, paramount to have the qualifications of a Speaker separate from those of the members.

40. In the United States, there are no educational requirements to become a congressman or Congresswoman which is also the qualification needed for one to become a Speaker. As at 2018, all members of the United States Senate had higher degrees. In the House of Representatives, only 19 members out of 435 did not have higher degrees (15 Republicans and four Democrats). There was only one governor without a college degree.

41. Going by past trends, members of the Congress are inclined to elect a Speaker of the Congress and will mainly opt for a person with degrees in political science, law or other social sciences relating to governance. Some members state that they would prefer a former or retired judge for the position. This subtly implies that a Degree related to Governance is paramount in the position of the Speaker.

CONCLUSION

Owing to the foregoing, it is IEBC's considered view that there be academic qualifications for persons intending to vie as Speaker for both Parliament and County Assemblies. The said educational qualification to be a Degree from a recognized University. It should not be limited to a Bachelors Degree in Law as outlined in the Petition, but a Degree in the field of law, political science, public policy or other related field owing to the fact that Parliamentary and County debates are from a wide range of fields.

Borrowing from the words of Justice Mumbi Ngugi, the Commission is of the opinion that, the educational requirements of a Degree qualification for the positions of Speakers of both Parliament and County Assemblies are reasonable and justifiable. The number of positions required is reasonably small, the nature of the duties and functions to be performed by those holding the positions is such as would require higher educational

qualifications and skills and wider exposure which higher education allows a person to acquire.

The Commission recommends an amendment to Article 106(a) of the Constitution to separate the conjoined requirement of the Speaker being same as those of Members of Parliament and in fact outline that the requirements should mirror those of a Presidential Candidate with over and above the degree qualification outlined above.

Further, IEBC recommends an amendment of Section 21 (1) of the Elections Act also ought to be amended to separate the requirement of a County Assembly Speaker so as to mirror those of a County Governor in addition to the degree qualification suggested above.



MARJAN HUSSEIN MARJAN, MBS
COMMISSION SECRETARY/CEO

Annex 4: Submissions by Kenya Law
Reform Commission

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

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When replying please quote

Ref. No. **KLRC/8/86(37)**

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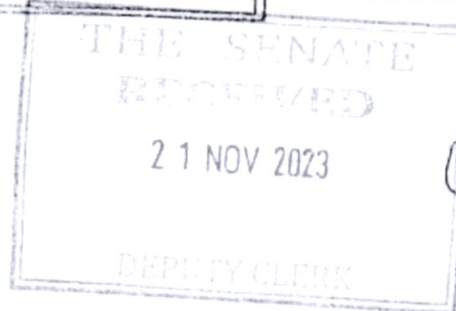


KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
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20th November, 2023

Mr. J. M. Nyaganye, CBS
Clerk of the Senate
Clerks Chambers
Parliament Buildings
P O Box 41842 - 00100
NAIROBI



① DGAC

kindly deal

Dear *Senr*,

RE: PETITION BY HON. SIMON LENGUIYA REGARDING THE ACADEMIC QUALIFICATIONS FOR ELECTION AS A SPEAKER OF THE SENATE, THE NATIONAL ASSEMBLY OR COUNTY ASSEMBLY

E 21/11/2023

Your letter Ref SEN/DGC/JLAHRC/2023/(156) dated 7th November, 2023 on the above subject refers.

The Kenya Law Reform Commission (KLRC) is established under the Kenya Law Reform Commission Act No. 19 of 2015 with the mandate of keeping the law under review and recommending its reform to ensure among other things that the law conforms to the Constitution, is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

KLRC discharges its mandate through undertaking legal research, drafting Bills, preparing law reform reports based on government policy and public consultations. KLRC's law reform mandate is discharged to both the national and county governments. In this regard KLRC has over the years worked closely with various Parliamentary Committees, in the reform of various branches of law.

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② ADD-Governance
SCA - JASSR

kindly deal

22/11/2023

The KLRC has studied the Petition by Hon. Simon Lenguiya and makes the following observations.

1. ANALYSIS OF THE PETITION:

- (a) The Petitioner's case in a nutshell is that there is a grave danger of legislative assemblies passing unconstitutional and substandard legislation unless they are guided by a Speaker with "deep knowledge in law, governance and general issues of life."
- (b) He avers that the Speaker ought to be like the wise Solomon and a "judge" because he makes critical decisions in the legislation process and guides the debate.
- (c) He further notes that unless the Speaker is possessed of this knowledge, the legislative assembly is bound to pass poor legislation and recommends that the Speaker, Deputy Speaker and temporary Speakers ought to possess at least a bachelors degree in law.
- (d) Finally, he points out that current Speakers of county assemblies who are not lawyers end up being swayed in their judgments by the media, political rhetoric, biased opinions and majority view.

2. HISTORICAL ANALYSIS OF CONSTITUTIONAL PROVISIONS RELATING TO THE QUALIFICATION OF SPEAKERS

- a) Section 43(1) of the 1963 Constitution provided that there shall be a Speaker of the Senate who shall be elected by the Senate from among the persons who are Senators or are qualified to be elected as such.
- b) Section 45(1) provided that there shall be a Speaker of the House of Representatives who shall be elected by that House from among persons who are Members thereof or who are qualified to be elected as such.
- c) Section 37 of the 1969 Constitution provided that there shall be a Speaker of the National Assembly, who shall be elected by the Assembly, in accordance with the standing orders, from among persons who are members of the Assembly or are qualified to be elected as such members, other than the President, the Vice-President, Ministers, Assistant Ministers and the Attorney-General.
- d) Article 106 (1) (a) of the CoK 2010 provides that there shall be a Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members.
- e) Article 99 sets out qualifications of being elected as a member of Parliament if the person, among other things, satisfies any educational, moral and ethical requirements prescribed by the Constitution or by an Act of Parliament.

- f) Article 178 (3) provides that Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies.
- g) Section 21(1) of the Elections Act, 2011 provides the speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.
- h) Section 22 (1) of the Elections Act, 2011 provides that a person may be nominated as a candidate for an election only if that person is qualified to be elected to that office under the Constitution and the Act; and holds
 - (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or
 - (ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.

PETITIONER'S PRAYER

The Petitioner requests Parliament to:

- a) Amend sections 21(1) and 22(2) of the Elections Act to insert a provision that academic qualification of the Speakers of the two Houses of Parliament as well as the county assemblies shall include a bachelor of laws degree from a recognized university; and
- b) Distinguish the position of the Speaker from that of members of legislative assemblies since Speakers do not represent an electoral area.

KLRC's OBSERVATIONS

1. KLRC notes the amendments requiring a university degree as a qualification was introduced in the run up to the 2022 general elections through the Election Laws (Amendment) Acts of 2021 and 2022. The amendments were met with multiple petitions which were consolidated into the *County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) [2021] eKLR Constitutional Petition E229, E225, E226, E249 & 14 of 2021 (Consolidated) and Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated) High Court at Nairobi AC Mrima, J April 13, 2022*. In summary the Court held as follows:
 - i. A declaration was issued that section 22(1)(b)(i) and (ii) of the Elections Act were unconstitutional and in violation of article 10(2)(a) of the Constitution for failure to undertake adequate public participation.

ii. A declaration was issued that section 22(1)(b)(i) and (ii) of the Elections Act was unconstitutional and in violation of articles 24, 27, 38(3) and 56 of the Constitution.

iii. An order was issued that section 22(1)(b)(i) and (ii) of the Elections Act was inoperational, of no legal effect and void ab initio. For clarity, the requirement that a person had to possess a degree from a university recognized in Kenya to qualify to be a Member of Parliament in Kenya was nullified.

2. The national values and principles of governance enshrined in the Constitution include non-discrimination, inclusiveness, human rights, good governance among others.
3. Any form of limitation of human rights including political rights under Article 38 of the Constitution must pass the test of limitation enshrined under Article 24.

KLRC'S CONCLUSION

1. The requirement to preserve the position of Speakers of legislative assemblies to persons holding bachelors degree from recognized universities has a number of implications which should be properly analyzed including the following:
 - a) Whether it is rational, reasonable and justifiable in an open democratic society to lock out all other professions.
 - b) Whether it is discriminatory to other professions.
 - c) Whether it limits or restricts the political rights of persons who do not hold bachelors degree in law.
 - d) Whether the number of lawyers in Kenya and the distribution is sufficient across all wards in Kenya
2. The Commission is however aware that qualifications of the Speaker are likely to influence both the quality of the debate as well as quality of legislation.
3. There is nothing that stops Parliament from legislating different qualifications for the Speakers of legislative assemblies from those of elected members.

We thank you for your continued support and cooperation.

Yours *Sincerely,*



Joash Dache, MBS
SECRETARY/CEO

Annex 5: Submissions by Kenya National
Commission on Human Rights



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

**MEMORANDUM ON THE PETITION BY HON. SIMON LENGUIYIA REGARDING
THE ACADEMIC QUALIFICATIONS FOR ELECTION AS SPEAKER OF THE
SENATE, THE NATIONAL ASSEMBLY, OR A COUNTY ASSEMBLY**

TO

**THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

PRESENTED BY: ROSELINE ODEDE, HSC: CHAIRPERSON

DATED: 15th NOVEMBER 2023

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A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under Article 249 of the Constitution has the mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. Through a letter dated 7th November 2023, the Senate invited the Commission to present its submissions on a petition by Hon. Simon Lenguiya regarding the academic qualifications of the Speaker of the National Assembly, Senate, and County Assemblies. Pursuant to the Commission’s mandate as well as experience in democracy, electoral reforms and governance, we submit the following views for your consideration.

B. BACKGROUND

4. This petition before the Senate avers that the Speaker of the National Assembly, Senate, and County Assembly should possess a degree in law on the grounds of the nature and tasks that are bestowed upon that seat. Article 106 (1) (a) of the Constitution provides for the qualifications of a speaker of both houses of parliament to be similar to that of the member of parliament. Section 22 of the Elections Act provides for the contestants for Member of Parliament and Member of County Assembly seats to have a university degree qualification. However, this Section was declared unconstitutional by the High Court in 2021 in the case of **[2021] KEHC 304 (KLR)** and therefore did not apply in the 2022 General Election.
5. The petitioner herein, therefore, proposes that based on the roles of a speaker, the qualification of the holder should be a law degree and goes further to give examples of the Chair of the Kenya National Commission on Human Rights as well as the Attorney General where the law expressly provides for the holder to have a background in law.

C. ROLES AND RESPONSIBILITY OF A SPEAKER

6. Before examining the qualification question, it is important that we analyze the roles of the Speaker of the County and National Assemblies to inform the determination of the educational needs necessary for undertaking these duties.
7. The roles and duties of a Speaker entail presiding over parliamentary sessions, maintaining order, and ensuring that debates follow established rules and procedures including the standing orders. The Speaker further interprets and applies parliamentary rules, making rulings on points of order raised during debates. A key role of the Speaker is to facilitate debates by giving Legislatures the opportunity to speak, managing speaking times, and ensuring that discussions are constructive and relevant. In the event of a tie during a vote, the Speaker often has a casting vote to break the tie.
8. The Speaker has the authority to take disciplinary actions against members who violate parliamentary rules and standing orders. With regard to external relations of the National and County Assemblies and Senate, the Speaker is responsible for communicating official decisions, messages, and announcements on behalf of the Parliament. The Speaker represents the Parliament in its relations with the other arms of government including the Executive and Judiciary as well as other relevant authorities. The Speaker may also represent Kenya internationally in parliamentary forums.
9. The role of the Speaker is therefore central to the effective functioning of the parliamentary system both at the national and county levels, ensuring fair and orderly proceedings while upholding the principles of democracy and representation. From the above description of the role of a speaker, it is not strictly tied to law but rather to parliamentary proceedings. The KNCHR therefore advises focusing on the experience and skills and the ability to perform the tasks arising from the scope of work responsibilities bestowed on the Speaker.

D. COMPARATIVE ANALYSIS ACROSS OTHER JURISDICTIONS

10. The qualifications for a Speaker vary by country and jurisdiction. While being a lawyer is not a strict requirement, many countries find it beneficial for the Speaker of Parliament to have a legal background. A legal education can provide a solid foundation in understanding laws, constitutional principles, and parliamentary procedures. However, effective communication, impartiality, and leadership skills are equally important. Some Speakers may come from diverse backgrounds, such as political science or public administration, as long as they possess the necessary qualities to preside over parliamentary sessions impartially and competently.

11. In the UK, for instance, Speakers are often experienced Members of Parliament with a legal or parliamentary background. In the United States, the Speaker of the House is typically an elected member with political acumen. In Germany, a seasoned parliamentarian with a deep understanding of legislative processes is the basis for the selection of a speaker. In Canada, speakership candidates are often senior MPs with a reputation for fairness.
12. The trends are also similar in the African continent. In South Africa, the Speaker is often an experienced Member of Parliament with a good understanding of parliamentary rules. Legal qualifications are not mandatory, but a legal background can be beneficial. In Nigeria, the Speaker is typically a member with legislative experience. Legal or educational qualifications may enhance a candidate's suitability but are not strictly required. In Ghana, the Speaker is usually a seasoned parliamentarian with a legal or political science background.
13. From this comparative analysis, it is clear that the common criteria focusses more on parliamentary experience, integrity, impartiality, communication skills, and a deep understanding of parliamentary procedures. Academic qualifications may not be mandatory, but a strong background in law, political science, or public administration is often beneficial. Additionally, the ability to mediate, manage debates, and uphold parliamentary rules is crucial for an effective Speaker.

E. HUMAN RIGHTS CONSIDERATIONS

14. The Commission notes that access to higher education particularly the law degree locks out the majority of Kenyans, especially the vulnerable groups and marginalized communities. According to the 2019 Kenya Population and Housing Census, only 1.2 million Kenyans held university degrees which translates to about 3.5% of the entire Kenyan population. With regards to lawyers, statistics from the Law Society of Kenya indicate slightly over 20,000 registered lawyers which translates to 0.04% of the total population. This therefore means that to strictly prescribe law as the only eligibility for Speakers at both the national and county levels would be reserving it for a small fraction of the society.
15. A human rights-based approach guides that qualifications of such a public nature should not discriminate based on characteristics like gender, race, religion, or other protected attributes. Consideration of systemic marginalization and denial of opportunities for vulnerable groups should be taken into consideration. The law should uphold principles of equality and non-discrimination, respecting individuals' rights to equal opportunities. Additionally, the qualifications should not infringe on the right to participate in government, as stipulated in international human rights instruments.

16. Any eligibility criteria must be reasonable, proportionate, and not arbitrary, allowing diverse individuals to engage in the democratic process including the application of affirmative action for vulnerable groups. Transparency in the selection process and accountability of decision-makers are also essential human rights principles to uphold during the drafting of any changes to the legislation on the qualifications of a Speaker.

F. CONCLUSION AND RECOMMENDATIONS

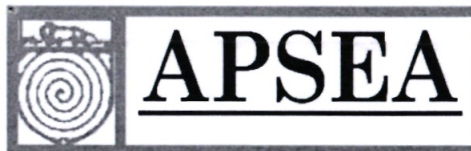
17. Whilst the importance of the role of the Speaker at the Senate, National and County Assemblies is appreciated, the prescribing of qualifications should not perpetuate discrimination nor should it be at the expense of democratic principles and provisions of the Constitution. The focus should be on a transparent, inclusive, and accountable selection process of individuals who have the right skill set to deliver on the roles of the Speaker in a manner that meets the demands of the public and tenets of the Constitution.
18. It is therefore the view of the KNCHR that preference on the qualifications of a Speaker must be given to a factual interpretation that favors the full participation of a wide range of citizens, rather than an interpretation that might impede it; and that the provisions of the law must furthermore be of non-discriminatory application so that in the face of similar situations, the reasons for exclusion will be applied equally, without any distinction whatsoever regarding the subject.
19. The Commission therefore recommends that we refrain from strictly prescribing law as the qualification of Speakers at the Senate, National Assembly and County Assemblies but rather embrace a selection process that is transparent and meets the requirements of Chapter 10 and 27 of the Constitution. Any changes to the law governing the qualifications of Speakers must be subjected to effective and meaningful public participation of all citizens.

SIGNED:

A handwritten signature in black ink, appearing to read 'R. Odede', written in a cursive style.

**ROSELINE ODEDE, HSC
CHAIRPERSON**

Annex 6: Submissions by Association of
Professional Societies in East
Africa



Association of Professional Societies in East Africa (APSEA)

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APSEA SUBMISSION ON THE PETITION BY HON SIMON LENGUIYA REGARDING THE ACADEMIC QUALIFICATIONS FOR ELECTION AS A SPEAKER OF THE SENATE, THE NATIONAL ASSEMBLY OR A COUNTY ASSEMBLY

The Association of Professional Societies in East Africa (APSEA) is a joint forum and umbrella body of professional societies formed in 1961 that brings together professional bodies of diverse disciplines. Currently, the Association has thirty-two corporate members in Kenya constituting all major professions in the country and with over 500,000 individual professionals.

APSEA has reviewed the petition submitted and is of the following opinion:

#	PETITION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Section 21(1) and 22 (1) of the Election Act be amended by adding academic qualifications of the Speakers and (their deputies) of both houses of Parliament and County Assembly to be a person who “holds a bachelor’s degree in laws from a recognized University”	The proposal that the Speaker and his deputies be one must be an holder of a bachelor’s degree in laws is discriminatory and essentially precludes other Kenyan professionals, who may have the competence to discharge the functions of the office of the speaker or deputy in a democratic state for the following reasons: 1. Petitioner fails to produce empirical evidence and statistics to support the allegation that lack of bachelor’s degree in laws qualifications has had detrimental effects in the county assemblies whose speakers and deputies lacked the law degree in the three cycles of Assemblies. 2. The Court decision on Constitutionality of Section 21(1) and 22 (1) of the Election Act has not been appealed	APSEA recommends that: i) The petition be dismissed in its entirety ii) The Petitioner considers to appeal the decision by Justice Mirima on the Constitutionality of Section 21(1) and 22 (1) of the Election Act to the Supreme Court for	▪ To protect the Constitutional requirement for inclusivity and representation ▪ There are adequate checks and balances provided to support the office of speaker in the conduct of his functions namely - the provisions in the Standing Orders of the different Assemblies, the

#	PETITION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		3. The Speaker being an ex-officio Member of the Assembly get into office through an election process. In many jurisdictions, the Speaker retains substantial power and authority and is generally expected to remain politically impartial at all times. As a presiding officer, the Speaker oversees the orderly flow of business and further ensures that the House observes parliamentary rules and traditions, both written and unwritten. The Speaker must interpret the rules impartially to maintain order and to defend the rights and privileges of Members. In according Members opportunity to debate, the Speaker takes into consideration several factors including parliamentary parties' leadership structures, gender and regional balance, as well as Members' specific interest on a matter. The Speaker also decides on matters of procedure and not necessarily law which is the jurisdiction of the Courts of law. 4. The office of the Deputy Speaker is established in the Constitution and provided for in the Standing Orders. The Deputy Speaker is elected by Members and performs various roles under the Office of the Speaker or as delegated by the Speaker. The Deputy Speaker is the Chairperson of the Committee of the Whole House and also chairs the Liaison Committee. In the absence of the Speaker, the Deputy Speaker presides over a sitting of the House. In the event that the Speaker's office falls vacant, the Deputy Speaker presides over the election of the Speaker unless the Deputy Speaker is one of the candidates.	further determination. iii) education system and curriculum address civic education and prepare future citizens and electorate	Elections Act and the County Governments Act - induction and orientation for the holders, speakers panel, various internal offices such as the legal departments, technical assistants, continuing educational training and development etc to enable them to carry out their function effectively

#	PETITION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		Limiting the office to a specific degree holder is discriminatory, limiting the democratic process and might be considered unconstitutional.		
2.	The Standing orders of the house be amended to provide that powers of the speaker's panel during house proceedings be limited to facilitation of debate and that matters requiring ruling be deferred to the date the speaker or his deputy shall be available to make a decision.	▪ The mandate of the Speaker and the Speakers' panel is to consider emerging procedural issues and challenges encountered whilst presiding in the House. The standing orders and parliamentary procedures are already aligned with the Commonwealth Parliamentary practices. ▪ Speakers' role in determining questions at the Assembly is already limited to guiding the proceedings. The County Government Act section 20. (1) provides that any question proposed for decision by the county assembly shall be determined by a majority of the members of the county assembly present and voting. (2) On a question proposed for decision by a county assembly— (a) the speaker of the county assembly has no vote; and (b) in the case of a tie, the question is lost.	Consider dismissal of the petition	The Speakers panel is important for orderly conduct of business of the Assembly.

Annex 7: Submissions by County
Assemblies Forum



COUNTY ASSEMBLIES FORUM (CAF)

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CAF MEMORANDUM ON THE PETITION BY HON. SIMON LENGUIYIA REGARDING THE ACADEMIC QUALIFICATIONS FOR ELECTION AS SPEAKER OF THE SENATE, THE NATIONAL ASSEMBLY OR A COUNTY ASSEMBLY

TO: Mr. Jeremiah Nyegenye, CBS, Clerk of the Senate, Parliament of Kenya.

FROM: The County Assemblies Forum.

DATE: 16th November 2023.

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that strengthen the devolved system of Governance in County Governments.

2.0. BACKGROUND

- 2.1. This Memorandum has been prompted by a petition presented by Hon. Simon Lenguiya, a Member of the Narok County Assembly, highlighting concerns about the current qualifications of Speakers and their impact on the legislative process.
- 2.2. Hon. Simon Lenguiya, in his petition, argues for the amendment of electoral laws to introduce mandatory academic qualifications for Speakers of the Senate, National Assembly, and County Assembly. His proposal is motivated by a perceived lack of adequate knowledge among current Speakers, particularly in county assemblies, regarding the law, standing orders, and the legislative process. He contends that this deficiency may lead to the enactment of substandard legislation, some of which may be invalidated by the courts..
- 2.3. Furthermore, The suggested amendments advocate for a requirement that anyone aspiring to become a Speaker or Deputy Speaker must possess a degree certificate. Additionally, Hon. Lenguiya proposes changes to the standing orders of the Houses to limit the powers of the members of the speaker's panel, ensuring that matters requiring rulings are deferred to the availability of the Speaker or Deputy Speaker for decision-making.
- 2.4. However, It is important to note that the educational qualifications for public officeholders have been a subject of recent legal scrutiny. The High Court declared Section 22 of the Elections Act unconstitutional, a provision that mandated aspirants for the position of Member of County Assembly (MCA) to possess a university degree. The court ruled that the enactment of such requirements lacked sufficient public participation, violating constitutional principles.



- 2.5. The Petition concerns counties and contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

3.0. GENERAL COMMENTS.

- 3.1. It worth noting that, proposed prayers do not address the absence of similar qualifications for other state officers, such as County Executive Committee Members (CECs), County Secretaries, and Governors, leading to inconsistency and inequality.
- 3.2. While the Forum is in agreement that Academic qualifications, particularly in law, can contribute to enhanced legislative competence. Knowledge of legal principles and procedures is crucial for effective lawmaking and governance, the Requirement for academic qualifications may inadvertently exclude individuals facing financial constraints or those who could not complete their education due to unforeseen circumstances, hindering equal representation.
- 3.3. Further, while the Forum is in agreement that academic qualifications may ensure that Speakers possess a deep understanding of the legislative process, leading to the creation of high-quality legislation, there is a risk that overemphasizing formal education may overlook crucial qualities such as leadership skills, practical experience, and a deep understanding of local issues, which are vital for effective representation.
- 3.4. The recent High Court ruling declaring Section 22 of the Elections Act unconstitutional, specifically for MCA aspirants, raises concerns about the constitutionality of similar requirements for Speakers.
- 3.5. CAF appreciates the opportunity to contribute to this Petition and on the basis of the foregoing proposes the following amendments:

4.0. CAF's VIEWS ON THE PETITION

- 4.1. The County Assemblies Forum (CAF) vehemently opposes the petition by Hon. Simon Lenguiya. CAF argues against the imposition of academic qualifications exclusively for Speakers, citing inconsistencies in the proposed prayers, lack of similar requirements for other state officers, and potential negative impacts on diversity and inclusivity in leadership roles. If academic qualifications are deemed necessary, they should be uniform across all public offices.
- 4.2. Further, we advocate for a comprehensive and inclusive approach to leadership that considers diverse skills, experiences, and backgrounds to ensure effective and representative governance.

- 4.3. The requirement for a law degree could shrink the pool of candidates and limit the legislators' will to choose their representatives. This violates principles of democracy and justice.
- 4.4. In the case of ***County Assembly Forum & 6 Others v Attorney General & 2 Others (2021) KEHC 304***, decided on October 15, 2021, by Justice AC Mrima in the High Court at Nairobi, the constitutional challenge centered on section 22(1)(b)(ii) of the Elections Act, requiring a degree qualification for candidates seeking the position of a Member of a County Assembly (MCA) in Kenya. The petitioners contested the constitutionality of this provision, arguing it unjustly limited fundamental rights, lacked public participation, and was discriminatory. Dismissing claims of res judicata and lack of jurisdiction, the court declared the provision unconstitutional, citing violations of articles 24, 27, 38(3), and 56 of the Constitution. Emphasizing the importance of public participation, the court nullified the degree requirement, asserting its in operational status and void ab initio, thereby influencing the eligibility criteria for MCAs and highlighting the need for inclusive representation beyond conventional degrees.
- 4.5. The above judgment underscored the importance of recognizing alternative qualifications. It noted that the impugned provision's exclusive focus on conventional university degrees was irrational and unjustifiable. The court suggested that other qualifications, as recognized by the National Qualifications Act, should be considered to allow for a more inclusive representation.
- 4.6. Another lesson learnt from the above matter and which CAF supports up to date is that academic qualifications alone should not be the sole criterion for effective public representation. The proposed Election (Amendment) Bill, 2020 by senate in the former parliament also, acknowledged the need to provide a lifeline for aspirants lacking university degrees, emphasizing the importance of political rights for all citizens.
- 4.7. Further the case emphasized the need for legislators to balance their legislative intent with constitutional rights. In this instance, the court noted that Parliament should balance its objectives with the right to representation and other constitutional provisions. The failure to strike this balance was a critical factor in the court's decision to declare section 22(1)(b)(ii) unconstitutional.
- 4.8. Further, in the case of ***Rajput & another v Independent Electoral & Boundaries Commission & another [2022] KEHC 17164 (KLR) (Constitutional and Human***

Rights) (16 December 2022) which involves the constitutional challenge to the eligibility requirements for presidential candidates in Kenya. Nazlin Omar Fazaldin Rajput, the 1st Petitioner and an aspiring independent presidential candidate in the 2022 elections, contested the Independent Electoral and Boundaries Commission's (IEBC) decision not to clear her and other independent candidates based on the mandatory university degree requirement stipulated in Section 22(2) of the Elections Act. Citing the precedent set in *Wambui & 10 Others v Speaker of the National Assembly & 6 others*, where the court nullified a similar requirement for Members of Parliament, the petitioner argued that Section 22(2) is unconstitutional as it imposes a different criterion for presidential candidates. The court, in its judgment, concurred with this view, declaring Section 22(2) unconstitutional and emphasizing the need for consistency in electoral laws and adherence to constitutional principles, setting a significant precedent for the eligibility of presidential aspirants in Kenya. The learned Judge stated

"On the basis of the above, this Court summed up the unconstitutionality of Section 22(2) in respect to the eligibility of County Governors as follows: -

a.A Declaration hereby issues that pursuant to Article 180(2) as read with Article 193 of the Constitution, the qualification for the election of a County Governor is similar to the eligibility for election as a Member of County Assembly.

b.A Declaration hereby issues that Section 22(2) of the Elections Act, No. 24 of 2011 contravenes Article 180(2) of the Constitution by creating an avenue for differentiation between the eligibility requirements between Members of County Assembly and County Governors, hence, unconstitutional.

*117.Having said so, the prevailing position in this matter is, hence, that as long as the decision in *Wambui & 10 Others v Speaker of the National Assembly & 6 others* case stands (which decision removed the requirement for a university degree for a person standing as a Member of Parliament), then Section 22(2) of the Elections Act cannot hold in demanding a university degree requirement for a presidential aspirant.*

118. In the end, it is the finding and holding of this Court that Section 22(2) of the Elections Act is unconstitutional for mandatorily demanding that a presidential aspirant must possess a university degree as long as the decision in Wambui & 10 Others v Speaker of the National Assembly & 6 others (Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated)) [2022] KEHC 10275 (KLR) (Constitutional and Human Rights) (13 April 2022) (Judgment) stands.”

- 4.9. This case study serves as a persuasive authority to challenge the constitutionality of similar provisions in other jurisdictions that impose educational qualifications for presidential candidates, MPs Aspirants and Governors, providing key reasoning for the judgment.
- 4.10. In the case of *Buoga v Attorney General & another (Constitutional Petition E290 of 2022) [2022] KEHC 13214 (KLR) (Constitutional and Human Rights) (30th September 2022)*, the court delved into the interpretation of the term 'notwithstanding' in Section 22 of the Elections Act. The court, in rendering its decision, referred to legal definitions of 'notwithstanding,' as found in sources such as Black's Law Dictionary 10th Edition, the Britannica Dictionary, and the Cambridge Dictionary. It noted that 'notwithstanding' denotes a situation where a provision or act cannot be prevented by a contrary provision or act. Applying this interpretation to Section 22(2) of the Elections Act, the court concluded that this provision operates independently, unaffected by the status of Section 22(1)(b). In essence, Section 22(2) stands alone, not deriving from or being contradicted by Section 22(1)(b), and its applicability is not contingent on the presence or absence of the latter provision. This nuanced understanding of the term 'notwithstanding' contributes to the court's broader analysis of the constitutionality of electoral eligibility requirements.
- 4.11. In light of the above three case studies, the Forum is of the view, that the principle of constitutional equality should be maintained across all elected positions. A uniform standard for academic qualifications should be established. If there is no academic qualification for the President, MP, Governor and the MCA then there should be no requirement for Speaker of National Assembly, Senate or County Assembly Speaker without clear and justifiable reasons.
- 4.12. Instead of focusing solely on academic qualifications, CAF advocates for

comprehensive solutions such as improved training, capacity-building programs, and mentorship opportunities for Speakers of both houses and the Speakers of Conty Assembly to enhance their effectiveness

- 4.13. In conclusion, CAF urges a thoughtful and inclusive approach to any amendments regarding academic qualifications for Speakers, recognizing the need for balanced and constitutionally sound requirements that uphold democratic principles.

Thank you.

Yours sincerely,

HON. PHILEMON SABULEI

CHAIRPERSON, CAF

Annex 8: Submissions by Mr. Elijah Rottok

**MEMORANDUM ON THE PETITION TO THE MEMORANDUM ON PETITION BY
HON SIMON LENGUIYIA REGARDING THE ACADEMIC QUALIFICATIONS FOR
ELCTION OF SPEAKER OF THE SENATE NATIONAL ASSEMBLY OR A
COUNTY ASSEMBLY**

TO

**THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS OF THE SENATE THROUGH THE CLERK OF THE SENATE**

PRESENTED BY: ELIJAH ROTTOK - ADVOCATE

DATED: 9th November 2023

**ELIJAH ROTTOK
P.O. Box 21558-00505
NAIROBI, KENYA
Tel: 254-722-402487
Email: elijahrottok@gmail.com**

A. INTRODUCTION

I Elijah Kandie Rottok, an Advocate of the High Court of Kenya do wish to submit this memorandum to the Standing Committee on Justice, Legal Affairs and Human Rights of the Senate in pursuant to standing order 228(1) of the Senate Standing Orders.

B. BACKGROUND

1. This petition before the Senate seeks to safeguard the seat of the Speakers of the Senate, National Assembly and County Assemblies against incompetence and ineptitude by seeking to amend section 21 and 22 (1) of the Elections Act by requiring that the qualifications for the said positions require one to have a law degree.
2. By the time the said petition was filed, section 22 (1) had already been declared unconstitutional in the case of **County Assembly Forum & 6 others v Attorney General & 2 others**¹ in which the court held that the provisions of section 22(1) of the Elections Act contravened articles 24, 27, 38(3) and 56 of the Constitution to the extent that it did not pass the test of limitation in article 24 of the Constitution and it unfairly and without justification, discriminates on the basis of educational qualifications. It also failed to treat every person equal before the law. It also held that the provisions infringed the constitution to the extent that it places unreasonable restrictions to the exercise of political rights and failed to take into account the dictates in article 56 of the Constitution regarding the rights of the minority and marginalised groups.
3. Similarly, in the case of **Johnson Muthama v Minister for Justice & Constitutional Affairs & another [2012] eKLR**² the court held that excluding a person from running an elective seat on account of not having post-secondary education was discriminatory and in violation of article 10(2)(a) of the Constitution. It was also noted that the standards in regards to education qualifications for leaders seeking positions of power and responsibility cannot be discriminatory as

¹ Constitutional Petition E229, E225, E226, E249 & 14 of 2021 (Consolidated) <http://kenyalaw.org/caselaw/cases/view/220669/> Accessed on 12th November 2023

² Petition Nos 198, 166 & 172 of 2011 (Consolidated) <http://kenyalaw.org/caselaw/cases/view/80498/> Accessed on 12th November 2023

it cuts across parties and those who do not qualify have an opportunity to seek first of all to attain the qualifications before vying for the offices.'

C. ADVISORY

4. I do note and agree with the averments of the petition from paragraphs 1-7 of pages 2 and 3.
5. Our beloved country Kenya has ratified the International Covenant of Civil and Political Rights and as such refers the distinguished members of the Senate to the General Comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) by the Human Rights Committee states as follows at para 15:

"The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office".³

6. The provision above appears not prescriptive, it is therefore upon the states to determine what is "unreasonable restriction" and which is not.
7. In my view, preference must always be given to a factual interpretation that favours the full participation of citizens, rather than an interpretation that might impede it; and that the provisions of the law must furthermore be of non-discriminatory application, so that in the face of similar situations, the reasons for exclusion will be applied equally, without any distinction whatsoever regarding the subject;
8. At the outset, it can be said that the democratic principle demands that the requirements for eligibility be the same as for a voter: citizenship, being of age and

³ Human Rights Committee General Comment on Article 25 of the ICCPR <https://humanrights.gov.au/our-work/rights-and-freedoms/right-take-part-public-affairs-voting-rights-and-access-public-service#:~:text=The%20effective%20implementation%20of%20the,on%20objective%20and%20reasonable%20criteria>. Accessed on 12th November 2023

the full possession of civil and political rights. So any further demand must specifically be envisaged in the constitution or in the law and be sufficiently justified in the execution of constitutional values to explain such limitation of fundamental rights to specific categories of citizens.

9. Free suffrage means that voters can truly make a free choice among various candidates or political parties in elections. A free vote also involves the right of every voter to exercise their voting rights or not. The principle of free suffrage is especially emphasised in the Constitution concerning elections to the County, National Assembly and senate although in view of the nature of the constitutional provisions this principle should be taken as a general principle that applies to all elections.
10. While the petitioner in paragraphs 8 and 9 in pages 3 and 4 respectively raises concerns regarding Speakers of the County Assemblies as follows:

“Currently, most county assemblies have speakers who are not abreast of the law including the import of standing orders, the law-making process, interpretation and application of the law. Most not learned in law, grapple with minor issues when debate is on, not appreciate basic principles of law, unable to contextualise issues, address them by applying standing orders, constitutional provisions or national legislation to it. learned in law, neither is specific who the Speakers are nor as to the number.”

11. This claim is not substantiated to demonstrate how the current speakers are incompetent. Should the concerns above be raised without the support of data, statistics, report or evidence to substantiate the said claim or concern, then it may amount to casting of aspersions as to the images of the past and current Speakers of the County Assemblies.
12. Further, it is worth noting that the petitioner is silent and raises no concerns as to the quality or competences of the Speakers of the Senate and the National Assembly.
13. It cannot be gainsaid that Speakers of the Senate, National Assembly or a County Assembly play a critical role in society as their decisions influences the community development, activates of and also creates conditions for social, economic and territorial development of the Country. It is expected that they shall perform their

duties openly and transparently. In a manner that conforms to and also meet the demands of the public. These roles are also extended to the defence of democracy and participation of the people. On this basis, it is clear that the Speaker of the Senate, National Assembly or a County Assembly have many powers, and responsibilities, so we consider that this function should be occupied by suitable candidate who has personal qualities to the performance of such functions.

14. In the duties and responsibilities that are prescribed to the position of Speakers of the Senate, National Assembly or County Assembly places the need to establish qualification requirements for the said positions in order to increase professionalism. This however should not be at the expense of democratic principles and provisions of our Constitution.
15. Scholarly arguments on the qualification of elective positions of leadership and educational background have differing opinions as some scholars argue that of the differences between people with more and less education may instead reflect social and economic exclusion. The costs associated with education keep some talented people from pursuing degrees (and enable some less talented people with economic resources to pull ahead). In turn, education confers lifelong economic and social benefits. People with degrees may earn more not because they have superior skills but because employers assume that degrees are markers of quality and offer more pay to people who have them. People with more education may also participate in civic life more not because they have superior abilities, but because the political process tends to be more responsive to more privileged people and they have more to gain by engaging (e.g., Bartels 2008; Gilens 2012)".⁴
16. Other proponents, are of the view that the higher the position, the higher the educational qualification required for the said position. It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration. The classification cannot be said either based on no intelligible differentia or without a reasonable nexus with the object sought to be achieved.

⁴ N. Carnes & N. Lupu, What is a good college degree: Education and Leader Quality reconsidered, University of Chicago press Journal
<https://www.journals.uchicago.edu/doi/10.1086/683027#:~:text=Some%20of%20the%20differences%20between,economic%20resources%20to%20pull%20ahead>). Accessed on 12th November 2023

17. Education is a viable and most important aspect in our current world scenario. The perception of the general public to look upon the politician or in this case the Speaker of the Senate, National Assembly or County Assembly as an able person who can guide the house of representatives and make proper and appropriate decisions. The Assumption also is that most people prefer the politicians to be their role model. Thus, if the politicians do not have proper academic background would have a negative impact on the state, bringing to a downfall in literacy rate as most of the people will think of education as an unnecessary subject.
18. Other proponents are of the view that Constitutional dictates seem to suggest that the framers of the Constitution believed that the power to the Parliament under the omnibus clauses of Articles 93 to 99, and 178 which also included the power to prescribe literacy qualifications for the elective positions.
19. One of the ways to examine the qualification question is by drawing the roles of the Speakers of the Senate, National Assembly or a County Assembly as a way of determining the educational needs necessary for undertaking these roles. The question as to whether there has been a correlation as to the level of education and the quality of political leaders requires an analysis of data across a wide range from the previous transitions from both the Senate, National Assemblies and County Assemblies.
20. The petitioner cites the example of the qualification of the Chairperson of the Kenya National Commission on Human Rights and the Office of the Attorney General as examples. In my view, these examples do not correspond to the position or person as referred by the petitioner in Paragraph 25 (i) as quoted verbatim as "acts as an arbiter, to preside over proceedings of the house". Therefore, they are not fit to be used as examples as the role of the Chairperson of KNCHR and the Attorney General Judges and members of tribunals. These are both distinct and separate positions with defined roles separate from those of the Speakers of the County Assemblies and the National Assembly. The Same applies to Judges and Presiding members of tribunals that hold appointive positions as opposed to elective positions.
21. A look at Parliament's website reveals that the previous assembly more than 200 MPs (out of 416) had degrees, including PhDs, and thus met the legal requirements. It showed that 50 MPs had not posted their CVs, while another 50

claimed to be studying for their degrees. In the senate, four senators appeared not to have degrees while another six had not put their CVs on the website.

22. According to the 2019 Population Census, only 1.2 million Kenyans held university degrees. That translated to 3.5% of the entire Kenyan population. Out of the 1.2 million university graduates, 25% of them were in Nairobi County. The balance was shared between the rest of the 46 counties. Should this data be relied upon then some wards would not have degree holders who are vying for the position of Member of County Assembly due to the few numbers of persons with degrees.
23. It should also be noted regarding the Access to higher education among the Kenyan Population that the costs associated with pursuing degrees at higher education will keep some talented people wishing to vie for elective seats from pursuing degrees and enable some less talented people with economic resources to pull ahead. The fact that each year few candidates are selected to join Universities in pursuit of degrees places impediments on a significant part of the Kenyan Population.
24. Having the qualification of a degree holder does not necessarily guarantee that the said candidate seeking an elective seat with a degree would have the knowledge already related to the intricate procedures, roles and responsibilities for position he or she seeks. This is because the pursuit of the Law degree courses does not offer the specific knowledge the procedures and roles or the members of the Speakers of the Senate, the National Assembly or the County Assemblies and their standing orders. This implies that the successful candidates would still be taken through induction, trainings, capacity building and bench marking sessions on their respective roles, duties and responsibilities effectively.
25. There are other factors that determine a political leader with qualities that enable him or her to perform their duties better than a political leader with degrees. Quality of performance of the duties of elective positions to the legislature would depend on the of obtaining the information, experience and skills and requires a professional approach to the office and the ability to perform the tasks arising from his scope of work responsibilities.
26. I invite the Honourable Senators to examine other Legal systems and the provisions of their elected leaders or speakers as pointers for the Committee to consider:

27. Regionally, in Tanzania, the Speaker of the National Assembly must be an MP who has been elected to be Speaker by other Members of Parliament.
28. In Uganda the Speaker and Deputy Speaker are Members of Parliament who are elected in the House. The qualification for the nomination of a member of parliament is an A level certificate or its equivalent.
29. In Nigeria, the Speakers of the Senate and the National Assembly are elected from their members whose qualification is a school certificate or its equivalents and an age limit of 35 and 25 for the Senate and the National Assembly respectively.
30. In South Africa, every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly.
31. In India, only a citizen of India is qualified to be chosen a member of a House of Parliament. He or she should not be less than 30 years of age for the upper house and not less than 25 years for the Lower House.
32. In Sweden, to become an MP, a person must be entitled to vote (i.e. be a Swedish citizen, be at least 18 years old and be or have been resident in Sweden) and must be nominated by a political party. The MPs are elected by proportionality in constituencies across the nation.
33. In the Netherlands, the qualification is that anyone who is a citizen and of 18 years of age and has not been disqualified from voting can be elected at the upper or lower house. The same can be said of Canada.
34. It follows therefore, that numerous countries have low requirements for qualifications of one being elected to their legislature and by extension the election of Speakers of their respective houses.
35. On the question as to whether the requirement for knowledge of the law can be a prerequisite for the passage of quality laws as the petitioner alleges in paragraph 25 (ii), I submit that this is not the case if one considers the numerous instances in which some provisions contained in various laws passed by the Senate, National Assemblies and or County Assemblies have ended up being challenged in court, and found unconstitutional.
36. I invite the members of this Committee to consider whether one can cure a law prescribing a degree qualification that was considered as unconstitutional by our courts, by amending it to prescribe a law degree qualification for the position of the Speakers of the Senate National Assembly or County Assemblies.

37. Whereas Parliament has the preserve to enact, amend or repeal any legislation, Courts on the other hand have the duty to ensure that Parliament inter alia keeps within the constitutional borders while discharging its mandate. As such, the Court's exercise of its jurisdiction in determining whether Parliament acted within the Constitution in coming up with a law cannot be seen as an affront to the doctrine of separation of powers as the two are distinct mandates under the Constitution.
38. In the foregoing, it is my view that proposing an amendment that still prescribes a degree qualification without consideration of other relevant qualifications for the position of the part of the Speakers of the Senate, National Assembly or a County Assembly may face the same fate as the provisions of section 22 (1) of the Elections act that were declared unconstitutional.

C. CONCLUSION

39. In conclusion, there is need to engage further with an aim of reviewing the provisions of section 22 (1) and Sections 21 with an aim of making the qualification to run for elective positions accessible to majority of Kenyans in order to realise their political ambitions and in accordance with the direction of the Courts in relation to the decided cases above. This may be further enhanced by subjecting the proposals to further public participation.
40. Finally, an amendment ought to be developed by the legislature that takes into account the application of the provisions of the National Qualifications Act that gives a less restrictive qualifications by widening the requirements for qualifications to provide for any other relevant qualifications that may be attained as opposed to the convectional degrees.

Annex 9: Submissions by the Petition

THE SENATE
RECEIVED

21 NOV 2023

DIRECTOR COMMITTEE SERVICES



**MEMORANDUM IN RESPONSE TO THE COMMENTS BY VARIOUS
STAKEHOLDERS ON THE PETITION BY HON. SIMON LENGUYA
REGARDING EDUCATIONAL QUALIFICATION TO BECOME SPEAKER OF
THE SENATE, NATIONAL ASSEMBLY AND COUNTY ASSEMBLY**

TO:

THE SENATE OF THE REPUBLIC OF KEYA,
C/O,
HON. JEREMIAH NYEGENYE, CBS,
THE CLERK,
THE SENATE,
PARLIAMNT BUILDING,
PALIAMENT ROAD,
TEL: (254-2) 2221291 or 2848000,
E-mail: clerk.senate@parliament.go.ke

20 NOV 2023



FROM:

HON. SIMON LENGUYA,
MCA NAROK COUNTY ASSEMBLY.

② HOD-GOVERNOR
SCA - OLAKH

① DGAC

Kindly Seal

21/11/2023

Kindly deal-

20/11/2023

A. INTRODUCTION

1. I have gone through the memoranda submitted by various interest groups in respect to my petition and I have duly considered their opinion on the subject. Below is my reaction to their views.

B. THERE IS LACUNA IN LAW

2. While orally submitting before the Committee on 16th November, 2023, the County Assemblies Forum (CAF) intimated that there is no lacuna in law supposedly because the Constitution as well as the Elections Act have already prescribed qualifications for one to become speaker in parliament and at the county assembly.
3. This is not true. Pursuant to the provisions of articles 99 (1) (b) and 178 (3) of the Constitution, the Parliament enacted section 22 (1) (b) (i) and (ii) of the Elections Act making degree a mandatory requirement for one to be speaker. These two provisions were declared unconstitutional in **County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) (Constitutional Petition**

E229, E225, E226, E249 & 14 of 2021 (Consolidated)) [2021] KEHC 304 (KLR) and in Wambui & 10 others v Speaker of the National Assembly & 6 others (Constitutional Petition 28 of 2021 & Petition E549, E037 & E065 of 2021 & E077 of 2022 (Consolidated)) [2022] KEHC 10275 (KLR)

4. The net effect of the invalidation of section 22 (1) (b) (i) and (ii) of the Elections Act by the court is that the parliament has not actually enacted a legislation as mandated by articles 99 (1) (b) and 178 (3) of the Constitution. Put differently, as things stand now, there is no statute prescribing educational requirement for speakers as required by the constitution. This is the lacuna which is easy to spot. It is what I seek to address through the petition.

C. THE PETITION IS NOT AN APPEAL

5. An argument has been put forth that this petition is an appeal against the court decisions alluded to above. This line of thought is based on the fallacy that the court declared everything to do with a degree requirement for all elective seats as unconstitutional. Far from it. The court was categorical that in fulfilling the constitutional directive under articles 99 (1) (b) and 178 (3), the parliament ought to have factored in other modes as per the Kenya National Qualifications Act. The court was of the view that University degree alone without consideration of other modes of learning is discriminatory. Further, the court was dealing with questions regarding election of MPs and MCAs which are many seats, representing electoral areas as opposed to seats for speakers which IEBC correctly argues is a reasonably small number and with much bigger responsibilities.

D. THE QUESTION OF DEGREE VIS-À-VIS INFORMAL EDUCATION

6. There is a cliché that university education does not automatically translate to good leadership/quality decisions. The proponents of this notion posit that leadership comes from God and as such one does not require formal education in order to successfully lead.
7. While I agree with KNCHR that experience and skills are vital considerations and can impact ability to perform, there is no yardstick that guides what amounts to *experience and skills* that can be defined with specificity for such critical legislation.

8. Speakers are elected by MPs and MCAs. In an election cycle the country can end up with all new faces in the assemblies such that there is no one with experience on running of the house. A sitting speaker can also choose not to seek re-election. The former MPs/MCAs can equally decide not vie for the speaker's seat. Where will experience come from?
9. There is an argument which I agree with that the constitution does not talk of academic qualification but rather education which encompasses both formal and informal education. However, what I invite this Committee to consider is whether in giving parliament power to enact legislation prescribing educational requirement to seek speaker's seat, the constitution demanded that parliament must choose both formal and informal education and not one. My position is that the hands of the parliament are not tied. It can only choose one. Thus, picking formal education for this particular position is not unconstitutional as the constitution does not require the parliament to pick both. As long as it is not in dispute that university degree is also a form of education, this house cannot be faulted for picking it as an educational requirement. Neither the court nor the concerned stakeholders can direct the parliament to pick one form of qualification and leave out the other. So there is nothing wrong with this house settling on a degree (or its equivalent) for the speaker's position.
10. While upholding the degree requirement for president, deputy president, governor and deputy governor in **Johnson Muthama v Minister for Justice & Constitutional Affairs & another [2012] eKLR** Mumbi, J. reasoned that **"the number of positions required is reasonably small, the nature of the duties and functions to be performed by those holding the positions is such as would require higher educational qualifications and skills and wider exposure which higher education allows a person to acquire."**
11. I share a similar opinion as the judge. Much as there is informal education and I respect Kenyans in those sectors, a speaker cannot be a trained mechanic, a skilled carpenter, a respected truck driver, a legendary welder. A speaker does not make political decisions like whether to build a cattle dip or hospital, or whether or not to offer scholarship to college students, whether to raise parking fees, who to lead the implementation of a certain project or whether to demonstrate against the OCS until security is provided, where to zone hawkers, etc. These are political/leadership decisions that are made by elected politicians. They can be made by any good leader who may not necessarily have formal education. But that is not the duty of a speaker.

12. The speaker is a neutral leader of the house presiding over house proceedings, facilitating debate, making rulings. To competently discharge his duties, he needs not just wisdom from God but as well school-given knowledge to make informed decisions. The issues the speaker grapples with in his daily assignments require understanding of law, governance, politics, administration, economics which knowledge comes from school and not from experience in doing plumbing works. This gives the justification needed under article 24 of the Constitution. I do not think that when talking about inclusivity and non-discrimination, the drafters of the constitution meant that we pick any Tom, Dick and Harry for an elective/political position. We would be careless as a nation to do that.

E. THE QUESTION OF DEGREE IN LAWS

13. I have deeply interrogated proposal to have only persons with LL.B to be eligible for election as speakers. I have weighed my suggestion against the constitutional principles of non-discrimination and inclusivity and the opinions of various stakeholders and I am persuaded that it was not the intention of drafters of the constitution to limit the position to only one profession.
14. In fact, the constitution does not talk of academic but educational qualification. As I have explained above, academic qualification is a form of educational criterion and therefore constitutional.
15. Based on the above, I wish to amend paragraph 34 of my petition by replacing "Bachelor's Degree in Laws" with "Bachelor's degree". Though I would have wished to have lawyers on the seat especially since there is a deficit of legal minds at the county leadership, I am mindful of the Constitutional principles espoused under article 10 and I hereby implore this house to open the position to holders of any university degree.

F. SEPERATION OF SPEAKERS QUALIFICATIONS FROM MPS

16. The qualifications to be speaker for Senate and National Assembly are equated to those of members of parliament under article 106 (1). This means that there is no unique qualification to be speaker separate from those of MPs yet their roles are different, with the speaker having a higher responsibility. The constitution treats the two positions like inseparable Siamese twins yet they are not. The speaker is the elder brother.

17. I invite this house to separate the captain from the rest of the crew. I am of the view that article 106 (1) of the Constitution should be amended by deleting "from among persons who are qualified to be elected as members of parliament but are not such members" and adding article 106 (1) (c) outlining the qualifications to be speaker. This amendment can be by way of parliamentary initiative without need for referendum in light of article 255 (1).
18. Article 178 (3) should not be disturbed as it clearly gives authority to this house to legislate on election of the speaker of county assembly.

G. COMPARATIVE STUDIES

19. It is good practice to consider the positions of other countries as such information enrichen our knowledge and may convince us to abandon a position earlier taken. However, such comparative studies ought to factor in our unique circumstances.
20. Kenya's democracy is still developing. We cannot be compared to America, South Africa and India where constitutionalism has been deeply entrenched. The systems and structures of governance in those nations were established last century and are efficient. Kenya's constitution is just 13 years old and devolution is still being nurtured, with daily emerging challenges. The counties are still in the process of learning how to raise revenue, budget with what they have, account for the decisions made and spur economic growth. Great minds are thus needed to offer leadership during these formative stages.
21. The comments by Elijah Rottok, advocate, did not factor in the high literacy levels in America, India, UK, Nigeria and South Africa. In these countries, there is no requirement for University degree to contest for speaker's position presumably because they know it is highly unlikely to get an illiterate person becoming speaker. In Kenya, the risk of electing an illiterate speaker (especially in counties) is as high as the school fees.

H. THE KENYA NATIONAL QUALIFICATIONS FRAMEWORK ACT, 2014

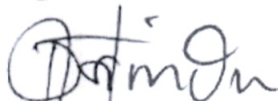
22. This piece of legislation was a noble idea. It aims to bring about equality between the formal and informal learners in terms of recognition and certification.

23. I brought out the idea behind this statute in the petition so that this house can address it in light of the decision of the court where Mrima, J. faulted the parliament for limiting qualification to seek MCA seat to University degree as opposed to other modes of qualification. Indeed, nearly all the memoranda have alluded to it.
24. Much as this legislation ought to be considered for elective positions like MP and MCA, the speaker's position cannot be left to an unknown form of training. A speaker is someone who will be required to think on his feet, make critical decisions, address rival arguments, moderate debate and interpret the standing orders. To acquire this kind of mind, one needs academic training. A *fundi* who has excelled in repair of electronics may or may not be a critical thinker. What are the chances of getting it wrong with him? What are the chances of getting it right with a school-trained degree holder?
25. I wish to bring to the attention of this committee the provisions of the Kenya National Qualifications Framework Regulations, 2018. Regulation 5 (1) outlines eligibility criteria for accreditation to be considered by the National Qualifications Authority.
26. Though I believe my petition comprehensively and succinctly addressed the concerns of whether the proposed amendment would meet the same fate which befell the earlier legislation on degree requirement, I wish to give further input. I suggest that in order to avoid invalidation of the proposed amendment by a judge who may not be able to distinguish the two cases, this committee can add that for one to be speaker he has to have **a University degree or its equivalent as certified by the National Qualifications Authority in accordance with the Kenya National Qualifications Act**. This will rule out secondary school drop outs and holders of certificates, diplomas and other lower level certificates issued by the National Qualifications Authority. The National Qualifications Authority should be obligated to indicate in the certificate issued the nature of training, the institution, duration of training and skills obtained and **whether such are equivalent to University degree, diploma or certificate in line with section 18 of the Act**.

27. The committee can also consider amending the Elections Act by deleting the sections with degree requirement for MPs and MCAs as the courts declared such unconstitutional and replacing it with post-secondary school qualification including equivalent certification by the National Qualification Authority, so that this becomes a one-off legislation addressing all the academic related concerns for all elective/political positions.

Hon. Simon Lenguiya **alias** SK Lenguiya, Member Narok County Assembly.

Signature



.....
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Annex 10: Minority Report by Sen. Andrew
Omtatah Okoiti, MP

MINORITY REPORT ON THE PETITION BY HON. SIMON LENGUIYIA CONCERNING THE ACADEMIC QUALIFICATIONS REQUIRED FOR ONE TO BE A SPEAKER OF A COUNTY ASSEMBLY, THE SENATE, OR THE NATIONAL ASSEMBLY

A. Introduction

1. I have read through the draft Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Petition by Hon. Simon Lenguiyia concerning the academic qualifications required for one to be a Speaker of a County Assembly, the Senate, or the National Assembly.
2. While I agree with Chapters One and Two of the Report, which set out the background and consideration of the Petition by the Committee, I do not concur with the findings and determination of the Committee on the Petition, as set out at Chapters Three and Four of the Report.
3. In particular, I do not agree with –
 - a) the proposition that separate qualifications and requirements need to be put in place for one to become a Speaker of a County Assembly, the Senate, or the National Assembly, **as distinct from** the qualifications put in place for the election of members of the respective House; and
 - b) the proposition to put in place a degree requirement for the holders of the office of Speaker.
4. I proceed to discuss my reservations below.
5. I am not persuaded that the proposed amendment would pass the threshold set by Article 24 of the Constitution, on limitation of rights and fundamental freedoms. The limitation would not be reasonable and justifiable in an open and democratic society, and would not be commensurate to the purpose for which it is intended to achieve.
6. The jurisprudence from the courts on the qualification of candidates for election as Members of Parliament and members of county assemblies, where Courts have repeatedly found such limitations to be unconstitutional, would equally apply to the proposals to legislate academic qualifications for Speakers. In *Johnson*

Muthama v Minister for Justice and Constitutional Affairs and Another (2012)
eKLR, Mumbi J., as she then was, held that –

‘By excluding everyone who does not have a ‘post-secondary qualification,’ a term which is not defined in the Act, from running for any elective office established under the Constitution, the Act discriminates directly on the basis of status and social origin, for almost invariably, and as noted from the analysis of the socio-economic context above, it is the poor in society, those 18 million Kenyans living in poverty, who will not get an opportunity to acquire an education, let alone a post secondary education....’

7. Further, as the courts have ably stated, academic qualifications do not equate to leadership ability or competence, nor are they a measure for integrity of the person. In the earlier cited case of *Johnson Muthama*, Justice Mumbi Ngugi, as she then was, stated that –

‘I agree with the petitioners that the harm that the legislature seeks to address in enacting legislation as required under the Constitution is lack of leaders with integrity. That is why the Constitution requires the legislature to enact legislation that sets moral, ethical and educational qualifications. A requirement for a post secondary qualification does not address the real concern of the citizenry; indeed it violates the provisions of the Constitution by excluding many who may not, through no fault of their own, have been able to achieve post-secondary education.’

8. I hold that the election of the Speaker of a county assembly, the Senate or the National Assembly is a purely political process, similar to that of the members of Parliament and the county assemblies. The members of the respective legislature must be allowed to freely elect their Speaker without unnecessary fetters such as the proposed additional educational requirements.
9. As demonstrated on the main Report, even without requirements for academic qualifications, all twelve Speakers of Parliament since independence have been holders of a minimum of a bachelor’s degree, with six of them holding a minimum of a bachelor’s degree in law. It would therefore appear to be clear that the intended legislation is meant to apply only to the county assemblies, who would then be restricted to only electing persons who are holders of a university degree. This would be not only unconstitutional, but an expression of contempt in the capacity of the members of county assembly to freely elect who their speakers should be.

10. The available data indicates that, over sixty years after independence, only 3.5% of Kenyan citizens hold tertiary educational qualifications. If this data is disaggregated by county, the percentage of persons holding a degree in some counties would fall below 1%. Why would the positions of Speakers of the county assemblies be restricted to such a small, privileged category of people? This would clearly contravene the provisions of Article 27 of the Constitution and, for that reason, I cannot support it.
11. In the USA, there are no educational requirements to become a congressman or congresswoman. And there are really only two things one needs to become the Speaker of the House of Representatives: First, one must be elected to a seat in the House of Representatives. After that, one must gain experience and the respect of those in his/her party; only then will one be viewed as a good choice for this important post.
12. In the USA, there are no specific education or training requirements to become a senator, but many senators have experience in law or business, and they often hold at least a bachelor's degree. Some senators have an undergraduate degree in business management or a constitutional law degree. Solid leadership, communication, and organizational skills are vital for anyone who wishes to be elected senator.
13. Abraham Lincoln had very little formal education and no college degree, but not only was he elected to the House of Representatives in 1846, but he was twice elected as the President of the United States.
14. The Constitution, the County Governments Act and the standing orders of the respective Houses set out elaborate procedures for removal from office of a Speaker, in the event the members of that House are dissatisfied with the conduct or performance of the Speaker. If the mischief that the Petition sought to address was the cases where some Speakers of county assemblies are deemed to be either rogue or incompetent, the solution lies not in legislating additional requirements for the position, but in the said assemblies simply exercising their power to remove the Speaker from office.
15. In my considered view therefore, while acknowledging that the Petition does raise substantive questions for consideration, the solution it proposes is not capable of implementation without offending Article 24 of the Constitution, on the limitation of rights and fundamental freedoms, and Article 27, on equality and freedom from discrimination.

16. On that basis, I disagree with the findings and recommendations of the majority and tender this Minority Report on the Petition.

Signed

Date.....

SEN. ANDREW OMTATAH OKOITI, MP
MEMBER, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS