

Rt. Hon. Speaker
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Eg 28/05/2024



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DATE	29/5/2024
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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

APPROVED
RT. HON. SEN
AMASON J. KINGI


28/05/2024

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MAY, 2024

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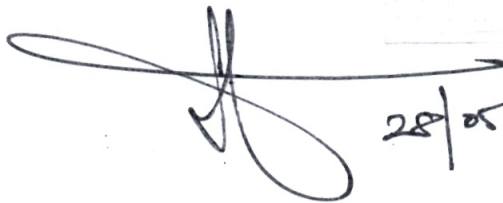
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DATE	29/5/2024
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COMMITTEE	JLHR C.
CLERK AT THE	Nj96

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LIST OF ABBREVIATIONS AND ACRONYMS

ELGIA	Electoral Law Governance Institute for Africa
ELOG	Elections Observation Group
IEBC	Independent Electoral and Boundaries Commission
I-RCK	Inter-Religious Council of Kenya
ORPP	Office of the Registrar of Political Parties
PPLC	Political Parties Liaison Committee
NADCO	National Dialogue Committee
KAPAPARANET	Kariobangi Paralegal Network
NCKK	National Council of Churches of Kenya
ICJ	International Commission of Jurists
LSK	Law Society of Kenya
ICPAK	Institute of Certified Public Accountants of Kenya

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

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 Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Maina, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) are attached to this Report as *Annex 1*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

Honourable Senators, the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) was passed by the National Assembly with amendments, on May 2nd, 2024 and thereafter transmitted to the Senate for consideration. The Bill was read a First Time in the Senate on Thursday 9th May, 2024 and committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

The Bill aims to amend the Independent Electoral and Boundaries Commission Act (hereinafter, IEBC Act (Cap 7C) to redefine key terms, expand qualification criteria, streamline vacancy management and align the Act to various pronouncements of the Court. The Bill seeks to enhance transparency, efficiency and accountability in electoral processes. The Bill seeks to make the Commission's appointment processes more inclusive and transparent while ensuring continuity and stability within its administrative structure.

Honourable Speaker,

Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee placed an advertisement in the *Daily Nation* and *Standard* newspapers on May 15th May, 2024 inviting the public to submit memoranda by way of written statements and comments on the Bill, Annex 4. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill and attend a public participation forum on May 24th, 2024. The memoranda were to be received on or before May 22nd, 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received eleven (11) memoranda on the Bill which the Committee considered in the preparation of this report from –

- a) The Independent Electoral and Boundaries Commission (IEBC);
- b) Office of the Registrar of Political Parties;
- c) the Political Parties Liaison Committee (PPLC);
- d) Electoral Law and Governance Institute for Africa (ELGIA);
- e) Inter-Religious Council of Kenya);
- f) ICJ Kenya;

- g) Election Observation Group,
- h) Law Society of Kenya;
- i) Kariobangi Paralegal Network;
- j) National Council of Churches; and
- k) Collins Lusi

While considering the Bill, the Committee observed that the Bill made reference to some of the recommendations and views of the public as submitted to the NADCO which was established to facilitate dialogue and consensus building.

Honourable Speaker,

The Committee fervently appreciates the Offices of the Speaker and Clerk of the Senate for the logistical and technical support advanced and extended during the process and consideration of this Bill. The Committee further wishes to thank the Stakeholders for submitting views on the Bill. I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat for making useful contributions towards the preparation and production of this Report.

Honourable Speaker,









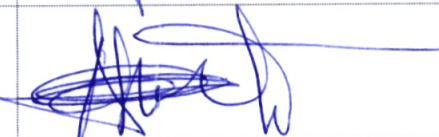
It is my pleasure and gratitude to report that the Committee has considered the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023 (National Assembly Bills No.10 of 2024) and have the honour to report back to the Senate with the recommendation that the House approves the Bill with amendments. Finally, I wish to express my appreciation to the Honorable Senators of the Committee of the Standing Committee on Justice, Legal Affairs and Human Rights for their utmost contributions, devotion and commitment to duty, that were useful towards preparation and production of this report.

Signed  Date.. 27/05/2024

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

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

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 <i>(Chairperson)</i>	
2.	Sen. Raphael Chimera Mwinzagu, MP <i>(Vice-Chairperson)</i>	
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. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bill No. 10 of 2024) is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill was published on 4th March, 2024 *vide* Kenya Gazette Supplement No. 46 of 2024, and introduced in the National Assembly by way of First Reading on 5th March 2024. The Bill was considered by the National Assembly and passed with amendments, on Thursday, 2nd May, 2024. A copy of the Bill as passed by the National Assembly and referred to the Senate is attached to this Report as *Annex 2*.

2. Pursuant to Article 110(4) of the Constitution, the Bill was transmitted and read a First Time on Thursday 9th May, 2024, and thereafter the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Message from the National Assembly conveying the Bill to the Senate is attached. *Annex 3*.

1.2 Objects of the Bill

3. The principal object of the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 is to amend the Independent Electoral and Boundaries Commission Act to redefine key terms, expand qualification criteria, and streamline vacancy management. The Bill seeks to enhance transparency, efficiency, and accountability in electoral processes. The Bill seeks to make the Commission's appointment processes more inclusive and transparent while ensuring continuity and stability within its administrative structure.

4. The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, Cap 7C, by deleting obsolete provisions and make consequential amendments intended to align the Act to the Judgement of the High Court in the *Katiba Institute & 3 Others v Attorney General & 2 Others (2018) eKLR* where the High Court held that rendered certain provisions unconstitutional. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) on the issues of Electoral Justice and Related Matters and Outstanding Constitutional matters among others.
5. The Bill further seeks to amend Section 6 of the Act by introducing the expertise and professional experience in accounting, or information and communication technology as additional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.
6. Further, the Bill aims to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine members in order to accommodate a wide spectrum of stakeholders and incorporate diversity of interest groups. The Bill proposes to amend and replace the existing Fifth Schedule of the Parent Act with new and updated schedule.

1.3 Overview of the Bill

7. The Bill proposes the following amendments. In particular, –
 - (a) **clause 1** of the Bill sets out the short title of the Bill and provides for its commencement upon publication in the *Gazette*;
 - (b) **clause 2** of the Bill proposes to amend **section 2** of the Principal Act by deleting in the definition of the word “chairperson”, the words “or vice-chairperson or a member of the Commission when discharging the functions of the chairperson” appearing immediately after the word “Constitution”. It also seeks to delete the definitions of the expressions: “first review”, “former Boundaries Commission”, “former Constitution” and “issues arising”. The Clause further proposes to introduce the definition of the word “parliamentary party” which it causes to mean a party or a coalition of parties consisting of not less than five percent of the membership of the National Assembly;

- (c) **clause 3** of the Bill proposes to amend section 6(2)(c) of the Act by introducing information and communication technology and accounting, as additional fields from which persons with relevant experience may qualify for appointment as a member of the Commission;
- (d) **clause 4** of the Bill proposes to amend section 7A of the principal Act by deleting sub-sections 4, 5 and 6 which allow the vice-chairperson of the Commission, or any member elected by the other members to act as chairperson in case of a vacancy in that office;
- (e) **clause 5** of the Bill proposes to amend section 10 of the principal Act by reducing the term of office of the Secretary from five years to four years;
- (f) **clause 6** of the Bill proposes to insert a new section 24A to provide for the review of conduct of general election by the Commission. The report of the review is to be published in the Gazette within eighteen months from the general elections, and submitted to Parliament. This section is aimed at having the Commission make the necessary changes required to make its operations more efficient, effective, transparent and accountable;
- (g) **clause 7** of the Bill proposes to introduce a new part IIIA to provide for the procedure for delimitation of electoral boundaries. The report generated is considered by, and tabled only in the National Assembly;
- (h) **clause 8** of the Bill proposes to repeal section 36 of the Act which currently provides for the procedure for delimitation of electoral boundaries;
- (i) **clause 9** of the Bill proposes to amend **paragraph 1** of the **First Schedule** to the Act by expand the IEBC selection panel from seven members to nine members. This Clause further proposes to alter the membership of the selection panel. The clause also proposes to introduce new sub-paragraphs to provide for the manner of selecting nominees for appointment to the selection panel. Additionally, it seeks to further introduce a new sub-paragraph (7) to provide that the Parliamentary Service Commission shall provide for and meet the expenditure of the selection panel. Lastly, this clause proposes to delete **paragraph 6** of the First Schedule and replace it with a new paragraph providing for the dissolution of the selection panel. The new paragraph prescribes that the selection panel shall finalize the recruitment exercise within ninety days of its appointment and forwards the names of the nominees to the President and shall thereafter stand dissolved. Additionally, Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for specified period;

- (j) **clause 10** of the Bill proposes to amend the Second Schedule to alter the quorum for the conduct of business at a meeting of the Commission from at least half of the existing members of the Commission (and not less than three members) to five members, and the manner of taking decisions on a matter before the Commission in the event a unanimous vote is not reached from a majority of the members present and voting to a majority of all members of the Commission;
- (k) **clause 11** of the Bill proposes to amend the Fifth Schedule of the Principal Act which initially gave provisions relating to the first review and substituting therefor, a new Fifth Schedule that provides for the procedures for the delimitation of electoral units;
- (l) **clause 12** of the Bill provides for saving and transition. It proposes that the selection panel existing immediately before the commencement of the proposed amendment Act should stand dissolved once the said Act commences on the conditions that the members of that panel may be nominated to serve in any subsequent panel and nothing done by that panel for purposes of executing its functions shall, if done in good faith, render any member of that panel personally liable for any action, claim or demand;
- (m) **clause 12** of the Bill further proposes to have the respective nominating bodies under paragraph 1(2)(b), (c), (d) and (e) of the First Schedule to the Act to within fourteen days from the date of commencement of the Act, submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment to the selection panel under the Act. It proposes to designate that the President is to within seven days of receipt of the names of the nominees under paragraph 1(2) of the First Schedule to the principal Act from the Parliamentary Service Commission, appoint a selection panel for the purpose of appointment of the chairperson and members of the Commission; and
- (n) **Clause 12** further proposes to have a person holding the office of the secretary of the Independent Electoral and Boundaries Commission to continue in office for the remainder of the unexpired period of their term.

1.4. Consequences of the proposed Bill

8. The Bill's proposed deletion of subsections 4, 5, and 6 of section 7A of the IEBC Act does away with having a person other than the chairperson, performing functions of the chairperson in his or her absence.

9. By allowing expertise in additional fields like information technology and accounting as qualifiers for appointment, the Bill stands to diversify the skill set within the Commission, possibly enhancing its efficiency and effectiveness.
10. The introduction by the Bill of a provision for the review of general election conduct will enhance the Commission's accountability and transparency.
11. Further, the introduction of procedures for delimitation of electoral boundaries signifies an effort to address issues related to representation and constituency demarcation.
12. The Bill's proposal to increase the number of persons on the selection panel and its specification of related procedures will make the appointment process more inclusive and transparent.
13. Amendments to the Second Schedule clarify the quorum and decision-making process within the Commission.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.1 Introduction

14. Pursuant to Article 118 (1) (b) of the Constitution provides and Senate Standing Order 145 (5) of the Senate Standing Orders the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee placed an advertisement in the *Daily Nation* and the *Standard* newspapers on Wednesday, 15th May, 2024 inviting members of the public to submit memoranda by way of written statements or comments on the Bill. A copy of the advertisement is attached as **Annex 4**. Further, the Committee invited key stakeholders to submit views on the Bill and attend a public participation forum on Friday, 24th May, 2024.
15. To this end the Committee received eleven (11) memoranda as annexed to this report as **Annexes 5(a) to Annexes 5(k)**. The memoranda from the Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties (ORPP), the Political Parties Liaison Committee (PPLC), Electoral Law and Governance Institute for Africa (ELGIA), Inter-Religious Council of Kenya, ICJ Kenya, Election Observation Group (ELOG), Law Society of Kenya (LSK), the National Council of Churches of Kenya (NCCCK), Collins Lusi and the Kariobangi Paralegal Network were largely in support of the Bill save for a few reservations. Thereon a summary in the form of a matrix is attached as **Annex 6**.

2.2 Overview of the Stakeholders submissions on the Bill

16. The Stakeholders submissions on the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 together with the Consideration by the committee are summarised below:

Clause 2

17. The **IEBC, ELOG, NCCCK and Kariobangi Paralegal Network (KAPAPARANET)** concurred with the proposal to delete obsolete provisions of sections **32, 33** and **34** of the Act as contained in the IEBC Act to harmonise the Bill with the Act. The IEBC noted that the proposed amendment gives prominence to Article 250(2) of the Constitution while aligning to the pronouncements of the **Katiba Institute & 3 Others v Attorney General & 2 Others (2018) eKLR**. It also proposed amendment to the Bill

further by inserting the phrases, “city, densely populated area, population quota, sparsely populated area and urban area,” that has the meaning assigned to it under Urban Areas and Cities Act, Cap 275.

18. The **ORPP** in their submissions agreed to the clarity the Bill proffers on the definition of Parliamentary Party noting that the definition is key in the process of nominating representatives to the Selection panel given that the representatives of the PPLC are to be drawn from, *inter alia*, a party or a coalition of parties that is not a parliamentary party.
19. **The PPLC** expressed reservations in their submission holding that there shall still exist lacunae in law in the event of the vacancy in the office of the chairperson and especially at a time such as during the elections with strict constitutional timelines which would have the effect of creating a national crisis.
20. **LSK** submitted that the proposed amendment of the definition of chairperson opens room for unnecessary confusion especially where there is no chairperson.

Committee observation

21. The Committee agreed with the stakeholders as regards aligning the definition of “chairperson” with Article 250 of the Constitution. It however noted that the proposed definition of “parliamentary party” excludes the Senate, and an amendment ought to be proposed to include the Senate.

Clause 3

22. The **IEBC and NCCK** submitted in support of merging "accounting and finance" under Section 6(2) (iii) to qualifications for the appointment as Chairperson or member of the Commission as the two proposals on the limb that the two disciplines deals with matters relating to the financial management. The Stakeholder maintained that at least one member of the Commission, besides the Chairperson professes qualifications, knowledge and experience similar to that of the High Court of Kenya. The IEBC proposed that the commissioners be required to possess at least ten (10) years proven experience in the field they are qualified in. The **IEBC** further submitted the composition of the membership of the Commission should consider adhering to two-

thirds gender rule. **NCKK** further commended the holding of the provision holding that the paradigm shift technology and a reflection of the societies' adaptation to changes.

23. The **PPLC** submitted that there is need to review on the qualifications with the view that members of the Commission only need to hold degrees from recognised institutions of learning. The Stakeholder was of the view that additional qualifications can be acquired through training and support from the Secretariat that is composed of technical personnel.
24. **I-RCK** noted that the proposed additional qualifications are not essential for the Commission to execute its mandate and should not be a preserve of certain professional cadres but represent a broad spectrum. It added that the qualifications proposed to be added should only be an added advantage and not the core requirements for the role of a Commissioner.

Committee Observation

25. The Committee noted that section 6 of the Act specifies that for a person to qualify for appointment as a member of the Commission, the person needs to prove relevant experience in certain fields which are necessary considering the nature of the function of the committee. Therefore, the proposed additional experience in information and communication technology and accounting accords with the various functions of the Commission that include the use of technology in elections and the prudent procurement of goods and services related to the conduct of an election. The Committee also agreed with the IEBC that commissioners should be required to possess at least ten (10) years proven experience in the field they are qualified in, so that they can have the requisite expertise and skills to perform their duties.

Clause 4

26. **PPLC, NCKK, ELOG** and **IEBC** concurred in the matter of *Katiba Institute & 3 others –vs- Ag & 2 others (2018)* which decision led to amendment of the IEBC Act by deleting sub sections 4, 5, and 6 of section 7A of the Principal Act, and ensure that the Bill is compliant with the Constitution which is the Supreme Law of the land.
27. **Kariobangi Paralegal Network** agreed in their submission on the proposal amending Section 7A and back the proposed deletions of subsections (4), (5) and (6) in of the principal act because this will simplify and streamline the legal framework potentially

removing redundant and outdated provisions enhancing effectiveness and clarity.

Committee Observations

28. The Committee observed that although the proposed amendment sought to align the Act with the court's judgement in the above case, there was need to ensure that the functioning of the Commission would not be affected in case of a vacancy or absence in the office of the chairperson to the Commission. It noted that this may lead to a constitutional crisis especially if the vacancy occurred during general elections.

Clause 5

29. The **IEBC, PPLC, ORPP** and **Kariobangi Paralegal Network** contented that the current term of the Commission Secretary be maintained at five years with eligibility for reappointment in line with what obtains in the constitutional commissions. In the alternative, the **IEBC and NCKK** the submitted that same be reviewed to a single term of six (6) years. Consequently, their proposal would enhance the security of tenure and independence of the Secretary.

30. **ELOG** submitted that the proposed amendment guarantees oversight over the secretarial affairs by the Commission and further addresses the balance of power between the Commission and the CEO of the EMB as well as asserts independence of the Commission. The Stakeholder reserved that the provision should provide clear criterion for consideration of a renewal of the term of the CEO.

Committee observation

31. The Committee noted that the provision the Bill limiting the term of the office of the Secretary to the Commission to a term of four years eligible for reappointment for one further term of four years was reasonable.

Clause 6

32. The **IEBC, PPLC, ORPP, ELGIA, Kariobangi Paralegal Network** concurred with the proposed amendment that seeks to conduct review of and identify areas for reform taking into account the time it takes for settlement of disputes after an election. Furthermore, **IEBC** recommended that the proposal is better placed as a stand-alone section or part in the **Election Act** since it's an operational activity.

33. The **ELGIA** submitted that the Bill should be categorical on the role of Parliament in the review process since some changes may require statutory reforms. Consequently, it proposed the Bill should provide timelines for the review of the report by Parliament (to mean both Houses of Parliament) upon submission by the Commission.
34. The **PPLC** proposed that the proposal be amended to provide that the audit be carried out by a reputable entity or audit firms in partnership with the Commission.

35. **LSK** submitted and proposed that the provision and side notes touching on the review of operations in the conduct of the general elections should align and speak to the same review; of the conduct of the general election.

Committee Observation

36. The Committee observed that a review of the conduct of a general election is a crucial process in the electoral cycle and that it will promote transparency and accountability in the conduct of general elections.

Clause 7

37. The **IEBC** agreed with the proposed amendment to the Fifth Schedule to remove boundary provision in the saving and the transition part of the Act and carry the same as substantive stand-alone part. In the alternative, the Stakeholder proposed the deletion of sub section 3- 12 of the Fifth Schedule and moving provisions touching on boundary delimitation as set out in the Fifth Schedule to the new Section 24B. It further proposed that the provision may be structured to replicate IEBC Rules of Procedure as they carry all the provisions. The IEBC submitted conforming standpoints with the view of obtaining consistency and clarity in the text of the Bill.
38. **ELGIA** submissions were for the two Houses to be involved in the delimitation and Review of the Electoral process. The Stakeholder further proposed amendment to Clause 24B of the Bill to make reference to a 'Joint Parliamentary Committee' in line with the Article 124(2) of the Constitution, to accommodate the Senate in the process considering that the Wards are devolved units of Governance.

39. **ORPP** submitted that the Committee should review the approach of the provision in the use of a deliberate language to consider human rights in conducting public hearings by including Persons with Disabilities, incorporating sign language and access to the venue of public hearings. The Stakeholder submitted that the preparation of the revised

report should have a requirement for the Commission to illustrate how the views from the public have been considered or included with reasons to that effect.

40. **NCKK** submitted in support of the proposed amendment which in their view endeavour to bring clarity to the procedure for delimitation of electoral boundaries.

Committee Observation

41. The Committee observed that in some instances, reference is made to the National Assembly (e.g. in the new section 24B) while in others, reference is made to Parliament. The Committee noted the need to have both Houses of Parliament participate in the electoral boundary delimitation and review process.

42. The **IEBC and I-RCK** submitted that the First Schedule of the Bill on the composition of the selection panel be increased from a number of seven (7) to nine (9) to include all key stakeholders as the current provision gives priority to political parties by increasing nominees from PPLC from 1 to 3. Additionally, the proposed two nominees from the Parliamentary Service Commission are deemed to be from Political Parties.

43. The **ORPP** proposed that Parliament should reconsider in **Clause 9(2)b** qualifying the phrasing of the **PPLC** to communicate that the representatives be drawn from the Political Parties. The Stakeholder further proposed deleting the phrase “**coalition of parties**” given that Clause 2 of the Bill on Interpretation already defines “parliamentary party” **ORPP** further submitted that the Committee should reconsider the wording and the language used to attain the constitutional imperative of two-third gender rule in the Selection Panel. The Stakeholder recommended further that the language used by the **IEBC Act** where a nominating body is mandated to nominate two representatives to the Selection Panel that being, one man and one woman. In addition, the **ORPP** recommended the use of plain language in the terms used, to avoid determining what the two-third gender principle of two persons is. In this regard, the nomination by the Parliamentary Service Commission and the Interreligious Council of Kenya should be qualified to “one man one woman.”

44. **LSK** submitted that the Selection Panel as provided for in this provision should be reconstituted to: representation of three persons from the Parliamentary Service Commission, and one from a party other than the parliamentary party or coalition of parties; one from the majority party or coalition of parties; One from minority party or coalition of parties; One from PPLS, two (2) from LSK on the basis of gender equity;

one from ICPAK and one from Inter-Religious Council of Kenya. The LSK was of the view that the proposed composition of the selection panel as inferred in Clause 9 creates an imbalance since there would be over representation from the political parties.

45. **NCKK** proposed the composition of the members of the selection panel be appointed through a competitive and transparent process to bolster inclusivity and inculcate confidence in the recruitment process. They proposed that the composition of the selection panel should include: two (2) persons nominated by the Parliamentary Service Commission representing majority party or coalition of parties and the minority party or coalition of parties; three persons nominated by the PPLC of whom—one shall be from a party other than a parliamentary party or coalition of parties; one shall be from a parliamentary party or coalition of parties forming the national government. The Stakeholder further proposed one person nominated by the LSK, one person nominated by the ICPAK, and two persons nominated by the Inter-Religious Council of Kenya.
46. **ELOG** submitted that the proposed amendment is inclusive and guarantees public confidence as far as consideration of the two-third gender principle. The Stakeholder further recommended that the provision should be enriched to consider civil society organizations, representations of the PWDs and marginalised communities within the meaning of the text of the Constitution. The Stakeholder further submitted that the amendments to the selection panel threaten the neutrality and impartiality essential for the recruitment of the IEBC Commissioners potentially compromising the integrity of the electoral process.

Committee Observation

47. The Committee observed that the revision of the membership of the selection panel to give PPLC extra slots for the persons they should nominate is due to the fact a general election is political process. In line with proposed increase in selection panel's membership from 7 to 9 members, the Committee noted that the present provision should be retained as is.
48. The PPLC submitted that increasing the membership of the selection panel addresses the deficiency of inclusivity in the selection process. The Stakeholder was of the view that two extra slots designated for the PPLC will significantly enhance the political parties' participation in shaping the future of the Commission.

Clause 8

49. The IEBC supported the proposed amendment that repeals Section 36 of IEBC Act and submitted that the amended provision is not in contention and is spent.

Committee Observation

50. The Committee observed that the provisions under section 36 of the IEBC Act on the procedure for delimitation of electoral boundaries are wrongly placed in the Act under the savings and transition.

Clause 9

51. The **IEBC and I-RCK** submitted that the First Schedule of the Bill on the composition of the selection panel be increased from a number of seven (7) to nine (9) to include all key stakeholders as the current provision gives priority to political parties by increasing nominees from PPLC from 1 to 3. Additionally, the proposed two nominees from the Parliamentary Service Commission are deemed to be from Political Parties.

52. The **ORPP** proposed that Parliament should reconsider in **Clause 9(2)b** qualifying the phrasing of the **PPLC** to communicate that the representatives be drawn from the Political Parties. The Stakeholder further proposed deleting the phrase “**coalition of parties**” given that Clause 2 of the Bill on Interpretation already defines “parliamentary party” **ORPP** further submitted that the Committee should reconsider the wording and the language used to attain the constitutional imperative of two-third gender rule in the Selection Panel. The Stakeholder recommended further that the language used by the **IEBC Act** where a nominating body is mandated to nominate two representatives to the Selection Panel that being, one man and one woman. In addition, the **ORPP** recommended the use of plain language in the terms used, to avoid determining what the two-third gender principle of two persons is. In this regard, the nomination by the Parliamentary Service Commission and the Interreligious Council of Kenya should be qualified to “one man one woman.”

53. **LSK** submitted that the Selection Panel as provided for in this provision should be reconstituted to: representation of three persons from the Parliamentary Service Commission, and one from a party other than the parliamentary party or coalition of parties; one from the majority party or coalition of parties; One from minority party or

coalition of parties; One from PPLS, two (2) from LSK on the basis of gender equity; one from ICPAK and one from Inter-Religious Council of Kenya. The LSK was of the view that the proposed composition of the selection panel as inferred in Clause 9 creates an imbalance since there would be over representation from the political parties.

54. **NCKK** proposed the composition of the members of the selection panel be appointed through a competitive and transparent process to bolster inclusivity and inculcate confidence in the recruitment process. They proposed that the composition of the selection panel should include: two (2) persons nominated by the Parliamentary Service Commission representing majority party or coalition of parties and the minority party or coalition of parties; three persons nominated by the PPLC of whom—one shall be from a party other than a parliamentary party or coalition of parties; one shall be from a parliamentary party or coalition of parties forming the national government. The Stakeholder further proposed one person nominated by the LSK, one person nominated by the ICPAK, and two persons nominated by the Inter-Religious Council of Kenya.
55. **ELOG** submitted that the proposed amendment is inclusive and guarantees public confidence as far as consideration of the two-third gender principle. The Stakeholder further recommended that the provision should be enriched to consider civil society organizations, representations of the PWDs and marginalised communities within the meaning of the text of the Constitution. The Stakeholder further submitted that the amendments to the selection panel threaten the neutrality and impartiality essential for the recruitment of the IEBC Commissioners potentially compromising the integrity of the electoral process.

Committee Observation

56. The Committee observed that the revision of the membership of the selection panel to give PPLC extra slots for the persons they should nominate is due to the fact a general election is political process. In line with proposed increase in selection panel's membership from 7 to 9 members, the Committee noted that the present provision should be retained as is.
57. The PPLC submitted that increasing the membership of the selection panel addresses the deficiency of inclusivity in the selection process. The Stakeholder was of the view

that two extra slots designated for the PPLC will significantly enhance the political parties' participation in shaping the future of the Commission.

Clause 10

58. The **IEBC** was of the view that the quorum of five members to conduct a meeting of the Commission was applicable when commissioners were nine and therefore not applicable in the present provision of the Bill which proposed provision shall confine the number of the Commissioners to seven (7). The IEBC submitted that the quorum of the Commissioners should be dependent on the number of members in post. The IEBC urged the Committee, in the alternative to consider the following provision: *"Notwithstanding the provisions of paragraph 5, where a vacancy has occurred and the Commission membership is less than five, the quorum shall not be less than fifty percent (50%) of the number of the Commissioners in post."*
59. Additionally, **ELOG** made reference to the question on quorum to the recent Supreme Court ruling on the BBI judgment where the Supreme Court noted that, whereas it is desirable to have a high threshold for quorum, the same may lead to procrastination of the critical decision making. The Stakeholder affirmed in the submission that this provision may be construed to be inconsistent with Article 250(1) of the Constitution.
60. **LSK** on the provision that seeks to amend Second Schedule of the Principal Act recommended that the Committee retains the present provision in the Parent Act as is, on the basis that the heavily provision borrows from *Mwongozo* Code of Governance which recommends that the quorum of the Board should be 5 where the total members of the Board is 8-9 and 4 where the total membership is 7 and below. LSK proposes that since the current composition of the Commission is 7, quorum of 4 is the most practical in their view.
61. **LSK** further submitted that the proposed amendment of the second schedule to the Principal Act shall interfere with the existing provision in the Principal Act. LSK comments that the principal Act outlays that a decision in the commission is arrived at either unanimously or by way of the majority members of the Commission present. LSK was of the view that the new proposed amendment deleting paragraph 7 of Clause 10 shall create room for members who are not present and voting to be part of the decision-making process by simply concurring without indicating how such concurrence would be communicated, opening room for manipulation. The Society

proposed that the provision endeavour to ensure presence of members to vote when decisions are made.

62. **ICJ** proposed that the composition of the increased number of the Commissioners from 7 to 9 should comprise of: two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties; three persons nominated by the PPLC whom:—one shall be from a party other than the parliamentary party or coalition of parties; one shall be from the majority party or coalition of parties; one shall be from the minority party or coalition of parties. One person nominated by the LSK, one person nominated by the Institute of Public Accountants of Kenya; and two persons nominated by the Inter-Religious Council of Kenya. However, the Stakeholder envisions that the amendment to the composition of the selection panel undermines the Constitutional principles set out in Article 81(e) of the Constitution.

Committee Observation

63. The Committee observed that the quorum of five members was reasonable for the conduct of the Commission's business.

Clause 11

64. The **IEBC and ELOG** submitted in support of the proposal to have a detailed step by step procedure for the boundary delimitation under the Fifth Schedule. However, the Commission proposed that the Schedule be further amended with the new title: Procedures for the delimitation of electoral units which elaborates the step-by-step procedures to be undertaken during the electoral boundary delimitation.

65. **ELGIA** submitted that the Bill should provide a framework of establishment and the membership of the County Boundary Panels. This is in consideration that currently there is no law on the review of the County Boundaries under Article 188 of the Constitution that would have provide for such panels.

66. **ICJ** noted in their submissions that the timelines given in the Constitution for the boundaries review lapsed sometime in March 2024 contrary to recommendations given by the National Dialogue Committee specifically on amendments to Article 89 of the

Constitution. The stakeholder further submitted that the absence of a fully constituted IEBC poses a Constitutional Crisis and dilemma.

Committee Observation

67. The Committee observed that the Senate on 2nd May 2024 passed the County Boundaries Bill and the same is currently under consideration by the National Assembly, and that this will provide a framework of establishment and the membership of the County Boundary Panels, hence no need to have provisions on the same in this Bill.

Committee Observation

68. The Committee observed that the transitional provision allowing the Secretary to the Commission to continue serving until the end of their term will promote stability in the operations of the Commission as well as adherence to employment law rights of the Secretary.

Clause 12

69. The ORPP was in support of proposed transitional provision particularly on the term on the part that seeks to enable current CEO of the IEBC to serve the remainder of his term in the event the Bill becomes law.

70. IRCK were of the view that work done by the current selection panel should not be discarded altogether, if upon assessment is found useful by the subsequent selection panel in place when the Bill is enacted.

71. NCKK affirmed support of the proposed transitional provision that seeks to allow members serving in the existing selection panel shall be eligible to be nominated to serve in the subsequent panel, upon enactment of Bill.

72. PPLC was of the view that the unexpired term of the current CEO should be reviewed and not renewed as contemplated under Clause five (5) of the proposed amendment; if the expiry period of the CEO falls within one year to the next general election. In the alternative, the stakeholder proposed appropriate compensation commensurate to legitimate expectation advanced by contractual obligation.

Committee Observation

73. The Committee observed that the transitional provision allowing the Secretary to the Commission to continue serving until the end of their term will promote stability in the operations of the Commission as well as adherence to employment law rights of the Secretary. The Committee was in support of the transitional clause allowing members serving in the existing selection panel to be eligible for nomination to serve in the subsequent panel, upon enactment of Bill.

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.1 Committee Observations

74. Having considered the Bill and the submissions received thereon, the Committee made the following observations –
- (a) that most of the stakeholders were in support of the Bill and the reforms it seeks to put in place, particularly as regards expansion of the selection panel to promote inclusivity in the selection process, and the putting in place of a framework for boundary review;
 - (b) that there is need to have highly qualified commissioners and further noted the importance of including information technology as one of the key fields that commissioners ought to have experience in, especially considering the wide use of technology in the electoral process, for example in voter registration and results transmission. The Committee also notes the need for commissioners to have vast experience in their areas of qualification in order for them to efficiently and effectively undertake their duties;
 - (c) proposed amendment barring other persons from performing the duties of a chairperson of the Commission sought to align the Act with the court’s judgement in the Katiba Institute case (supra), there was need to ensure that the functioning of the Commission would not be affected in case of a vacancy or absence in the office of the chairperson to the Commission. It noted that this may lead to a constitutional crisis especially if the vacancy occurred during general elections;
 - (d) that the requirement to review the conduct of general elections and table a report within 18 months as well as publish the same promotes transparency in the conduct of elections and ensures that the Commission remains accountable to Kenyans and implements changes that would make the conduct of the next election much more efficient;
 - (e) that the definition of a “parliamentary party” excludes the Senate and only considers parties in the National Assembly. The definition of Parliament under article 94 includes both the National Assembly and the Senate hence the Bill ought to be amended to reflect this. The definition of a “parliamentary committee” also excludes the Senate, hence the need to amend it;

- (f) that there is lack of clarity as regards the submission and review of boundary delimitation reports by Parliament. In some instances, reference is made to the National Assembly (in the new section 24B) while in others, reference is made to Parliament. Both houses however play a role in expansion of timelines for the boundary review process. Delimitation of electoral boundaries is a sensitive process which affects all elections in the country and as such, there is need to involve both houses in the boundary review process. The proposed new section 24B and the new Fifth Schedule ought to be reviewed and amended to reflect involve both the Senate and the National Assembly; and
- (g) that there were concerns raised about the shortened term of the Commission Secretary/ CEO to the Commission. The Committee however notes that the proposed new timeline is reasonable as it ensures that the Secretary has sufficient time to learn the internal workings of the Commission so as to effectively execute his or her duties.

75. The Committee therefore observed that the following amendments to the Bill would be required –

- (a) an amendment to clause 2 of the Bill to include the Senate in the definition of “parliamentary party” and “parliamentary committee”;
- (b) an amendment to clause 3 so as to make it a requirement for persons appointed as commissioners to have at least ten (10) years proven experience in the field one is qualified in; and
- (c) an amendment to clause 7 so as to involve the Senate and its relevant standing committee in the electoral boundary delimitation process.

76. The text of the proposed amendments is attached as **Annex 7**.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

4.1. Committee Recommendations

77. Having considered the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bill No. 10 of 2024) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Senate **passes the Bill with amendments** as proposed by the Committee.

LIST OF ANNEXURES

- Annex 1:* Minutes of the sittings of the Committee in considering the Bill
- Annex 2:* Copy of the Bill as passed by the National Assembly
- Annex 3:* Copy of the Message conveying the Bill to the Senate
- Annex 4:* Advertisement published in the *Daily Nation* and *Standard* Newspapers on Wednesday, 15th May, 2024
- Annex 5:* Copies of Stakeholder Submissions on the Bill
- Annex 6:* Matrix on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bill No. 10 of 2024)
- Annex 7:* Text of the proposed Committee amendments to the Bill

ANNEX 1: Minutes of the sittings of the Committee in
considering the Bill



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 136TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 22ND MAY, 2024 AT 8.00 A.M ON 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. Karen Njeri Nyamu, MP | - Member |
| 7. 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 |

SECRETARIAT

- | | |
|-----------------------|---|
| 1. Ms. Lillian Waweru | - Legal Counsel II |
| 2. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 3. Ms. Angela Bonaya | - Clerk Assistant III |
| 4. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 5. Ms. Judith Aoka | - Assistant Audio Officer |
| 6. Ms. Marion Kibet | - Attachee |

MIN. NO. 172/2024

PRELIMINARIES

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

MIN. NO. 173/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 174/2024

CONSIDERATION OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2024 (NATIONAL
ASSEMBLY BILLS NO. 10 OF 2024)

The Committee commenced consideration of the Independent Electoral & Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) and was taken through the legal brief, Committee Paper No. 54. The Committee noted the principal object of the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 is to amend the Independent Electoral and Boundaries Commission Act to redefine key terms, expand qualification criteria, and streamline vacancy management. The Bill seeks to enhance transparency, efficiency, and accountability in electoral processes. The Bill seeks to make the Commission's appointment processes more inclusive and transparent while ensuring continuity and stability within its administrative structure.

Due to lapse of time, the Committee resolved to resume consideration of the Bill at its subsequent meeting scheduled to be held on Friday, 24th May, 2024 in Machakos County.

MIN. NO. 175/2024

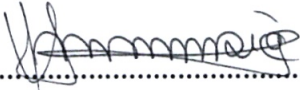
CONSIDERATION OF THE COUNTY CIVIC
EDUCATION BILL, 2024 (SENATE BILLS NO. 4 OF
2024)

The Committee deferred this Agenda due to lapse of time.

MIN. NO. 176/2024

ADJOURNMENT

The Chairperson adjourned the meeting at sixteen minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 23rd May, 2024 at nine O'clock.

SIGNED: 

DATE: 28/5/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 138TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 24TH MAY, 2024 AT 9.00 A.M AT THE FOUR POINTS BY SHERATON, NAIROBI, AIRPORT

PRESENT

- | | |
|--|----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair (<i>Chairing</i>) |
| 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

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

- | | |
|------------------------|---|
| 1. Mr. Hassan Odhowa | - HoD, Governance Committees |
| 2. Ms. Lillian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |
| 7. Ms. Rosebella Ngesa | - Protocol Officer III |
| 8. Mr. Abdalla Mbore | - Sergeant-at-Arms |
| 9. Ms. Marion Kibet | - Attachee |

IN ATTENDANCE (*See Annex for Full List*)

1. Independent Electoral and Boundaries Commission (IEBC)
2. Office of the Registrar of Political Parties (ORPP)
3. Political Parties Liaison Commission (PPLC)
4. Inter-Religious Council of Kenya
5. Electoral Law and Governance Institute for Africa (ELGIA)

MIN. NO. 181/2024

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past nine O'clock and opened with a word of prayer. This was followed by a self-introductory session by Senators, Secretariat, and the invited stakeholders

MIN. NO. 182/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Hamida Ali Kibwana, MP.

MIN. NO. 183/2024

MEETING WITH STAKEHOLDERS TO RECEIVE SUBMISSIONS AND DELIBERATE ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

The Committee resumed consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024). The Committee noted that some of the invited stakeholders made their representations on the Bill before the joint sitting of the counterpart Committees of the National Assembly and the Senate that was held on the 18th April, 2024. Upon invitation by the Chairperson, the Committee received submissions from the following invited stakeholders –

a) Independent Electoral and Boundaries Commission

The Commission noted that the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024), makes proposals to amend the IEBC Act and that the said proposals are intended to enhance the efficacy of the Commission processes. The Commission submitted that they are in support of the intention of the Bill and the reviewed provisions. However, the Commission has some reservations on the splitting of the procedures that would amount to duplication of provisions on boundary delimitation and Clause 5, Section 10, the Commission saw it fit to retain the five (5) years term of office of the Commission Secretary. Under the First Schedule, Amend the composition of the selection panel from 7 to 9, the Commission was of the view that the selection panel needed to be inclusive of all key stakeholders who would give additional value to the process e.g. Special Interest Groups.

b) Office of the Registrar of Political Parties

ORPP supported the proposed amendments on the Bill other than Clause 5 where they submitted that Parliament ought to retain the term of office of the IEBC CEO of 5 years

of discriminating against competent professionals who may not have just that one single qualification.

e) Electoral Law and Governance for Africa

The Committee noted that ELGIA provided technical support to the NADCO process and is in agreement with most of the proposals and recommendations contained in the Report and the Bill generally. ELGIA went further and submitted that –

- i) Clause 6 of the Bill should provide timelines for the review of the report by parliament upon submission by the Commission;
- ii) Clause 7 proposes to amend the principal Act by inserting part IIIA Delimitation of Electoral units after section 24A of the Act. ELGIA recommends amendment to section 24B of the Bill to make reference to a ‘joint Parliamentary Committee’ in line with Article 124(2) of the Constitution, to accommodate the Senate in the process. This is in consideration that wards are devolved units of Governance; and
- iii) Clause 11 on procedures for the Delimitation of Electoral Units, the Bill should provide a framework of establishment and membership of the County Boundaries Panels.

MIN. NO. 184/2024

ADJOURNMENT

The Chairperson adjourned the meeting at five minutes past one O'clock. The next meeting was scheduled to commence the same day at two O'clock.

SIGNED: 

DATE: 28/5/2024

with an opportunity for reappointment as provided in the IEBC Act. They further submitted that –

- i) under clause 9, Parliament should consider qualifying the phrasing of PPLC to communicate the representatives are drawn from political parties;
- ii) parliament should consider deleting the Phrase “coalition of parties” from the provision given that Clause 2 of the Bill already defines a parliamentary party to include a coalition of parties;
- iii) plain terms should be used as opposed to inviting the difficulty of determining what two-thirds gender principle of two persons. That is, Clause 9 should retain the language of the IEBC Act where a nominating body is entitled to nominate two representatives that being one male one female; and
- iv) Clause 11, paragraph 7 on public hearing, there should be inclusion of persons with disabilities. This may include sign language and access to the venue of public hearing. Under paragraph 8(2) on the preparation of a revised report should have a requirement for the Commission to illustrate how the views from the public have been considered with reasons thereof.

c) Political Parties Liaison Commission

The Commission was in support of the proposed amendments and stated that the amendments aim to streamline the conduct and operations of the Commission to enhance the realization of its core mandate. They further stated that the Bill contains some progressive provisions that, if adopted by Parliament and enacted into law, would held address the inherent problems faced by the Commission. However, the Bill also includes provisions that would require fine-tuning to enable seamless functional institution such as –

- i) they opposed the deletion in clause 2(a) as proposed in the Bill and to align the Act with the judgment of the court. The Commission proposed and amendment to section 6 of the Bill in respect of the qualifications of the vice chairperson or any member who the Commission would elect to act as chairperson in the case of a vacancy; and
- ii) The Commission recommended to uphold the qualifications in section 6(2) of members of the Commission as the basic qualifications but raise the bar for the chairperson to be a Masters Degree holder;

d) Inter-Religious Council of Kenya

The Council was in support of the proposed Bill and submitted that the proposed amendment to section 6 of Cap 7(c) to include experience in accounting and ICT should be reconsidered or delete the proposed amendment. This is because it may run the risk



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 139TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 24TH MAY, 2024 AT 2.00 P.M AT THE FOUR POINTS BY SHERATON, NAIROBI, AIRPORT

PRESENT

- | | |
|--|----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair (<i>Chairing</i>) |
| 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

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

- | | |
|------------------------|---|
| 1. Mr. Hassan Odhwa | - HoD, Governance Committees |
| 2. Ms. Lillian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Joshat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |
| 7. Ms. Rosebella Ngesa | - Protocol Officer III |
| 8. Mr. Abdalla Mbore | - Sergeant-at-Arms |
| 9. Ms. Marion Kibet | - Attachee |

IN ATTENDANCE (*See Annex for Full List*)

1. Independent Electoral and Boundaries Commission (IEBC)
2. Office of the Registrar of Political Parties (ORPP)

3. Political Parties Liaison Commission (PPLC)
4. Inter-Religious Council of Kenya
5. Electoral Law and Governance Institute for Africa (ELGIA)

MIN. NO. 185/2024 **PRELIMINARIES**

The Chairperson called the meeting to order at twenty minutes past two O'clock.

MIN. NO. 186/2024 **MEETING WITH STAKEHOLDERS TO RECEIVE
SUBMISSIONS AND DELIBERATE ON THE
INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)**

a) Inter-Religious Council of Kenya

The Council was in support of the proposed Bill and submitted that the proposed amendment to section 6 of Cap 7(c) to include experience in accounting and ICT should be reconsidered or delete the proposed amendment. This is because it may run the risk of discriminating against competent professionals who may not have just that one single qualification.

b) Electoral Law and Governance for Africa

The Committee noted that ELGIA provided technical support to the NADCO process and is in agreement with most of the proposals and recommendations contained in the Report and the Bill generally. ELGIA went further and submitted that –

- i) Clause 6 of the Bill should provide timelines for the review of the report by parliament upon submission by the Commission;
- ii) Clause 7 proposes to amend the principal Act by inserting part IIIA Delimitation of Electoral units after section 24A of the Act. ELGIA recommends amendment to section 24B of the Bill to make reference to a 'joint Parliamentary Committee' in line with Article 124(2) of the Constitution, to accommodate the Senate in the process. This is in consideration that wards are devolved units of Governance; and
- iii) Clause 11 on procedures for the Delimitation of Electoral Units, the Bill should provide a framework of establishment and membership of the County Boundaries Panels.

Deliberations

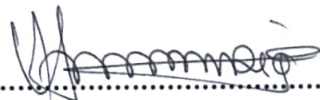
After the Committee received submissions from the invited stakeholders, this was followed by a discussion on the key issues that arose from the submissions received, including –

- i) what mischief is the Bill trying to cure by reducing the term of office of the IEBC Secretary/CEO from 5 years to 4 years;
- ii) whether the Board requires professional qualifications and at least ten years' experience in matters relating to any of the required fields; and
- iii) inserting the word “and Senate” in some of the provisions that do not mention the Senate but mention the National Assembly.

Thereupon, the Committee directed the Secretariat to prepare a draft report on the Bill to be considered and adopted on the subsequent meeting.

MIN. NO. 187/2024 ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past four O'clock. The next meeting was scheduled to be held on Saturday, 25th May, 2024 at nine O'clock.

SIGNED: 

DATE: 28/5/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 140TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON SATURDAY, 25TH MAY, 2024 AT 9.00 A.M AT THE FOUR POINTS BY SHERATON, NAIROBI, AIRPORT

PRESENT

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

SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. Hassan Odhwa | - HoD, Governance Committees |
| 2. Ms. Lillian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |
| 7. Ms. Rosebella Ngesa | - Protocol Officer III |
| 8. Mr. Abdalla Mbore | - Sergeant-at-Arms |
| 9. Ms. Marion Kibet | - Attachee |

MIN. NO. 188/2024

PRELIMINARIES

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

MIN. NO. 189/2024

ADOPTION OF THE AGENDA

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

MIN. NO. 190/2024

CONSIDERATION OF THE DRAFT COMMITTEE REPORT ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

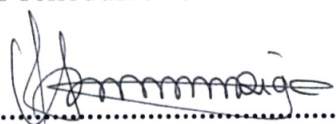
The Committee was taken through the draft Report on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Hamida Ali Kibwana, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 191/2024

ADJOURNMENT

The Chairperson adjourned the meeting at forty-five minutes past twelve O'clock. The next meeting was scheduled to be held on Tuesday, 28th May, 2024 at nine O'clock.

SIGNED: 

DATE: 28/5/2024

REPUBLIC OF KENYA







13TH PARLIAMENT | 3RD SESSION


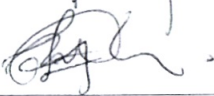

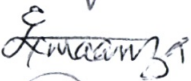
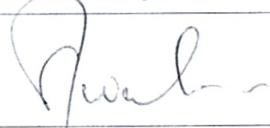



STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

STAKEHOLDERS ATTENDANCE SHEET

DATE: 24/05/2024 | TIME: 9:00AM | VENUE: Four Points by Sheraton

AGENDA: Meeting with stakeholders to receive submissions on the IEBC (Amendment) Bill, 2024
(National Assembly Bills No. 10 of 2024)
IN ATTENDANCE

NO	NAME	TITLE AND ORGANIZATION	SIGNATURE
1.	MARJAN HUSSEIN MARJAN	CEO - IEBC	
2.	Charidah Keitany	Deputy CEO - IEBC	
3.	Christpine Dwiye	Director Legal Services - IEBC	
4.	Wafuka Wakoko	Legal - ORPP	
5.	Grathen Judy	Registration - CRPP	
6.	EVANS MISATI	CHAIRMAN PPHC	

NO	NAME	TITLE AND ORGANIZATION	SIGNATURE
7.	Mike Oiewo	Chair Legal & Disputes Resolution Subcom of PPLC	
8.	Isabel Gitirija	member, political parties Liaison Committee (PPLC)	
9.	Cindwila MUKESA	Deputy Treasurer PPLC	
10.	Abdulmajid Nasser	Inter-Religious Council of Kenya	
11.	Abdirahman Ismail	Inter-Religious Council of Kenya (IRCK)	
12.	Bon Makolwel	Executive Law & Human Rights Africa (ECHR/HR)	
13.	Dr. Meshack Koni	Director Research & Boundaries IEBC	
14.	Mr. Turo C. Nkomo	Manages/PA - CEO IEBC	
15.	Daniel Mathenge	Communication - IEBC	
16.			
17.			

ANNEX 2: Copy of the Bill as passed by the National
Assembly Bill



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 10 of 2024)

**THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2024**

(A Bill published in the Kenya Gazette Supplement No. 46 of 2024 and passed
by the National Assembly, with amendments, on May 2nd, 2024)

N.A./B/No. 10/2024

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2024**

A Bill for

**AN ACT of Parliament to amend the Independent Electoral
and Boundaries Commission Act and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2024 and shall come into force upon publication in the *Gazette*.

Short title and commencement.

2. Section 2 of the Independent Electoral and Boundaries Commission Act (hereinafter referred to as “the principal Act”) is amended—

Amendment of section 2 of Cap. 7C.

- (a) in the definition of the word “chairperson” by deleting the words “or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson” appearing immediately after the word “Constitution”;
- (b) by deleting the definition of the expression “first review”;
- (c) by deleting the definition of the expression “former Boundaries Commission”;
- (d) by deleting the definition of the expression “former Constitution”;
- (e) by deleting the definition of the expression “issues arising”;
- (f) by inserting the following new definition in proper alphabetical sequence—

“parliamentary party” means a party or coalition of parties consisting of not less than five percent of the membership of the National Assembly;

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new subparagraphs immediately after sub-paragraph (vi)—

Amendment of section 6 of Cap. 7C.

(vii) information and communication technology;

(viii) accounting.

4. Section 7A of the principal Act is amended—

Amendment of section 7A of Cap. 7C.

(a) by deleting sub-section (4);

(b) by deleting sub-section (5);

(c) by deleting sub-section (6).

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section—

Amendment of section 10 of Cap. 7C.

(4) The secretary shall hold office for a term of four years and is eligible for re-appointment for one further term of four years.

6. The principal Act is amended by inserting the following new section immediately after section 24—

Insertion of a new section 24A in Cap. 7C.

Review of conduct of general election.

24A. (1) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(2) The review shall be completed within eighteen months after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

7. The principal Act is amended by inserting the following new Part immediately after section 24A—

Insertion of a new PART IIIA in Cap. 7C.

PART IIIA—DELIMITATION OF ELECTORAL UNITS

Procedure for delimitation of electoral boundaries.

24B. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

- (a) review of the names and boundaries of constituencies;
- (b) review of the number, names and boundaries of wards;
- (c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
- (d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—
 - (i) allows for variation of margin of not more than the limits provided under Article 89(6) of the Constitution in relation to cities, sparsely populated areas and other areas;
 - (ii) takes into account the provisions of Article 89(7)(b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical demographical details relating to such delimitation; and

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the *Gazette*.

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the *Gazette* of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

8. The principal Act is amended by repealing section 36.

9. The First Schedule to the principal Act is amended—

Repeal of section 36 of Cap. 7C.
Amendment of the First Schedule to Cap. 7C.

(a) in paragraph 1—

(i) by deleting the word “seven” appearing immediately after the words “consisting of” appearing in sub-paragraph (1) and substituting therefor the word “nine”;

(ii) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

“(2) The selection panel shall consist of—

- (a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
 - (b) three persons nominated by the Political Parties Liaison Committee of whom—
 - (i) one shall be from a party other than a parliamentary party or coalition of parties;
 - (ii) one shall be from the majority party or coalition of parties;
 - (iii) one shall be from the minority party or coalition of parties;
 - (c) one person nominated by the Law Society of Kenya;
 - (d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
 - (e) two persons nominated by the Inter-religious Council of Kenya.”
- (iii) by inserting the following new subparagraphs immediately after subparagraph (2A)—
- “(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.
 - (2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds

of the nominees are of the same gender.”

- (iv) in sub-paragraph (3), by deleting the words “sub-paragraphs (2)(b) and (c)” and substituting therefor the words “sub-paragraphs (2)(b), (c), (d) and (e)”;
- (v) by inserting the following new subparagraph immediately after subparagraph (6)—

“(7) The Parliamentary Service Commission shall provide for and meet the expenditure of the selection panel.”

- (b) by deleting paragraph 6 and substituting therefor the following new paragraph—

“Dissolution of Selection Panel

6. (1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.”

10. The Second Schedule to the principal Act is amended—

Amendment of
the Second
Schedule to Cap.
7C.

- (a) by deleting paragraph 5 and substituting therefor the following new paragraph—

“5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.”

- (b) by deleting paragraph 7 and substituting therefor the following new paragraph—

“(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission.”

11. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule—

Repeal and replacement of the Fifth Schedule to Cap. 7C.

**FIFTH SCHEDULE (s.24B(12))
PROCEDURES FOR THE DELIMITATION OF
ELECTORAL UNITS**

1. Notice of delimitation of electoral units

(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2) and (3) of the Constitution, the Commission shall notify the public of—

- (a) the intended review;
- (b) invite representations from interested parties; and
- (c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

- (a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and
- (b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—
 - (i) the population quota for constituencies and wards;
 - (ii) the number of inhabitants in every constituency and ward;

- (iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
- (iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

(a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and

(b) the latest official population census report.

(2) The Commission may use as its secondary reference material—

(a) the reports of County Boundary Review Panels; or

(b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as ~~soon as possible after the completion of every~~ national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

- (a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
- (b) invite the public to make representations on the proposals contained in the report; and
- (c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

- (a) for all the electoral units in accordance with the final boundary dissemination delimitation report;
- (b) for the respective constituencies in every county; and
- (c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the *Gazette* as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. Maintenance of records

The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

12. Upon the commencement of this Act—

Saving and transition.

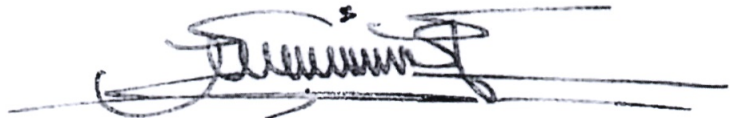
- (a) the selection panel existing immediately before the commencement of this Act shall stand dissolved but—
 - (i) the members of that panel may be nominated to serve in any subsequent panel; and
 - (ii) nothing done by that panel for purposes of executing its functions shall, if done in good faith, render any member of that panel personally liable for any action, claim or demand;
- (b) the respective nominating bodies under paragraph 1(2)(b), (c), (d) and (e) of the First Schedule to the principal Act shall within fourteen days from the date of commencement of this Act submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment to the selection panel under the Act;
- (c) the President shall, within seven days of receipt of the names of the nominees under paragraph 1(2) of the First Schedule to the principal Act from the Parliamentary Service Commission, appoint a selection panel for the purpose of

appointment of the chairperson and members of the Commission; and

- (d) a person holding the office of the secretary of the Independent Electoral and Boundaries Commission shall continue in office for the remainder of the unexpired period of their term.

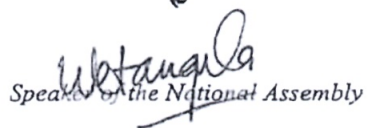
The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on Thursday, 2nd May, 2024.



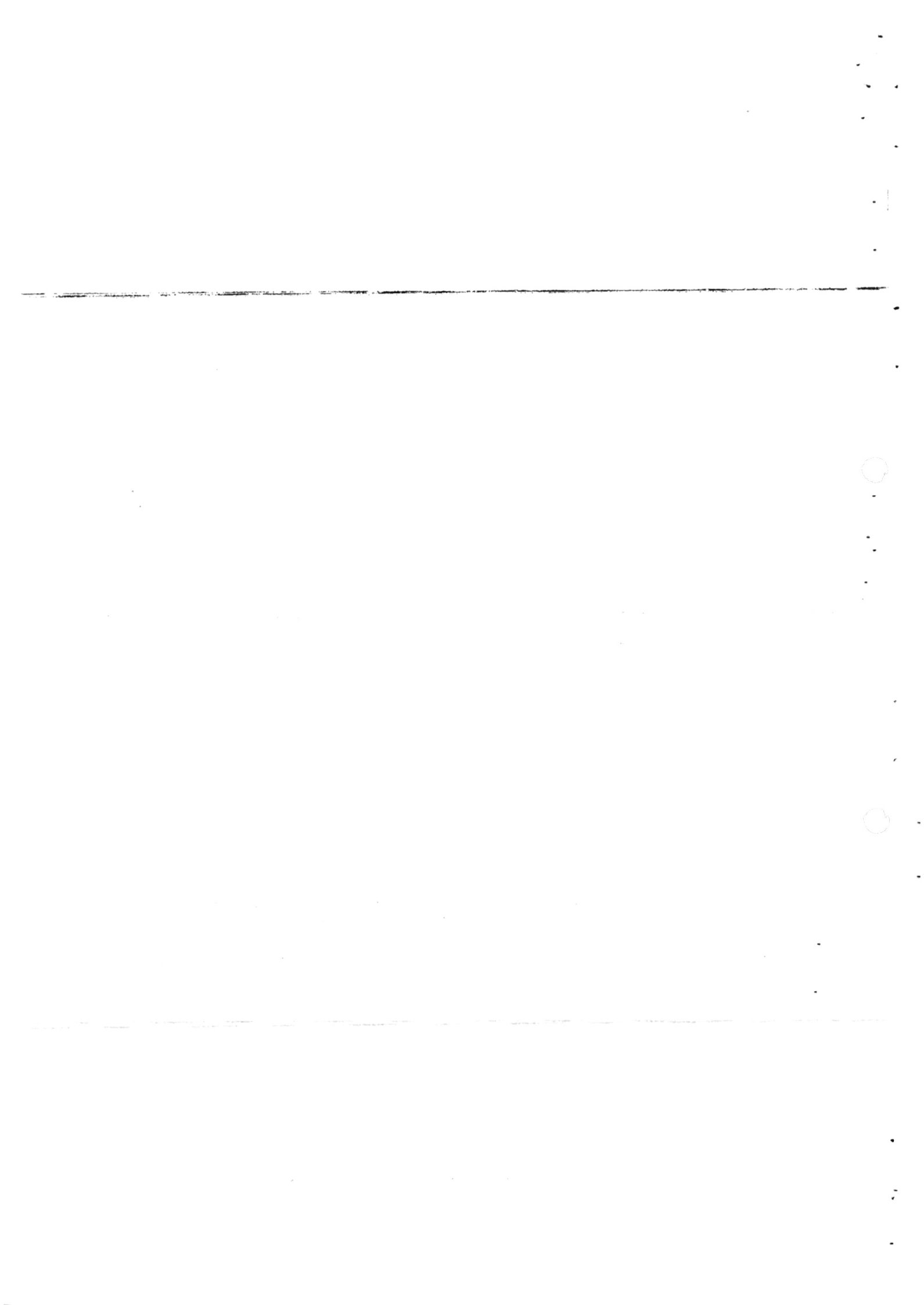
Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly.



Speaker of the National Assembly

PRINTED BY THE CLERK OF THE NATIONAL ASSEMBLY



ANNEX 3: Message from the Speaker of the National
Assembly



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY
MESSAGES

MESSAGE TO THE SENATE

(No. 12 of 2024)



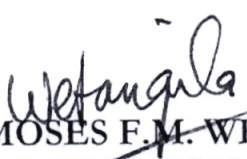
SUBJECT: PASSAGE OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2024)

PURSUANT to the provisions of Standing Order 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

WHEREAS, the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 10 of 2024) was published *vide* Kenya Gazette Supplement No. 46 of 4th March 2024 as a Bill *seeking to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions and make consequential amendments to give effect to some of the recommendations and views of the public as submitted to the National Dialogue Committee (NADCO) on the Issues of Electoral Justice and Related Matters, and for connected purposes;*

AND WHEREAS, on 2nd May 2024, the National Assembly considered the said Bill and passed it **with amendments** and in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.


THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Friday, 3rd May, 2024

ANNEX 4: Advertisement Published in the *Daily Nation* and
Standard Newspapers on Wednesday, 15th May,
2024



**THIRTEENTH PARLIAMENT | THIRD SESSION
THE SENATE**

**The Independent Electoral & Boundaries Commission (Amendment) Bill,
2024 (National Assembly Bills No. 10 of 2024)**

INVITATION FOR SUBMISSION OF MEMORANDA

The Independent Electoral & Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) was read a First Time in the Senate on Thursday, 9th May, 2024 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee now invites interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to senatejlhrc@parliament.go.ke to be received on or before **Wednesday, 22nd May, 2024 at 5.00 p.m.**

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

ANNEX 5(a): Independent Electoral and Boundaries
Commission (IEBC)

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Ref: IEBC/40/JLAC/14 (4)

22nd May, 2024

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

Dear

Mr. Nyegenye,

RE: SUBMISSION OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10
OF 2024)

The Independent Electoral and Boundaries Commission (IEBC) acknowledges receipt of your letter Ref: SEN/DGAC/DGC/JLAHRC/2024/24 (b) dated 16th May, 2024 on the above subject matter.

The Commission hereby forwards its written Memorandum on the IEBC (Amendment) Bill, 2024 to the Standing Committee on Justice, Legal Affairs and Human Rights as directed for further course of action.

Thank you for your continued support.

Yours

Sincerely,

Marjan Hussein Marjan, MBS
Commission Secretary/CEO

Encls: Memorandum on the IEBC (Amendment) Bill, 2024 – (National Assembly Bills no. 10 of 2024).

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM ON THE
NATIONAL ASSEMBLY BILLS (Bill No. 10 of 2024)

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2024

Dated 22ND MAY 2024

Independent Electoral & Boundaries Commission (IEBC)
Anniversary Towers, 6th Floor, Off University Way
P.O. Box 45371 – 00100, Nairobi – Kenya
Telephone: + 254 (0) 20 29925

A. Introduction

1. The Independent Electoral and Boundaries Commission (hereinafter referred to as “**the Commission/IEBC**”) is a Constitutional Commission established under Article 88 of the Constitution of Kenya.
2. Article 88 (4) outlines its mandate to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other election as prescribed by an Act of Parliament.
3. The Independent Electoral and Boundaries Commissions Act (hereinafter referred to as “**the Act**”) was enacted in 2011 to give life to the provisions of Article 88 and ensure effective operation of the Commission.
4. It provides for *inter alia* the mandate of the Commission, membership of the Commission, the relationship between the Commission and the Secretariat, qualifications of and appointment of the Chairperson, Commissioners and Commission Secretary/CEO, recruitment of staff and functions of the Secretariat, code of conduct for members and employees of the Commission and delimitation of boundaries.
5. Since its enactment, the Act has been amended several times but there remains certain gaps and deficiencies in the Act that need to be revisited.
6. As part of its legal reform agenda, the Commission has made proposals for reform on all electoral laws including the Independent Electoral and Boundaries Commission Act, which was presented before the Justice and Legal Affairs Committee and thereafter the draft proposals were submitted to both Houses of Parliament.
7. The Commission notes with appreciation that consideration that Parliament considered its proposals and included the same in the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024.

B. Purpose of the Bill

8. The Bill seeks to:

Delete obsolete provisions in the Act, introduce experience in Accounting or ICT as additional professional qualifications for appointment as a Member of the Commission, replace the current Fifth Schedule with a new updated schedule to provide the procedures for delimitation of electoral units, amend the term of office of the Secretary to the Commission to four years, renewable once, require the Commission to review its operations and make necessary changes required to make its operations more efficient after every general election, increase the number of members of the IEBC selection panel from 7 to 9 and amend the Commission quorum in the Second Schedule to the Act to five members.

C. General Comments

9. Whereas the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 makes proposals to amend the IEBC Act, we note that the said proposals are intended to enhance the efficacy of the Commission processes.

10. The Commission made its submissions before the joint committee of the National Assembly and Senate on 18th April, 2024 and appreciates the considerations that were made in the reviewed Bill which is the subject of discussion before this Honourable Committee.

D. Specific Comments

11. This Bill intends to review provisions of Sections 2, 7A, 10, 36, First, Second and Fifth Schedules of the IEBC Act in consideration of emerging reforms, and to this, we make the following specific comments on proposals that have an impact on the said Act.

12. The IEBC has endeavored to prepare submissions which highlight the relevant legal framework, justification, and proposals for review. In addition, IEBC has proffered comments on the implications of the proposed amendments.

Table: Matrix of IEBC’s comments on the IEBC (Amendment) Bill, 2024

S/ No.	Clause of the Bill	Section of the Act proposed for amendment	IEBC Comments on implications	Justifications and Proposals for review
1.	Clause 2	<p>Section 2 – Interpretation</p> <p>Delete:</p> <ul style="list-style-type: none"> i. the phrase including Vice Chairperson or a member of the Commission acting as a Chairperson in the Chairperson’s place. ii. definition of first review. iii. delete definition of former Boundaries Commission. iv. delete definition of issues arising; 	<p>The proposal is sound if it does not affect the provisions of paragraph 6 of the Second Schedule allowing the Vice Chairperson or other members of the Commission to take the place of the Chairperson in his/her absence.</p> <p>The reason being these are terms now introduced in the Act.</p>	<p>The Commission concurs with the proposal to delete the obsolete terms contained in this Section.</p> <p>Upon consideration, the Commission proposes the following definitions</p> <p>insert;</p> <p>city” has the meaning assigned to it under the Urban Areas and Cities Act, 2011 and includes capital city, city county and city within a county;</p> <p>“densely populated area” means an area whose population density is above the national average;</p> <p>“population quota” has the meaning assigned to it Article 89(12) of the Constitution;</p> <p>“sparsely populated area” means an area whose population density is below the national average;</p> <p>“urban area” has the meaning assigned to it under the Urban Areas and Cities Act, 2011;</p>
2.	<p><u>New</u> proposals under section 32 and 33</p>	<p>The provisions under PART V on savings and transitional provisions</p>	<p>These definitions in section 32 carry similar definitions as provided for under Section 2 of the Act. Section 33 is transitional, and therefore, spent.</p>	<p>Deletion of definitions of similar terms appearing in Sections 32 and deletion of section 33 which is spent.</p>

S/ No.	Clause of the Bill	Section of the Act proposed for amendment	IEBC Comments on implications	Justifications and Proposals for review
3.	Clause 3	<p>Section 6 – Qualifications for appointment as Chairperson or member of the Commission</p> <p>Amend by adding 2(c). (vii) information and communication technology (viii) accounting</p>	<p>The Commission supports the proposal to add ICT as one of the professional areas that one may be trained in given that technology is a key component of the election process.</p>	<p>While the Commission welcomes this proposal, we propose the merge of accounting and finance under Section 6(2)(c)(iii) as they deal with matters relating to financial management and audit necessary in elections.</p> <p>Further, we reiterate that at least one (1) Member of the Commission besides the Chairperson needs to have legal training because of the legal and quasi-judicial nature of election matters that the Commission handles.</p> <p>We proposed an amendment to section 6 (2) (c); be amended as follows; <i>“Has proven knowledge and at least ten years’ experience in matters relating to any of the following fields-....”</i></p> <p>This is owing to the fact that under the IEBC’s corporate governance structure, the Commissioners are the Chairpersons of Commission Committees. It is expected that, for a commissioner to steer a committee, they must at least possess considerable knowledge and experience in the mandate of the Committee.</p>

<i>S/ No.</i>	<i>Clause of the Bill</i>	<i>Section of the Act proposed for amendment</i>	<i>IEBC Comments on implications</i>	<i>Justifications and Proposals for review</i>
4.	Clause 4	Section 7 A – Absence of Chairperson Delete Sub-Sections 4, 5 and 6	Declared unconstitutional by the Courts.	A welcome proposal.
5.	Clause 5	Section 10 – Secretary to the Commission Amend sub-section 4 by revising the term of office from five years renewable once to four (4) years renewable once	It is the Commission's view that revising the term of office of the Commission Secretary from the current five years to four years shall pose challenges in Commission operations. Shortening the term of service denies IEBC full benefits of Human Capital invested in the position and suffer experience drain due to shortened period.	Our proposal is that the current term of the Commission Secretary be maintained at five years with eligibility for reappointment in line with what obtains in other constitutional commissions. In the alternative, should there be need to review the term, it is proposed that the same be reviewed to a single term of six (6) years. This will go a long way in ensuring that the Commission Secretary understands what is expected, draws plans, and implements the Commission's policy directives by putting in place the necessary mechanisms in preparation for elections and other processes. It will also go a long way in ensuring accountability by the Commission Secretary. This will not be achieved under a four-year contract. Finally, it should be noted that an election is a complex process with legal underpinnings, strategic and operational planning that will take at the very

<i>S/ No.</i>	<i>Clause of the Bill</i>	<i>Section of the Act proposed for amendment</i>	<i>IEBC Comments on implications</i>	<i>Justifications and Proposals for review</i>
6.	Clause 6	Section 12 – Units of the Commission Introduce sub sections 3 and 4 to require the Commission to review its operations within eighteen months after the General Election, publish a report and submit it to Parliament.	It should be noted that it is constitutionally imperative that after every election the Commission prepares and publishes a post-election evaluation report pursuant to Article 88 (4)(h) of the Constitution. It is the Commission's view that an evaluation of an election seeks to make a critical assessment of the conduct of an election. It identifies what worked, what did not work well and draws lessons-learnt for improvement of conduct of future elections. This is achieved through engagement with internal and external election stakeholders.	least one (1) to 1½ years to be conversant with the said processes depending on one's election background. This proposal is noted even though it is usually implemented after every election. The reviewed timelines of 18 months are agreeable. It is also the Commission's proposal that this be carried under the Principal Act on conduct of elections and not the IEBC Act since its an operational activity.
7.	Clause 7	Section 36 – Procedure for delimitation of electoral boundaries	The Commission welcomes the new change under section 24B and removing boundary provisions	While this has been carried, we propose the following review for synergy and application of the boundaries law.

<i>S/ No.</i>	<i>Clause of the Bill</i>	<i>Section of the Act proposed for amendment</i>	<i>IEBC Comments on implications</i>	<i>Justifications and Proposals for review</i>
		<p>Introduce sub-section 12 to make reference to the revised Fifth Schedule for procedure of delimitation of electoral units.</p>	<p>under the savings and transitional provisions of the Act and carrying it as substantive stand-alone part.</p> <p>The provisions under 3-12 are procedural hence they are best suited by being placed in the fifth Schedule as originally proposed for good order. Having the clauses under the fifth schedule and section 24B creates confusion. In the alternative, we move all provisions touching on boundary delimitation as provided for in the fifth schedule to the new section 24B.</p>	<p>Delete proposed sub sections 3- 12.</p> <p>Replace it therefore with the following.</p> <p>“The procedure for delimitation of electoral units shall be as set out under the Fifth Schedule.”</p> <p>Replicate the IEBC Rules of Procedure as they carry all the provisions. (see annex- submitted draft Bill and Procedures for delimitation of Boundaries)</p>
8.	<p>First Schedule</p>	<p>First Schedule – Procedure for appointment of chairperson and members of the Commission</p> <p>Amend the composition of the selection panel from 7 to 9</p>	<p>The proposal does not sufficiently include all key stakeholders as it gives most priority to political parties by increasing nominees from PPLC from 1 to 3. In addition, the two nominees from the Parliamentary Service Commission are still from the political parties.</p>	<p>The selection panel needs to be inclusive of all key stakeholders who will give additional value to the process e.g. Special Interest Groups (persons with disabilities), Public Service Commission, other professional entities, among others.</p>

S/ No.	Clause of the Bill	Section of the Act proposed for amendment	IEBC Comments on implications	Justifications and Proposals for review
9.	Second Schedule	<p>Second Schedule – Provisions as to the conduct of business and affairs of the Commission</p> <p>Revise quorum for members of the Commission to 5 and decision to be made by a majority of all members of the Commission.</p>	<p><i>In line with the decision of the High Court Decision in Isaiiah Biwott Kangwony v Independent Electoral & Boundaries Commission & another [2018] eKLR at par 44</i></p> <p><i>“Having regard to the above decision, I do not find any inconsistency between the provision in Paragraph 5 of the Second Schedule of the IEBC Act and Article 250(1) of the Constitution. I find that the Act must have been enacted on the assumption or hope that the Commission will be constituted with its maximum nine members which is not the case in the instant petition given that only seven commissioners were appointed in the current commission. Since quorum is composed of a clear majority of members of the commission, my take is that quorum cannot be a constant number as it is</i></p>	<p>The provision of quorum to be five was applicable when commissioners were nine and therefore not applicable now that the Commissioners are seven (7).</p> <p>We submit that quorum of Commissioners should be dependent on the number of the members in post.</p> <p><i>Case in point, in 2017, Commissioner Dr. Roselyn Akombe resigned and in 2018 Commissioners Kurgat, Mwachanya and C. Maina resigned leaving the Commission in limbo until the Court pronounced itself on the issue of quorum.</i></p> <p>Consider the following provision: “Notwithstanding the provisions of paragraph 5, where a vacancy has occurred and the Commission membership is less than five, the quorum shall not be less than fifty percent (50%) of the number of commissioners in post.”</p>

S/ No.	Clause of the Bill	Section of the Act proposed for amendment	IEBC Comments on implications	Justifications and Proposals for review
			<p>dependent on the actual number of the commissioners appointed at any given time. The question that we must ask is if quorum would remain five in the event that only three commissioners are appointed because the constitution allows for a minimum of three members. Would the quorum still be five? The answer to this question is to the negative. My take is that the issue of quorum, apart from being a matter provided for under the statute, is also a matter of common sense and construction depending on the total number of the commissioners appointed at any given time because it is the total number of commissioners appointed that would determine the quorum of the commission and not the other way round. In view of the above findings, I do not find</p>	

ANNEX 5(b): Office of the Registrar of Political Parties
(ORPP)



MEMORANDUM OF THE OFFICE OF THE REGISTRAR OF POLITICAL PARTIES ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024

1. Pursuant to Article 118(1) (b) of the Constitution and the Senate Standing Orders under Standing Order 145(5), the Senate called for submission of written memoranda on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 by May 22nd 2024 coupled with physical appearance before the Senate Committee on Justice, Legal Affairs and Human Rights on 24th May 2024.
2. The Office of the Registrar of Political Parties (ORPP) is established under Section 33 of the Political Parties Act, 2011 as an independent State Office within the meaning of Article 260 of the Constitution. Its mandate includes registration and regulation of political parties as well as administration of the Political Parties Fund.
3. On 18th April 2024, the ORPP appeared before the joint Committees of the National Assembly and Senate where it submitted views on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024.
4. The ORPP proposals as presented on 18th April 2024 have been accommodated in the following manner;

No.	ISSUE PRESENTED	ORPP PROPOSAL	HOW THE ISSUE HAS BEEN ADDRESSED
i.	The Bill had made reference to a parliamentary party without providing a definition of what amounts to a parliamentary party.	ORPP proposed that the Bill should define a parliamentary party for purposes of clarity. It noted that while National Assembly Standing Orders under Paragraph 20A provide, <i>inter alia</i> , that a parliamentary party is a party or a coalition of parties that consist of not less than	The Bill before the Senate has provided a definition of a parliamentary party as a parliamentary party is a party or a coalition of parties that consist of not less than five

		five percent of the membership of the National Assembly, the Standing Orders cannot be used to interpret Statutory terms.	percent of the membership of the National Assembly.
ii.	The Bill lacked a transition/saving clause for the current Chief Executive Officer of the IEBC.	The ORPP made a case for the need to have a transition/saving clause for the current CEO of IEBC to enable the CEO serve the remainder of his term when the proposed Bill becomes law.	The Bill before the Senate provides for the saving/transition clause to enable the CEO serve the remainder of his term.
iii.	The Bill had reduced the term of the CEO of IEBC to three years.	The ORPP proposed for the term of IEBC to be retained at 5 years as is in the IEBC Act on account of the import of the role of the CEO.	The Bill before the Senate has revised the term to four years. The ORPP has submitted further on this issue as indicated hereinafter.

5. In this regard, the views of the ORPP on the present Bill are as captured herein below;

No.	CLAUSE	REMARKS/RECOMMENDATIONS
1.	Clause 2 of the Bill provides a definition for the term "parliamentary party".	As referred to under paragraph 4, the definition of a parliamentary party has been provided. The definition is key in the process of nominating representatives to the Selection Panel given that the representatives of the PPLC are to be drawn from, <i>inter alia</i> , a party or a coalition of parties that is not a parliamentary party.
2.	Clause 5 of the Bill provides for the term of office of the IEBC Chief Executive Officer (CEO) as four (4) years with an opportunity for	Parliament should consider retaining the term of the CEO to the current 5 years with the opportunity for reappointment as provided in the Independent Electoral and Boundaries Commission Act. It is not apparent what mischief is being cured by the proposal to reduce the term of the CEO to four (4) years.

	<p>reappointment for a further four (4) years.</p>	<p>Available research by entities such as the International IDEA illustrate that a term of office of actors in an Election Management Body that extends an electoral cycle contributes to institutional experience given that the actors are able to conduct at least one general election. It is however also noted that a limited term office provides a platform for generation of new ideas through new appointments.</p> <p>Given the role of a CEO as the head of the Secretariat and their role in an election/referenda/boundary delimitation, it would be prudent for the appointment of a CEO to either be beyond an electoral cycle or at the very least, coincide with or be equated to one electoral cycle.</p>
<p>3.</p>	<p>Clause 6 provides for the review of the conduct of election with eighteen months of a general election.</p>	<p>The ORPP agrees with the proposal to the extent that the eighteen months' period provided shall allow the IEBC to benefit from final reports of election observers and monitors and thus conduct a review that appreciates the experiences of external actors.</p> <p>Further to the above, election petitions would have been concluded.</p>
<p>4.</p>	<p>Clause 9 provides for Political Parties Liaison Committee (PPLC) nominees to the Selection Panel.</p>	<p>Parliament should consider qualifying the phrasing of PPLC to communicate that the representatives are drawn from political parties.</p> <p>The present clause is ambiguous given that Section 38 of the Political Parties Act, 2011, provides that PPLC is a tripartite platform comprising IEBC, ORPP, and all political parties.</p>
<p>5</p>	<p>Clause 9 provides for PPLC nominees to be drawn from, inter alia, a party that is not a parliamentary party or a coalition parties.</p>	<p>Parliament should consider deleting the phrase "coalition of parties" from the provision given that Clause 2 of the Bill already defines a parliamentary party to include a coalition of parties.</p>

6	Clause 9 provides for the two-third gender principle in the Selection Panel.	<p>Parliament should reconsider the language used to achieve the two-third gender principle in the Selection Panel. The clause should retain the language of the IEBC Act where a nominating body is entitled to nominate two representatives to the Selection Panel that being, one man and one woman.</p> <p>ORPP is of the view that plain terms should be used as opposed to inviting the difficulty of determining what the two-third gender principle of two persons is. In this regard, the nomination by the Parliamentary Service Commission and the Interreligious Council of Kenya should be qualified to “one man one woman”.</p>
7.	Clause 11 provides for the proposed Fifth Schedule which contains procedures for the delimitation of electoral units.	<p>Parliament should consider the following-:</p> <p>Paragraph 7 on public hearings should employ a human rights approach in the use of a deliberate language on inclusion of Persons with Disabilities. This may include sign language and access to the venue of public hearings.</p> <p>Paragraph 8(2) of the proposed Fifth Schedule on preparation of a revised report should have a requirement for the Commission to illustrate how the views from the public have been considered/included with reasons thereof.</p>
8.	Clause 12 provides for transitional provisions on, <i>inter alia</i> , the term of the current CEO of IEBC	The ORPP agrees with the proposal to the extent that it provides for transition/saving clause of the CEO of IEBC. The clause shall enable the CEO to serve the remainder of his term in the event the Bill becomes law.



ANN N. NDERITU, CBS
REGISTRAR OF POLITICAL PARTIES
OFFICE OF THE REGISTRAR OF POLITICAL PARTIES

ANNEX 5(c): The Political Parties Liaison Committee (PPLC)



POLITICAL PARTIES LIAISON COMMITTEE (PPLC)

C/o Office of the Registrar of Political Parties, Lions Place, 1st Floor.

Karuna Close, Waiyaki Way, Westland's

P.O Box 1131-00606, Sarit Centre, Nairobi, Kenya.

Email: pplcparties@gmail.com

Ref; fin.com PPLC-SEN22/16/24 (i)

22nd May 2024

Mr. Jeremiah M. Nyegenye, CBS
Office of the Clerk of the Senate,
Main Parliament Buildings,
Nairobi.



Dear Sir,

REF: THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 PROPOSALS

The above subject matter refers to your letter with ref: SEN/DGAC/DGC/JLAHRC/2024/24(i), dated 16th May 2024.

The Political Parties Liaison Committee (PPLC) appreciates this opportunity to give feedback on the proposed amendments to the Independent Electoral and Boundaries Commission Act. We congratulate the National Dialogue Committee (NADCO) and indeed the Senate for formulating and processing this Bill for public input.

Background of PPLC

The Political Parties Liaison Committee is a tripartite dialogue platform comprising all the fully registered political parties in Kenya, the Office of the Registrar of Political Parties, and the Independent Electoral and Boundaries Commission.

Introduction

The Senate introduces the Independent Electoral & Boundaries Commission (Amendment) Bill, 2024 that seeks to among others:

- i) Review the framework of selecting for appointment, members of the Commission;
- ii) Review the term of office for the CEO to the Commission;
- iii) Review the quorum of the meeting of the Commissioners
- iv) Set out the procedure to be followed in the delimitation of electoral units;

These amendments stem from the presentations made by various stakeholders before the National Dialogue Committee on the thematic area concerning Electoral Justice and Related Matters.

We believe that these amendments emerging immediately after the 2022 general elections, aim to streamline the conduct and operations of the Commission to enhance the realization of its core mandate.

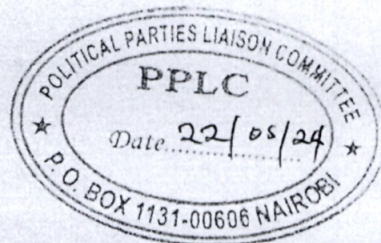
The Bill contains some progressive provisions that, if adopted by Parliament and enacted into law, will help address the inherent problems faced by the Commission.

However, the Bill also includes provisions requiring fine-tuning to enable a seamless functional institution, as highlighted in the Enclosed attachment.

Yours faithfully,



EVANS MISATI JAMES
NATIONAL CHAIRMAN PPLC.



Encls.

Enc.

Clause	Issue / What the Bill Provides	Proposal/Recommendations
2 (Interpretation)	The Bill seeks to amend section 2 of the Act by aligning the definition of the chairperson of the Commission with the judgement of the High Court in the matter of Katiba Institute & 3 Others -vs- AG & 2 Others (2018)	<p>The amendments seek to align the definition of the Chairperson as provided for in Article 250(2) of the Constitution hence giving prominence to the Constitution as the supreme law of the land.</p> <p>It is our considered opinion that there remains a lacuna in law in the event of a vacancy in the office of the chairperson and especially at a time such as during the elections with strict constitutional timelines which would have the effect of creating a national crisis.</p> <p>We therefore oppose the deletion in Clause 2 (a) as proposed in the bill and to align the Act with the judgement of the court, we propose an amendment to S. 6 of the bill in respect of the qualifications of the vice chairperson or any member whom the commission would elect to act as chairperson in the case of a vacancy until the position is duly filled.</p>

	Deleting the definition of "first review"	In agreement
	Deleting the definition of "former boundaries commission"	In agreement
	Deleting "former Constitution"	
	Deleting the definition of "issues arising"	In agreement
	Parliamentary Party to mean a Party or Coalition of Parties consisting of not less than 5% of the membership of the National Assembly.	<p>We agree with the amendment of the definition of a Parliamentary Party or Coalition of Parties.</p> <p>We further propose an amendment to include the definition of Parliamentary Party or Coalition of Parties in the Senate as provided for in the Senate Standing Orders which is "a Party or Coalition of Parties consisting of not less than 10 Senators."</p>
3 Qualifications	The Bill seeks to amend S.6 of the Act on Qualifications for appointment as chairperson or member of the Commission by proposing additional qualifications of ICT & Accounting	<p>There is need to review the qualifications. It is our considered view that members of the Commission <u>only need to hold</u> degrees from recognized institutions of learning. Additional qualifications can be acquired through training & support from the Secretariat that is composed of technical personnel.</p> <p>We propose a further amendment to S.6 on the</p>

		<p>Qualifications of the Chairperson from the current qualifications which require that he/she be qualified to hold the office of the judge of the Supreme Court which discriminates against Kenyans who would qualify to chair the commission from many other disciplines.</p> <p>Our recommendation is to uphold the qualifications in S.6 (2) of members of the commission as the basic qualifications but raise the bar for the chairperson and require that the chairperson be a Masters Degree Holder so that in the case of a vacancy in the office, the vice chairperson or a member of the commission with similar qualifications would qualify to act as a chairperson until the vacancy is filled.</p>
<p>4 Vacancy in the Office of Chairperson & Members</p>	<p>The Bill seeks to amend Section 7 by deleting subsections (4), (5) & (6) that were declared unconstitutional by the High Court in the matter of Katiba Institute & 3 Others --vs- AG & 2 Others (2018)</p>	<p>Where the constitution provides the manner of appointment and further states plainly and unambiguously the qualifications outlined in national legislation that one must meet to be appointed to a particular position, these requirements must be strictly followed.</p>

<p>5</p> <p>(Secretary to the Commission)</p>	<p>The Bill seeks to amend S. 10 of the Act by deleting sub-section (4) that provides that the CEO will serve a term of five years but shall be eligible for re-appointment for one further term of five years and substituting it with a term of four years and may be eligible for a reappointment for one further term of four years.</p>	<p>We support this proposal as it will enhance diligence and accountability. The Secretary will only be able to oversee a single general election. If the Commissioners are satisfied with the conduct of the office holder, then they will be eligible for another additional single term.</p> <p>The proposed term of four years with eligibility for renewal of one further term of four years may not cure the intention of the drafters which is to ensure that a CEO cannot oversee more than one general election based on the time of the first appointment.</p> <p>It is our proposal that eligibility for renewal of the term of CEC be reviewed against the date of the general election to ensure that the CEO can only oversee one general election.</p> <p>Further, consideration in the case of a renewal be made with an outer limit of not less than one year to the next general election, to allow for the new CEO adequate time to prepare and oversee the general elections, in view of the pronouncement</p>
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		by the courts that elections are a process.
<p>6</p> <p>Audit of Elections</p>	<p>The Bill seeks to amend S24 of the Act by creating a new subsection 24A that requires the Commission to after every general election to review its operations & make the necessary changes required to make its operations more efficient, effective, transparent & accountable.</p> <p>The review to be completed within 18 months and not 12 months as proposed in the NADCO report</p>	<p>It is good management practice to conduct a review of the Commission's operations after every general election. This review aims to verify whether the process, systems & operations were executed according to the law and the elections plan, and to identify areas for improvement.</p> <p>To achieve this objective, in the spirit of transparency and accountability, the Commission should undertake the review in partnership with reputable audit firms, PPLC, other relevant stakeholders.</p>
<p>7</p> <p>Procedure for delimitation of electoral boundaries</p>	<p>The Bill seeks to amend s. 36 of the Act by adding a new subsection to anchor provisions of the Fifth Schedule of the Act that provides the procedure for delimitation of electoral units</p>	<p>Given that the Fifth Schedule pertained to the initial review of electoral units under the Constitution of Kenya 2010, it is crucial that the procedure be integrated with the provisions of section 36 of the Act to guide future exercises.</p> <p>Public participation being one of the key principles of governance in our Constitution and</p>

		<p>to realise this objective, we propose the following:</p> <ul style="list-style-type: none"> - There is need for clear timelines for conducting public participation during the delimitation exercise - On public sensitization, the Commission shall engage the media, avail equipment and prepare materials for effective public education and engagement
<p>9 Procedure for appointment of Chairperson & Members of the Commission</p>	<p>The Bill seeks to amend the First Schedule of the Act to increase the number of members of the selection panel from seven to nine so as to accommodate more stakeholders and interest groups.</p> <p>The selection panel shall consist of three persons nominated by the Political Parties Liaison Committee of whom-</p> <ul style="list-style-type: none"> (i) One shall be from a party other than a parliamentary party or coalition of parties; (ii) One shall be from the majority party or coalition of parties; (iii) One shall be from the minority party or coalition of parties 	<p>Increasing the membership of the selection panel addresses the deficiency of inclusivity in the selection process. The addition of two extra slots designated for the PPLC will significantly enhance the political parties' participation in shaping the future of the Commission.</p>
	<p>The Parliamentary Service Commission to provide for and meet the expenditure of the selection panel</p>	
<p>10 Conduct of the Business & Affairs</p>	<p>The Bill seeks to amend the Second Schedule to the Act to provide quorum of the Commission to be at least five members of the Commission.</p>	<p>In conducting the affairs of the Commission, there is need for unanimity in arriving at its decisions.</p>

of the Commission	A further amendment to the effect that unless there is a unanimous decision, any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission.	The members of the Commission shall endeavour to be guided by the principles of transparency and accountability in the conduct of their business.
10 The Fifth Schedule	The Bill amends the Act by deleting the Fifth Schedule, which has provisions that relates to the procedure for delimitation of electoral units in the first review.	The period under review has already been extinguished and hence the Schedule is rendered obsolete.
11 Saving and Transition	The Bill seeks to amend the Act by providing transitional provisions upon commencement of the Act. It further amends the Act by providing a Saving Clause for the unexpired term of the Secretary of the Commission.	It is our recommendation that the unexpired term of the Secretary to the Commission be reviewed against the proposal given in Clause 5 above with respect to the term of office of the CEO not being eligible for renewal if the expiry period falls within one year to the next general election. In the alternative to the Saving Clause and further to cure genuine contractual expectations for the unexpired term of the Secretary to the Commission, we propose that appropriate compensation be awarded so as to give full effect to the provisions of the proposed bill on the term of office of the CEO as amended by the bill.

ANNEX 5(d): Inter-Religious Council of Kenya

		<p>reasons are 1) these qualifications are not essential for the commissioners to execute their mandate and; 2) The role of IEBC commissioners should not be the preserve of certain professional cadres but represent a broad spectrum of professions. 3) these additional qualifications can be treated as an added advantage and not primary requirements.</p>	
<p>IEBC AMENDMENT BILL 2024 (Transitional Clause)</p>	<p>1. The selection panel existing immediately at the commencement of this Act ceases to exist, but a person who served as a member of that selection panel may be nominated to serve as a member of the selection panel appointed under this Act.</p>	<p>1. In our considered opinion, it is not prudent to discard the work already done by the current selection panel, if it can be assessed not to have any biases or motives adjudged as ulterior.</p>	<p>1. We welcome the proposal to expand and reconstitute the selection panel through the Amendment of the First Schedule to No. 9 of 2011, due to public interest.</p> <p>2. In the spirit of prudent use of public finances, we urge Parliament to</p>

			create a mechanism to ensure relevant work undertaken by the previous IEBC Selection Panel that may be of use to the new panel is preserved.
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Signed and submitted on behalf of the Inter-Religious Council of Kenya on 22nd May 2024.

Signed:



Abdirahman Ismail, OGW
Executive Director
Inter-Religious Council of Kenya

ANNEX 5(e): Electoral Law and Governance Institute for
Africa (ELGIA)

MEMORANDA

From : Electoral Law and Governance Institute for Africa

To : The Clerk of the Senate

Date : 21st May, 2024

RE : The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023

Background

- The Departmental Committee on Justice, Legal Affairs and Human Rights in the Senate, established pursuant to the Standing Orders of the Senate which mandates it to study and review all legislation referred to it, has invited Electoral Law and Governance Institute for Africa (ELGIA) to submit representations/Comments on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023. This is in accordance with Article 118(1)(b) of the Constitution and Standing Order number 145(5) of the Senate, which requires Parliament to facilitate public participation and engage critical stakeholders in legislative and other Parliamentary committee business.
- Electoral Law and Governance Institute for Africa (ELGIA), is a Continental organization, headquartered in Nairobi, Kenya, working to strengthen and consolidate constitutional democracy, good governance, and electoral processes in African dialogue, electoral reforms, and advocacy. ELGIA collaborates with continental and sub-regional organizations such as the African Union, East African Community (EAC), Southern Africa Development Community (SADC) and ECOWAS. The institution aims to strengthen governance and political institutions through technical assistance, capacity building, advocacy, and research.
- ELGIA has developed this Memoranda to outline the key considerations that will inform the Committee on the proposed amendment to the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023.

The Memoranda Context

- The Bill seeks to amend the Independent Electoral and Boundaries Commission Act No. 9 of 2011 to give effect to some of the recommendations and views of the public that were submitted during the National Dialogue Discourse on the issues of Electoral Justices and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/ Coalitions and the law on multiparty Democracy among others. One of the objectives of the amendment is to clean up the Act by providing for the procedures for the delimitation of Electoral Units.
- It is important to note that ELGIA provided technical support to the NADCO process and is in agreement with most of the proposals and recommendations contained in the Report and the Bill generally. Additionally, ELGIA made representations before the joint Committee of the two Houses over the Bill and it is notable that the National Assembly through its report, took into consideration our representations in coming up with the Bill.

Remarks and comments and recommendations on the Bill to amend the Independent Electoral and Boundaries Commission Act and for connected purposes.

Proposed Amendment Clauses	Observation	Remarks and Comments
Clause 6 of the Bill	<ul style="list-style-type: none"> ● The Bill proposes to amend Section 12 of the Act to enable the Commission to review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable. ● The Bill proposes that the Commission shall publish the report in the gazette and submit the report to parliament. 	<ul style="list-style-type: none"> ● The Bill should be categorical on the role of Parliament in the review process. This is in the view that some of the review may need legal and statutory reforms. ● The Bill should provide timelines for the review of the report by parliament upon submission by the Commission.
Clause 7 of the Bill	<ul style="list-style-type: none"> ● The Bill proposes to amend the principal Act by inserting Part IIIA' Delimitation of Electoral Units after Section 24A of the Act. 	<ul style="list-style-type: none"> ● The two Houses should be involved in the delimitation and Review of Electoral Boundaries process. ELGIA recommends amendment to Section 24B of the Bill to make reference to a 'joint Parliamentary Committee' in line with

		<p>Article 124(2) of the Constitution, to accommodate the Senate in the process. This is in the humble consideration that Wards are devolved units of Governance.</p>
<p>Clause 11 of the Bill</p>	<ul style="list-style-type: none"> • The Bill proposes to amend the principal Act by deleting the Fifth Schedule and substituting with a new Fifth Schedule 'Procedures for the Delimitation of Electoral Units 	<ul style="list-style-type: none"> • The Bill should provide a framework of establishment and membership of the County Boundary Panels. This is in consideration that currently there is no law on the review of County Boundaries under Article 188 of the Constitution that would have provided for such panels.



Felix Odhiambo Owuor
Executive Director,
Electoral Law and Governance Institute for Africa (ELGIA)

ANNEX 5(f): Election Observation Group (ELoG)



Elections Observation Group

CREDIBLE. PEACEFUL. FREE AND FAIR ELECTIONS

TO CHAIR AND MEMBERS OF THE STANDING COMMITTEE ON
JUSTICE, LEGAL AFFAIRS & HUMAN RIGHTS, SENATE

CC OFFICE OF THE CLERK OF SENATE, KENYA

FROM ELECTIONS OBSERVATION GROUP (ELOG)

DATE 21st May 2024

Dear Chair,

RE: MEMORANDUM ON THE INDEPENDENT ELECTORAL BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (National Assembly Bill, no 10 of 2024).

We, Elections Observation Group (ELOG),

ACKNOWLEDGING that democratic elections are a cornerstone for entrenching democratic values in the society and a basis of establishing legitimate governments,

AWARE of the issues that have been raised by ourselves, other domestic observers, experts and international observers on the conduct and management of elections as well as the calls for Institutional, constitutional, legal, and policy reforms to enhance credible free and fair elections,

RECOGNIZING, the need for electoral reforms in Kenya's system of governance, and your mandate to among other things, enact policy, statutory or Constitutional changes that may be necessary for the realization of credible, peaceful, free and fair elections in Kenya, Report,

Hereby **HONOURS**, this committee invitation and **makes the following observations:**

1. Our understanding of the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024

According to the memorandum of objects and reasons, the Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to update the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in Katiba Institute & 3 Others v Attorney-General & 2 Others (2018) eKLR wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission. The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups. Lastly, it seeks to replace the current Fifth Schedule with a new and updated Schedule.

2. Detailed views on the Bill

Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
2	Seeks to amend section 2 of the Act.	Section 2. Interpretation (1) In this Act, unless the context otherwise requires- "chairperson" means the chairperson of the Commission	Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 (hereinafter referred to as "the principal	This clause seeks to align the definition of the Chairperson of the Commission to the Judgment of the High Court and to delete the obsolete provisions in section 2.	<i>This proposal is necessary since it is an editorial change to introduce more clarity and delete obsolete provisions.</i> Excluding the vice chairperson from the definition of the

		<p>appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson;</p>	<p>Act”) is amended- (a) in the definition of the word “chairperson” by deleting the words “or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson” appearing immediately after the word “Constitution;</p>	<p>Supreme Court ruling</p> <p>The Supreme Court of Kenya, in its ruling on the 2022 presidential election petition, provided significant insights into the roles and responsibilities of the IEBC commissioners, including the chairperson and vice chairperson. The court emphasized the collective responsibility of the commissioners in the electoral process and</p>	<p>chairperson in is a strategic move aimed at addressing the challenges witnessed during the 2022 elections. It seeks to provide clear authority and accountability structures within the commission, thereby preventing public disputes and enhancing operational efficiency. This amendment, supported by the principles outlined in the Supreme</p>
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			<p>(b) by deleting the definition of the expression “first review”;</p> <p>(c) by deleting the definition of the expression “former Boundaries Commission”;</p> <p>(d) by deleting the definition of the expression “former Constitution”;</p> <p>(e) by deleting the definition of</p>	<p>highlighted the following key points:</p> <p>Role of the Chairperson:</p> <p>The chairperson is the official spokesperson of the commission and has the mandate to declare the final election results.</p> <p>The chairperson is responsible for the overall leadership and integrity of the electoral process.</p> <p>Role of the Vice Chairperson:</p>	<p>Court's ruling, is expected to strengthen the integrity and credibility of the electoral process in Kenya. However, it will be essential to ensure that the principle of collective responsibility is upheld and that all commissioners work collaboratively towards the common goal of credible and fair elections.</p>
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			<p>the expression “issues arising”.</p>	<p>The vice chairperson supports the chairperson and, in their absence, acts on their behalf.</p> <p>The vice chairperson does not have independent authority to override or reject decisions made collectively by the commission.</p> <p>Collective Responsibility:</p> <p>All commissioners share collective responsibility for the commission’s decisions and actions.</p>	
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				The Supreme Court underscored the need for unity and consensus among the commissioners to maintain the integrity of the electoral process.	
Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
4	Seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court in Katiba Institute & 3 Others v	Section 7A. Vacancy in the office of chairperson and members (4) Whenever a vacancy occurs in the office of the	Sections 7A of the principal Act is amended- (a) by deleting sub-section (4); (b) by deleting sub-section (5);	Subsections (4), (5) and (6) were held to be unconstitutional by the High Court in Katiba Institute & 3 Others v Attorney-General & 2 Others (2018) eKLR.	This is a welcome proposal as it ensures that the Act is compliant with the Constitution which is the grund norm.

	<p>Attorney-General & 2 Others (2018) eKLR.</p>	<p>chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.</p> <p>(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the</p>	<p>(c) by deleting sub-section (6).</p>	<p>The Court found that the amendments to the IEBC Act were unconstitutional as they negatively affected the functioning of the IEBC. With respect to the amended provision dealing with the definition of the chairperson of the IEBC, the Court found the provision too wide since only an individual appointed as per the Constitution could fall within the definition</p>	
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		<p>powers and responsibilities of the chairperson until such a time as the chairperson is appointed.</p> <p>(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.</p>		<p>of a chairperson. With regards to the amended provision on the vice chairperson or other commissioners filling in a vacant office of the chairperson, the Court held that only a person who was qualified under the Constitution as a chairperson could fill in the vacancy and perform the constitutional functions of a chairperson and that any other person,</p>	
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				<p>whether or not in an acting capacity cannot be defined as a chairperson. On the amended provision that allowed the vice chairperson or any other commissioner to exercise the chairperson's functions on reason of absence, the Court made a finding that it was unconstitutional in so far as it allowed someone not qualified under the Constitution to take the office of the chairperson. In</p>	
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				<p>addition, the learned Judge emphasized that the provision weakened the IEBC and affected its institutional independence. This was mainly because despite the Constitution protecting the chairperson's tenure and independence, the provision presented an opportunity for other commissioners to oust the chairperson if he or she was absent.</p>	
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				<p>Lastly, on the amendments dealing with the quorum and decision making, the Court held that Parliament's reduction of the quorum of the IEBC to at least half of the existing members (now 7 members) and not less than three members and further scrapping the unanimous decision of the commission and replacing it with the majority decision of the present members was</p>	
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				<p>unconstitutional. This was because the provision made it possible that at a given time, 3 members of the commission could form quorum and 2 out of 3 members could make a decision that would be binding on the commission. This, the learned judge argued, would hinder the decision making of an independent commission and could have far reaching</p>	
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				consequences on democratic elections.	
Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
5	Seeks to amend section 10 of the principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once.	Section 10 Secretary to the Commission (4) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.	Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section- (4) The secretary shall hold office for a term of three	This clause seeks to facilitate smooth transition as well as reduce interruptions in the execution of the mandate of the Commission.	This proposal will ensure that active oversight over the secretariat affairs is maintained by the commission. It also addresses the balance of power between the commission and the CEO of the EMB as well as asserts the independence of the

			years and may be eligible for re-appointment for one further term of three years.		latter. However, a clear criterion for consideration of a renewal should be provided to guide the process.
Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
7	Provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.	Section 36. Procedure for delimitation of electoral boundaries (11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of	Section 36 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (11)- (12) Subject to this section, the provisions set	This clause seeks to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.	This is a welcome proposal as it brings clarity to the procedure for delimitation of electoral boundaries.

		subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.	out in the Fifth Schedule shall apply during the process of delimitation of electoral units.		
Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
8	Seeks to amend the First Schedule to the Act to increase the number of members of the selection panel from seven to nine in order to	FIRST SCHEDULE [s. 5(2)] PROCEDURE FOR APPOINTMENT OF	The Fifth Schedule to the principal Act is amended-	This clause seeks to enhance inclusivity and builds confidence in the recruitment process.	While this is a welcome proposal that intends to bolster inclusivity and build confidence in the

	<p>accommodate a wide spectrum of stakeholders and interest groups.</p>	<p>CHAIRPERSON AND MEMBERS OF THE COMMISSION [Act No. 12 of 2012, Sch, Act No. 36 of 2016, s. 38, Act No. 18 of 2020, s. 2, Act No. 1 of 2023, s. 2.]</p> <p>(2) The selection panel shall consist of—</p> <p>(a) one man and one woman, nominated by the Parliamentary Service Commission;</p>	<p>(a) in paragraph 1-</p> <p>(i) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph-</p> <p>(2) The selection panel shall consist of-</p> <p>(a) two persons nominated by the Parliamentary Service Commission representing the</p>		<p>recruitment process as well as ensure compliance with the two-thirds gender rule, the proposed panel is politicians heavy. Consideration should be made of election related civil society organizations, representation of PWDs and marginalized communities (in the meaning of Article 56 read together with Article 260)</p>
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		<p>(b)one person nominated by the Public Service Commission;</p> <p>(c)one person nominated by the Political Parties Liaison Committee;</p> <p>(d)one person nominated by the Law Society of Kenya; and</p> <p>(e)two persons nominated by the</p>	<p>majority party or coalition of parties and the minority party or coalition of parties;</p> <p>(b) three persons nominated by the Political Parties Liaison Committee of whom-</p> <p>(i) one shall be from a party other than a parliamentary party or</p>		<p>It is essential to prioritize merit-based selection and maintain a balanced and independent panel composed of diverse stakeholders.</p>
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		<p>Inter-religious Council of Kenya.</p> <p>(2A) A person is qualified for appointment as a member of the selection panel if such person —</p> <p>(a) is a citizen of Kenya;</p> <p>(b) meets the requirements of leadership and integrity set out in</p>	<p>coalition of parties;</p> <p>(ii) one shall be from a parliamentary party or coalition of parties forming the national government;</p> <p>(iii) one shall be from a parliamentary party or coalition of parties not forming the national government;</p>		
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		<p>Chapter Six of the Constitution; and</p> <p>(3) The respective nominating bodies under sub-paragraphs (2)(b) and (c) shall, within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission, submit the names of their nominees to the Parliamentary Service Commission for transmission to the</p>	<p>(c) one person nominated by the Law Society of Kenya;</p> <p>(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and</p> <p>(e) two persons nominated by the inter-religious Council of Kenya.</p> <p>ii) by inserting the following</p>		
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		<p>President for appointment.</p> <p>6.Dissolution of Selection Panel</p> <p>The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4</p>	<p>new sub-paragraphs immediately after sub-paragraph (2A)-</p> <p>(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.</p> <p>(2C) In nominating the persons under</p>		
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			<p>subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.</p> <p>(iii) in subparagraph (3), by deleting the words “subparagraphs(2)(b), (c), (d) and (e)”,</p>		
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			<p>(b) by deleting paragraph 6 and substituting therefor the following new paragraph-</p> <p><u>Dissolution of Selection Panel</u></p> <p>6.(1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the</p>		
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			<p>President and shall thereafter stand dissolved.</p> <p>(2) Despite subparagraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period</p>		
Clause	Stipulation	Old Section	New Section	Rationale	Recommendation
9	Seeks to amend the Second Schedule to the	SECOND SCHEDULE	The Second Schedule to the	This clause seeks to ascertain the quorum	ELOG supports the settlement of the

	<p>Act and provide for the quorum of the Commission.</p>	<p style="text-align: center;">[s. 8]</p> <p style="text-align: center;">PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION</p> <p style="text-align: center;">[Act No. 1 of 2017, s. 31, Act No. 34 of 2017, s. 4]</p> <p>5.The quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the Commission,</p>	<p>principal Act is amended-</p> <p>(a)by deleting paragraph 5 and substituting therefore the following new paragraph-</p> <p>“5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of</p>	<p>of the conduct of business at a meeting of the Commission.</p>	<p>quorum question by the Supreme Court during the BBI judgement. Having a high threshold for a quorum while desirable may lead to procrastination of critical decision making. Given the provisions of Article 250 (1) it may also be construed to be inconsistent with constitution.</p>
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		<p>provided that the quorum shall not be less than three members;</p> <p>7.Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.</p>	<p>the Commission.”</p> <p>(b) by deleting paragraph 7 and substituting therefor the following new paragraph-</p> <p>“(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all</p>		
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			the members of the Commission.”		
10	Provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.	<p>FIFTH SCHEDULE</p> <p>[s. 2]</p> <p>PROVISIONS RELATING TO THE FIRST REVIEW</p> <p>[Act No. 12 of 2012, Sch.]</p> <p>1.Resolution of issues arising from the first review</p>	The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule-	The procedure for the first review of boundaries was completed in 2012 and as such there is need to amend the Act to provide for procedure for subsequent delimitation of boundaries.	This is a welcome proposal to provide for the procedure of subsequent delimitation of boundaries to allow for expeditious delimitation exercise.

		<p>The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries or constituencies and wards and publish its final report within a period of four months or the date of its appointment under this Act.</p> <p>2.Reference materials</p> <p>(1) The Commission shall, in addressing</p>	<p>OF ELECTORAL UNITS</p> <p>1. Notice of delimitation of electoral units</p> <p>(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2) and (3) of the Constitution, the Commission shall notify the public of-</p>		
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		<p>the issues arising out of the first review-</p> <p>(a)use as its primary material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and</p> <p>(b)use as its secondary reference material the report of the Parliamentary Committee on the report of the former</p>	<p>(a) the intended review;</p> <p>(b) invite representations from interested parties; and</p> <p>(c) specify the period within which the Commission shall publish the preliminary report.</p> <p>(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary</p>		
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		<p>Boundaries Commission on the first review.</p> <p>(2) The issues arising out of the first review are -</p> <p>(a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;</p> <p>(b) subject to the Constitution, addressing issues of new constituencies</p>	<p>report containing the particulars set out under paragraph 2.</p> <p>2. Preliminary report</p> <p>The preliminary report shall contain the following particulars-</p> <p>(a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed</p>		
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		<p>falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall -</p> <p>(i)take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in</p>	<p>names of every constituency and ward; and</p> <p>(b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including-</p> <p>(i) the population quota for constituencies and wards;</p>		
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		<p>each constituency and ward for the purposes of the first review;</p> <p>(ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;</p> <p>(iii) be subject to the use of enumerated national census figures and not projected figures.</p>	<p>(ii) the number of inhabitants in every constituency and ward;</p> <p>(iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and</p> <p>(iv) an indication of the proposed margin of change from the</p>		
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		<p>(c)addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighboring constituencies where appropriate.</p> <p>3.Delimitation of electoral units</p> <p>(1) The Commission shall prepare and publish a preliminary report outlining -</p>	<p>population quota.</p> <p>3. Reference materials</p> <p>(1) The Commission shall, use as its primary reference material-</p> <p>(a)the final report of the last Electoral and Boundaries Commission on the review of electoral units; and</p>		
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		<p>(a) the proposed delimitation of boundaries for constituencies and wards; and</p> <p>(b) the specific geographical and demographical details relating to such delimitation.</p> <p>(2) The Commission shall ensure that the preliminary report is made available to the public for a period of</p>	<p>(b) the latest official population census report.</p> <p>(2) The Commission may use as its secondary reference material-</p> <p>(a) the reports of County Boundary Review Panels;</p> <p>or</p> <p>(b) other relevant data.</p>		
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		<p>twenty-one days and invite representations from the public on the proposals contained in the report during that period.</p> <p>(3) Upon the expiry of the period provided in sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised</p>	<p>(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.</p> <p>4. Ascertainment of the inhabitants of Kenya</p> <p>(1) For purposes of determining the population quota, the Commission</p>		
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		<p>preliminary report of proposed boundaries to the Parliamentary Committee.</p> <p>(4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under subparagraph (3), table the revised preliminary report to the National Assembly together with its recommendations.</p>	<p>shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.</p> <p>(2) Despite subparagraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation</p>		
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		<p>(5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.</p> <p>(6) Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly</p>	<p>exercise after the national population census.</p> <p>(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.</p> <p>5. Publicization of the</p>		
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		<p>under subparagraph (5), prepare and submit its final report outlining the matters set out in subparagraph (1)(a) for publication in the Gazette.</p> <p>(7) Where the National Assembly fails to make a resolution within the period specified in subparagraph (5), the Commission shall proceed to publish its report in accordance</p>	<p>preliminary report</p> <p>(1) The Commission shall-</p> <p>(a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;</p> <p>(b) invite the public to make representations on the proposals</p>		
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		<p>with subparagraph (6).</p> <p>(8) Any person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.</p>	<p>contained in the report; and</p> <p>(c) put in place administrative mechanisms for receiving representations from the public.</p> <p>(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as</p>		
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		<p>(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.</p>	<p>determined by the Commission.</p> <p>6.Public sensitization</p> <p>(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and</p>		
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		<p>4.Review of decision of Commission</p> <p>A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.</p> <p>5.Application for review</p> <p>An application for the review of the decision made under</p>	<p>participation of the public.</p> <p>(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.</p> <p>7. Public hearings</p> <p>(1) The Commission shall conduct boundaries review hearings</p>		
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		<p>paragraph 4 shall be made within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.</p> <p>6.Sensitization on the proposed boundaries</p> <p>The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate</p>	<p>in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.</p> <p>(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date,</p>		
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		<p>sensitization of the public on the boundaries for a period of thirty days.</p> <p>7.Maintenance of records</p> <p>The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by</p>	<p>time and place of such hearings.</p> <p>(3) Representation to the Commission may be made orally or in writing</p> <p>(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.</p>		
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		members of the public.	<p>8.Preparation of revised report</p> <p>(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.</p> <p>(2) The revised report shall be based on the feedback</p>		
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			<p>received during the public consultative process, subject to the relevant provisions of the law.</p> <p>9. Preparation and dissemination of maps</p> <p>(1) The Commission shall prepare and publish maps in its website-</p> <p>(a) for all the electoral units in</p>		
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			<p>accordance with the final boundary dissemination delimitation report;</p> <p>(b) for the respective constituencies in every county; and</p> <p>(c) for wards in every constituency</p> <p>(2) Despite sub- paragraph (1), the Commission shall provide physical copies</p>		
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			<p>of the maps to Parliament.</p> <p>10. Review of the decisions of the Commission</p> <p>(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of</p>		
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			<p>electoral boundaries.</p> <p>(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the Gazette as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the</p>		
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			<p>date on which it is filed.</p> <p>11. Maintenance of records</p> <p>The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by</p>		
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			<p>members of the public.</p> <p>12. Duty of certain officers to co-operate with the Commission</p> <p>It shall be the duty of every state officer or public officer serving in the relevant government ministry for the time being responsible for Interior and National</p>		
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			Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of delimitation of electoral units to provide the necessary information and technical support.		
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3. Conclusion

Elections are a celebration of fundamental civil and political rights of the people and therefore we are in support of an all-inclusive, transparent, accountable and people-centered process of professionalizing our election management body as well as enacting other necessary legislations. Cognizant that the window of political sobriety necessary to undertake electoral reforms is quickly closing and the urgent need to have a fully constituted IEBC so that critical processes like review of electoral boundaries and wards and conduct of by elections are attended to, time is therefore of essence.

Yours Sincerely,

Elections Observation Group

Jumuia Place, Lenana Road, 1st Floor

P.O. Box 43874 – 00100, Nairobi, Phone: 0718

Email: info@elog.or.ke, Website: www.elog.or.ke

For media inquiries, please contact, Pauline on info@elog.or.ke

Learn more about www.elog.or.ke or on social media on Facebook at facebook.com/ElectionObservationGroupKenya or on X [@elogkenya](https://twitter.com/elogkenya).

ANNEX 5(g): Internation Commission of Jurists (ICJ)



MEMORANDUM ON SELECT BILLS, 2024.

PRESENTED TO:

THE JUSTICE AND LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

SUBMITTED TO THE CLERK OF THE SENATE PO BOX 41842-00100, NAIROBI

IN THE MATTER OF CONSIDERATION BY THE JLAHRC COMMITTEE OF THE SENATE:

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILLS NO. 10 OF 2024.**

22ND MAY 2024.

SUBMITTED BY:

THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA)

ICJ KENYA HOUSE, OFF SILANGA ROAD, KAREN

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EMAIL: INFO@ICJ-KENYA.ORG

A. INTRODUCTION

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-profit, and member-based organisation whose objectives include development, protection of the rule of law, democracy, governance, promotion of human rights, and safeguard of independence of the Judiciary and the legal profession.¹

ICJ Kenya has reviewed and interrogated the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2014) (The **Bill**). ICJ Kenya submits this memorandum in line with its mandate and responds to the invitation for public participation by the Senate. This memorandum highlights ICJ Kenya's select views of the proposals included in the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024.

B. BACKGROUND/CONTEXT.

Electoral justice, involves the means and mechanisms available in a specific country, local community or on a regional or international level for:

- ensuring that each action, procedure and decision related to the electoral process complies with the legal framework;
- protecting or restoring electoral rights;
- and giving people who believe their electoral rights have been violated the ability to file a challenge, have their case heard and receive a ruling.

The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 aims to make significant changes to the structure and functions of the Independent Electoral and Boundaries Commission (IEBC) an independent constitutional body as established by article 88 (1) of the Constitution of Kenya 2010. Against this backdrop, ICJ Kenya seeks to unpack the bill, to interrogate whether they advance electoral justice.

C. ISSUES.

1. Amendment to the selection Panel

The Bill seeks to amend the first schedule of the Principal Act which currently provides for the selection panel comprised of seven members namely:

- a. two men and two women nominated by the Parliamentary Service Commission;
- b. one person nominated by the Law Society of Kenya; and
- c. two persons nominated by the Inter-Religious Council of Kenya.

The amendment aims to increase the number of members of the selection panel from seven to nine members. The membership shall comprise of:

¹ <https://ici-kenya.org/>

- a. two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
- b. three persons nominated by the Political Parties Liaison Committee of whom-
 - i. one shall be from a party other than a parliamentary party or coalition of parties;
 - ii. one shall be from the majority party or coalition of parties;
 - iii. one shall be from the minority party or coalition of parties;
- c. one person nominated by the Law Society of Kenya
- d. one person nominated by the Institute of Certified Public Accountants of Kenya; and
- e. two persons nominated by the Inter-Religious Council of Kenya

The Bill further seeks to amend paragraph 6 of the first schedule which deals with dissolution of the selection panel. Previously, as per the Principal Act it provided for dissolution of the selection panel after the panel fulfils its mandate of selecting the chairperson and commissioners of the IEBC and subsequent appointment by the President. The amendment now provides for an extension of the tenure of the selection panel for a specified period by a resolution passed in both the National Assembly and the Senate.

Analysis

The amendment above aims to bring to life recommendations of the **Report of the National Dialogue Committee (NADCO)**. Political parties have expressed interest in having the IEBC Commissioners selected by Political Parties or having political parties as part of the selection panel, like the nomination and selection of ECK Commissioners after the 1997 elections under the Inter-Parties Parliamentary Group (IPPG) reforms. This model was rejected by the High Court following an amendment of the IEBC Act to include the Parliamentary Service Commission in the selection panel, citing conflict of interest.²

The amendments to the composition of the selection panel undermine the constitutional principles of free and fair elections in **Article 81 (e)** of the Constitution of Kenya. Considering that the primary function of the selection panel is to recruit the Chairperson and Commissioners of the IEBC, it undermines the principle of fairness as the Constitution envisions that elections are administered in an impartial, neutral, efficient, accurate and accountable manner.

2. Delimitation of Electoral Units

The Bill provides for new amendments regarding the delimitation of electoral units. It does this by the insertion of a new Part III A in the Principal Act as well as incorporating the Fifth Schedule which guides the process of delimitation of electoral units.

The delimitation of electoral units in Kenya is guided by **Article 89** of the Constitution which provides in part as follows:

1. There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).
2. **The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but**

² *Okoiti v Attorney General & 5 others* (Constitutional Petition E364 of 2020)

any review shall be completed at least twelve months before a general election of members of Parliament.

3. The Commission shall review the number, names and boundaries of wards periodically.
4. If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

The Report of the National Dialogue Committee noted the issues of delimitation of electoral units as one of the key issues to be addressed. The committee gave the following recommendations.

- a. **Article 89 of the Constitution be amended to provide that where for any reason the review of the names and boundaries of constituencies by the IEBC is not completed within the time stipulated under Article 89 (2), or where there justifiable reasons for the extension of the period for review then Parliament may extend the period provided under the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the County delegations;**
- b. **The procedure for delimitation of the boundaries be provided for in the IEBC Act 2011**
- c. Parliament shall within six months of the adoption of the report enact the County Boundaries Bill 2023 to provide a legislative framework for the review of the County boundaries as provided for under Article 188 of the Constitution;
- d. The IEBC to undertake boundary delimitation of the constituencies and wards as provided for under Article 89 of the Constitution;
- e. The National Cohesion and Integration Commission investigates the claims of perceived marginalization and discrimination by Sabaot Community living in Bungoma and Trans Nzoia Counties; residents of Wajir South Constituency, Tiaty Constituency, and Teso, Kuria and Suba Communities, to ascertain the claims and extent of the marginalization and discrimination and make proposals for promoting inclusivity and peaceful coexistence amongst different communities

Analysis

It is important to note that timelines given in the Constitution for the review lapsed in March 2024. Furthermore, the country does not have a fully constituted IEBC that is mandated to undertake the delimitation exercise which then poses a Constitutional crisis. It is our considered opinion that the amendments regarding delimitation have been locked out of time due to constitutional restraints.

CONCLUSION.


In conclusion, ICJ Kenya has thoroughly reviewed the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024, and offers this memorandum to underscore its position. The proposed amendments, particularly those affecting the composition of the selection panel and the process for delimitation of electoral units, raise significant concerns regarding the adherence to constitutional principles of free, fair, and impartial elections as enshrined in Article 81(e) of the Constitution of Kenya.

The amendments to the selection panel threaten the neutrality and impartiality essential for the recruitment of IEBC Commissioners, potentially compromising the integrity of the electoral process. Additionally, the proposed changes to the delimitation process, though addressing crucial issues, are constrained by constitutional timelines and the current status of the IEBC, thereby presenting a constitutional dilemma.

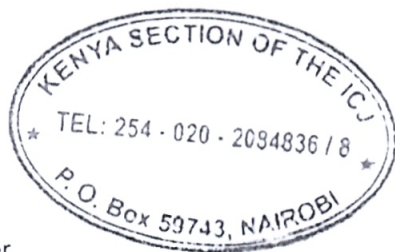
ICJ Kenya remains committed to promoting the rule of law, democracy, and human rights. We urge the Senate and other stakeholders to consider these critical observations to ensure that the amendments align with the constitutional mandate of administering elections in an impartial, efficient, and accountable manner.

----End-----

Yours Faithfully,



Demas Kiprono
Ag. Executive Director



ANNEX 5(h): Law Society of Kenya (LSK)



LAW SOCIETY OF KENYA
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Gitanga Road
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NAIROBI
Tel. +254 111 045 300

*DLS
HAD - Government
Loss of Case - ILASTR
Kindly Seal
23/05/2024*

MEMORANDUM

TO

THE SENATE

ON

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2024

MAY, 2024

Faith Mony Odhiambo, President Law Society of Kenya

Lavington, opp Valley Arcade,

Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya

Tel: +254 111 045 300

Email: president@lsk.or.ke

Website: www.lsk.or.ke

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Faith Mony Odhiambo
- Vice President, Mwaura Kabata
- General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble
- Coast Representative, Elizabeth Wanjeri
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes presentations on the Independent Electoral and Boundaries (Amendment) Bill (National Assembly Bills No. 10 of 2024.

GENERAL COMMENTS

The Bill seeks to amend various sections of the Independent Electoral and Boundaries Commission Act Cap 7C of the Laws of Kenya.

SPECIFIC COMMENTS ON THE ELECTIONS (AMENDMENT) BILL (SENATE BILL NO.11 OF 2024)

No.	Issue	Proposal	Justification
Clause 2	In the definition of the word "chairperson" by deleting the words "or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson" appearing immediately after the word "Constitution"	That the bill adopts the definition below: "Chairperson" includes the Vice Chairperson or any other member of the Commission when discharging the functions of the Chairperson;	The proposal in the Bill opens room for unnecessary confusion especially where there is a no chairperson.
Clause 6	Side notes states- Review of conduct of the general election. 24A. (1) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.	The Commission shall, after every general election, review its operations in the conduct of the general election and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.	The section and the side note should align and speak to the same review; of the conduct of the general election.
Clause 9	The First Schedule to the Principal Act is amended- (ii) by deleting subparagraph (2) and substituting therefor the following new subparagraph- (2) the Selection panel shall consist of-	That the Selection Panel be reconstituted as follows: Parliamentary Service Commission-(3 persons; one shall be from a party other than a parliamentary party or coalition of parties; one shall be from the majority party or coalition of parties; one	The proposed selection panel as is reflected in Clause 9 creates an imbalance since there would be over representation from the political parties.

		<p>shall be from the minority party or coalition of parties)</p> <p>Political Parties Liaison Committee- 1 person</p> <p>Law Society of Kenya- 2 persons (one female, one male)</p> <p>Institute of certified Public Accountants of Kenya – 1 person</p> <p>Inter-religious Council of Kenya- 2 persons</p>	
Clause 10	<p>The second schedule to the Principal Act is amended by deleting paragraph 5 and substituting therefor the following new paragraph-</p> <p>“5. The quorum for conduct of business at a meeting of the Commission shall be at least five members of the Commission.”</p>	<p>That the provision on quorum be maintained as is in the principal Act which states that- <i>The quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the Commission, provided that the quorum shall not be less than three members;</i></p>	<p>The provision of the principal Act is the one that is closest to the recommendations of Mwongozo Code of Governance which recommends that the quorum of the Board should be 5 where the total members of the Board is 8-9 and 4 where the total membership is 7 and below. Since the current composition of the Commission is 7, quorum of 4 is most practical.</p>
	<p>The second schedule to the Principal Act is amended by deleting paragraph 7 and substituting therefor the following new paragraph-</p>	<p>The Bill should not seek to interfere with the existing provision below- <i>Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the</i></p>	<p>The principal Act is clear on how a decision would be arrived at, which is unanimous decision or majority of members present and voting. The new proposal actually</p>

	<p>“(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all members of the Commission”</p>	<p><i>members present and voting</i></p>	<p>creates room for members who are not present and voting to be part of the decision-making process by simply concurring. The provision further does not indicate how this concurrence would be communicated, which leaves room for manipulation. For matters as grave as general elections, it is crucial that members be present to vote when decisions are made.</p>
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In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,



Faith Odhiambo
President Law Society of Kenya

ANNEX 5 (i): National Council of Churches of Kenya (NCCK)

May 4, 2024

Clerk to the Senate
Parliament of Kenya
Nairobi

DLS
HDD- Governance
Lead Clerk - JLSHR } @DGAC
Kindly deal
24/05/24

MEMORANDUM ON THE INDEPENDENT ELECTORAL BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024

Greetings from the National Council of Churches of Kenya (NCCK). Serving as a leading voice of witness to Jesus Christ since 1913, the NCCK is a family of churches and organisations bringing together more than 16 million Christians united in faith and mission and transforming lives.

Whereas via the Gazette Notice No. 2641 Dated 27th February 2023, whereby the President and Commander-in-Chief of the Kenya Defense Forces H.E. Dr. William Samoei Ruto, PhD, C.G.H., appointed the members of the Selection Panel for the Recruitment of Nominees for Appointment as the Chairperson and Members of the Independent Electoral and Boundaries Commission (IEBC), and further on 2nd March 2023, took an Oath of Office at the Supreme Court, before the Chief Justice of Kenya Hon. Lady Justice Martha Karambu Koome.

Whereas noting that dutifully the panel has discharged its role up and including the advertising of vacancies for the position of the chairperson and six members of the IEBC: receiving of applications and processing to the same to an advanced level.

Recognising the legislative proposals arising from these reports including the IEBC (Amendment) Bill 2024 that was published on 4th March 2024 and received in the National Assembly on 5th March for debate and due process for law making.

Underscores that the said Bill, IEBC (Amendment) Bill 2024, has substantive implications for the established IEBC Selection Panel.

The National Council of Churches of Kenya (NCCK) is concerned on the proposed amendments that are intended to reflect the full complement of powers already being exercised by state elites.

The Amendments are intended to provide a 'constitutional framework to an existing political settlement.'

The NCCK is aware of the issues that have been raised by ourselves and other institutions standing on the following observations:

According to the memorandum of objects and reasons, **the Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011** to update the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others (2018) eKLR* wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission. The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups. Lastly, it seeks to replace the current Fifth Schedule with a new and updated Schedule.

The following clauses seek to:

Clause 2 Seeks to amend section 2 of the Independent Electoral and Boundaries Commission Act, 2011 on this it seeks to align the definition of the chairperson of the Commission to the Judgment of the High Court and to delete the obsolete provisions in section 2(b)(c)(d)(e).

Recommendation: This proposal is necessary since it is an editorial change to introduce more clarity and delete obsolete provisions.

Clause 3 Seeks to amend section 6(2)(c) of the Independent Electoral and Boundaries Commission Act, 2011 to include information and communications technology and one of the relevant professional areas to be taken into account when nominating persons to be appointed as members of the Commission. It provides that Electoral processes are largely technology driven and as such there is need to include knowledge and experience in information, communication and technology (ICT) as one of the recognized qualifications for appointment as a member of the Commission.

Recommendation: This is a commendable proposal as it accommodate the paradigm shift to technology and a reflection of the societies' adaptation to changes.

Clause 4 Seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others (2018) eKLR*.

Recommendation: This is a welcome proposal as it ensures that the Act is compliant with the Constitution which is the grand norm.

Clause 5 Seeks to amend section 10 of the Principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once. This will facilitate smooth transition as well as reduce interruptions in the execution of the mandate of the Commission.

Recommendation: While the proposal to reduce the secretary's term to three years, renewable once, may initially seem conducive to seamless commission functioning, it also raises concerns about the adequacy of this timeframe for fulfilling their mandate as it

does not complete the full electoral cycle. Consider a single term of 6 years non renewable.

Clause 6 Seeks to amend section 12 of the principal Act and provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable. With the review being completed within one year after every general election and the Commission publishing the report in the Gazette and submitting the report to Parliament.

Recommendation: This is a welcome proposal as it resonates with efficient, effective, transparent and accountable operations within the Commission.

Clause 7 Provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units. This brings clarity to the procedure for delimitation of electoral boundaries.

Recommendation: This is a welcome proposal as it brings clarity to the procedure for delimitation of electoral boundaries

Clause 8 Seeks to amend the First Schedule to the principal Act to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.) The selection panel shall consist of-

(a) two persons nominated by the Parliamentary Service Commission representing the majority party or coalition of parties and the minority party or coalition of parties;

(b) three persons nominated by the Political Parties Liaison Committee of whom-

(i) one shall be from a party other than a parliamentary party or coalition of parties;

(ii) one shall be from a parliamentary party or coalition of parties forming the national government;

(iii) one shall be from a parliamentary party or coalition of parties not forming the national government;

(c) one person nominated by the Law Society of Kenya;

(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and

(e) two persons nominated by the inter-religious Council of Kenya.

The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process and shall further ensure that not more than two-thirds of the nominees are of the same gender.

Recommendation: This is a welcome proposal as it will bolster inclusivity and build confidence in the recruitment process as well as ensure compliance with the two-thirds gender rule. Further, the inclusion of members drawn from Political Party Liaison Committee and will widen political consensus and wider buy-in from the political class.

Dissolution of Selection Panel

6. (1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.

Clause 9 Seeks to amend the Second Schedule to the principal Act and provide for the quorum of the conduct of business at a meeting of the commission which shall be at least five members of the Commission. And unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission.

Recommendation: This proposal will make decision making at the commission cumbersome and raises the quorum exponentially high. If some commissioners are incapacitated or resign, or die, the quorum proposed in this Bill will not be attained thus rendering the entire Commission moribund. It will be prone to abuse and sabotage of the commission and the will of the people. While the divisions witnessed in 2022 general elections are regrettable, parliament should not respond to a mosquito bite with a hammer. It is our considered view that quorum for the Commission should be a third of the members or 3 commissioners out of 7.

Clause 10 Provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units. The procedure for the first review of boundaries was completed in 2012 and as such there is need to amend the Act to provide for procedure for subsequent delimitation of boundaries. The new schedule further provides for the procedures for the delimitation of electoral units

The Commission shall notify the public of –

- (a) the intended review;
- (b) invite representations from interested parties and
- (c) specify the period within which the Commission shall publish the preliminary report.

Recommendation: This is a welcome proposal to provide for the procedure of subsequent delimitation of boundaries to allow for expeditious delimitation exercise.

Clause 11 The selection panel existing immediately at the commencement date of the Act ceases to exist but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed under the Act.

Recommendation: This is a welcome proposal as it sets out provisions relating to the selection panel for the appointment of members of the Commission.

In Conclusion NCCK is in support of an inclusive, transparent and people driven process on the administering of the Bill. This will enhance the efficiency and improved management of the electoral management body and to reduce the backlog of key constitutional timelines to be adhered to. The electoral reforms are a much needed democratic right and process as the timeline provided by the constitution has lapsed on the electoral boundaries review, calling for

by-elections for Constituencies that have remained without representation but also sufficient preparation ahead of the 2027 general elections. The delays in the appointment of the IEBC commissioners continue to create a constitutional crisis.

Signed on this day 4th Day of May 2024 at Jumuia Place, Nairobi on behalf of the Member Churches and Organizations of the National Council of Churches of Kenya



Rev. Canon Chris Kinyanjui
General Secretary

ANNEX 5(j): Kariobangi Paralegal Network



Kariobangi Paralegal Network

Tel: 0720 201613, P.O. Box 47714, 00100 GPO, Nairobi, Kenya

E-mail: kariobangiparanet@gmail.com

THIS MEMORANDUM IS BASED ON A CALL BY THE SENATE TO THE GENERAL PUBLIC TO GIVE VIEWS ON THE INDEPENDENT ELECTORAL AND BOUNDERIES COMMISSION (AMENDMENT) BILL 2024 (NATIONAL ASSEMBLY BILL NO 10 OF 2024)

Presentation by Kariobangi Paralegal Network 21/05/2024

BACKGROUND

1. THE KARIOBANGI PARALEGAL NETWORK (KAPARANET) hereby wish to register our comments and feedback;
2. With reference to THE INDEPENDENT ELECTORAL AND BOUNDERIES COMMISSION, Bill No.10 of 2024, we therefore wish to state as follows: -
3. We acknowledge that legislative authority is derived from the people of Kenya and that parliament shall exercise legislative authority through bills passed by Parliament as captured in Article 94 and 109 of the Kenyan Constitution respectively.
4. We are in agreement of the deletion of the words “or the vice chairperson or a member of the commission when discharging the functions of the chairperson” in the definition of the chairperson as this will avoid ambiguity and eliminate redundancy in functional assignment. This will also make the legal text easier to interpret and more straight forward.
5. We are in agreement as regards deletion of the definition of the expression “first review” as it is no longer relevant to the current law thus removal of the expression will maintain consistency.

6. We are in agreement on deletion of the expression “former constitution” as it refers to a previous constitution which has since been replaced by the current constitution. This will also ensure the act aligns with the current legal context, and focus on current procedures without reference to the previous constitution.
7. We are in agreement on deletion of the expression “former boundaries commission” as it will reflect current changes in the operational and governance structure of the Independent Electoral and Boundaries Commission and exemplifies posterity.
8. We fully support the proposed amendments to Section 6 of the principal act because this inclusion is a significant positive development and recognizes the importance of information and communication technology and accounting. This proposed amendment will also ensure these two critical areas are adequately addressed withing the framework of the act. This also aligns with the current industry standards and future needs thus will enhance effectiveness and comprehensiveness of the act.
9. We fully agree with proposal to amend Section 7A and back the proposed deletions of subsections (4), (5) and (6) in of the principal act because this will simplify and streamline the legal framework potentially removing redundant and outdated provisions enhancing effectiveness and clarity.
10. We endorse the changes in Section 10 as this introduces a structured term limit for the office of the secretary establishing a clear tenure of three years with a possibility of re-appointment for an additional term. This will give an opportunity for periodic assessment and potentially a fresh perspective through new appointments.
11. We are on board with the proposed amendment to Section 12 because the requirement for the commission to review its operations after every general election ensures a cycle of continuous improvement within the commission. Mandating that the review be completed within one year ensures the improvements are timely and relevant and this swift action gives the commission to

address any issues that arose during elections and ensure they are rectified before the next general election. Requiring publication of the review report will allow for scrutiny and feedback from stakeholders.

12. We are in favor of insertion of Subsection 12 under Section 36, by explicitly stating that the provisions in the fifth schedule apply during the delimitation process of electoral units, this amendment provides clear guidelines and consistency in the delimitation process. This will also enhance accountability through providing a clear reference point for the procedures and standards that must be followed during delimitation process facilitating better oversight and public confidence in the delimitation process.
13. We affirm proposed amendments to the first schedule. This will enhance the selection panels representativeness and transparency by ensuring a balanced composition, competitive nomination process, and gender diversity. Furthermore, the stipulation that the selection panel completes its task within 90 days will ensure efficiency while also allowing the parliament to extend its tenure, if necessary, provides flexibility. Additionally, the changes on quorum requirements and decision-making process within the commission promote effective and democratic governance by requiring broader participation and consensus among its members. These changes collectively aim to improve the functioning and inclusivity of the selection and decision-making process.
14. We are on board with the proposed amendments on the fifth schedule on procedures for delimitation of electoral units. These will ensure a comprehensive, transparent, and inclusive process for reviewing and delimiting electoral boundaries. The requirement public notification and solicitation of representations from interested parties fosters greater public participation and accountability. Additionally, the amendments also emphasize the use of reliable reference materials which enhances the accuracy and credibility of the delimitation process.
15. We also support the proposed amendments on the fifth schedule because publicization of the preliminary report and establishment of mechanisms for receiving public feedback further strengthen transparency and public trust in the process. Moreover, the provisions for public

sensitization and hearings ensure that the public is adequately informed and engaged, facilitating meaningful participation in the review of electoral boundaries.

16. We are in agreement also regarding the inclusion of clear guidelines for the preparation and dissemination of maps and the maintenance of records as this ensures transparency and that the public has access to important information. Also, the requirement that the public officers must cooperate with the commission underscores the importance of inter-agency collaboration and support in achieving accurate and fair delimitation of electoral units.
17. We fully support the provision for judicial review of the commission's decisions in the fifth schedule as this upholds the principal of accountability, allowing for rectification of potential oversights in the delimitation process. This will collectively enhance realization of the principles enshrined under article 10 of the constitution of Kenya, 2010.
18. We find fault in some elements of the First Schedule with regard to members of the selection panel. It could have specified the number of groups such as youths and Persons with Disability.
19. We refute Section 12(1) and Section 12(4) of the Second Schedule with regard to who can be in business whether indirectly or directly with the Commission.
20. We take note of the fact that the Commission has embraced public sensitization on the reports published. The reports should however be announced in public places like the Bomas of Kenya where common wananchi can access as opposed to private places.
21. We take note of the immense powers assigned to the Commissioners but we advise for devolvement of such powers to members of the selection panel.
22. However, we note that the amendment has loopholes based on the following grounds:
 - a) The Second Schedule in paragraph 12(1) allows for members present in the Commission meetings to participate in business with the Commission. The Bill articulates that the member to declare interest after commencement of the meeting and this is clear conflict

of interest and goes against Article 232 of the Constitution on impartiality, transparency, professional ethics and is going to perpetuate exclusion of other Kenyans to genuinely do business with the Commission. In articulating that any person present in the meetings are allowed to be in business and this implies that even commissioners can be in business directly or indirectly with the Commission hence compromising integrity of IEBC, providing for cronyism and holding the Commission and its operations at ransom. This has a negative ripple effect of denting IEBC's reputation.

- b) There is ambiguity in regard to construction of paragraph 12(1) and 12(4). Members in the Commission's meeting are given the right to be in business with it in paragraph 12(1) but again are deprived of that right in paragraph 12(4). We strongly concur with Paragraph 12(4) that No member or Employee should transact business with IEBC directly or through proxies.
- c) The First Schedule does not provide for slots for Persons with Disability. This is in clear contradiction of Article 10 of the Constitution which provides for inclusiveness and non-discrimination.
- d) The selection panel in paragraph 1(5) of the first schedule has been given absolute power, discretion and control over its procedures. The Parliamentary Service Commission should only offer technical and logistical support to the panel.

DATED and SIGNED at NAIROBI on this 21st DAY OF MAY 2024

Chief Executive Officer
Kariobangi Paralegal Network

ANNEX 5(k): Collins Lusi

② HOD - Governance
Lead Clerk - JLAHR
Kindly deal 20/05/24

Subject Views on the Independent Electoral and Boundaries Commission(IEBC) (Amendment) Bill (National Assembly Bill No. 10 of 2024).

From Collins Lusi. <lusicollins@gmail.com>

To clerk senate <clerk.senate@parliament.go.ke>

Cc senatejlahrc@parliament.go.ke <senatejlahrc@parliament.go.ke>

Date Thursday May 16, 2024 7:09:28 PM

① DGAC; DLG
Kindly deal
OFFICE OF THE CLERK-SENATE
SECRETARY
17 MAY 2024
PSC
00100, NAIROBI
17/05/2024

CAUTION: This Mail Originated from outside of the Organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Here are my views on the Independent Electoral and Boundaries Commission(IEBC) (Amendment) Bill (National Assembly Bill No. 10 of 2024).

1. I fully support the efforts to amend the IEBC Act to enhance transparency, credibility, and inclusivity in Kenya's electoral processes. Strengthening our electoral framework is vital for upholding democracy and ensuring fair representation for all citizens.
2. Amendments aimed at strengthening the independence and integrity of the IEBC are crucial for restoring public trust in the electoral process. We need greater oversight and accountability mechanisms to prevent electoral malpractices and ensure free and fair elections.
3. It's imperative that the amendments prioritize inclusivity and representation in the electoral process. Measures to promote the participation of marginalized groups, including women, youth, and persons with disabilities, are essential for a truly democratic society.
4. Voter education is key to ensuring informed and active participation in elections. The IEBC should be mandated to conduct comprehensive voter education programs, particularly targeting marginalized and underrepresented groups, to empower citizens with knowledge about their rights and responsibilities.
5. Efforts to streamline electoral processes are commendable, as timely and transparent elections are fundamental to democracy. Amendments should address logistical challenges and enhance the efficiency of electoral operations to minimize delays and ensure the integrity of the electoral process.
6. Amendments should prioritize the security, reliability, and transparency of electoral technology systems. Independent audits and safeguards against tampering or manipulation are essential to instill confidence in electronic voting systems and protect the integrity of election results.
7. Provisions for fair and expeditious resolution of electoral disputes are necessary to uphold the rule of law and ensure electoral justice. Specialized electoral courts or tribunals can help resolve disputes impartially and efficiently, contributing to the overall credibility of the electoral process.
8. Meaningful public participation is vital to ensure that the amendments reflect the diverse interests and concerns of Kenyan citizens. Stakeholder engagement, including consultations with political parties, civil society organizations, and the general public, is essential for democratic decision-making and legitimacy.

I feel that, by advocating for these points, we can contribute to fostering a more robust and inclusive electoral framework that upholds the principles of democracy and serves the interests of all Kenyan citizens.

THE SENATE RECEIVED
20 MAY 2024
DIRECTOR COMMITTEE SERVICES
(DGAC)

THE SENATE RECEIVED
17 MAY 2024
DEPUTY CLERK

ANNEX 6: Matrix on the Committee's Consideration of the Stakeholder Submissions

THE SENATE



MATRIX

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

Stakeholders:

1. Office of the Registrar of Political Parties (ORPP);
2. Electoral Law and Governance Institute for Africa (ELGIA);
3. Inter-Religious Council of Kenya (I-RCK);
4. ICJ Kenya;
5. Election Observation Group (ELOG);
6. Political Parties Liaison Committee (PPLC);
7. Law Society of Kenya (LSK);
8. Independent Electoral and Boundaries Commission (IEBC);
9. Kariobangi Paralegal Network;
10. National Council of Churches of Kenya (NCCK); and
11. Collins Lusi.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
2	ORPP	Agrees with the insertion of the definition of parliamentary party.	The definition is key in the process of nominating representatives to the selection panel by the PPLC.	The Committee agrees with the stakeholder's view.
	IEBC	The Commission concurs with the proposal to delete the obsolete terms	The proposal is sound if it does not affect the provisions of paragraph 6	The Committee agrees with the stakeholder's view on

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>contained in this Section.</p> <p>Upon consideration, the Commission proposes the following definitions insert; city" has the meaning assigned to it under the Urban Areas and Cities Act, 2011 and includes capital city, city county and city within a county; "densely populated area" means an area whose population density is above the national average; "population quota" has the meaning assigned to it Article 89(12) of the Constitution; "sparsely populated area" means an area whose population density is below the national average; "urban area" has the meaning assigned to it under the Urban Areas and Cities Act, 2011;</p>	<p>of the Second Schedule allowing the Vice Chairperson or other members of the Commission to take the place of the Chairperson in his/her absence.</p> <p>The reason being these are terms now introduced in the Act.</p>	<p>deletion of obsolete terms. It however disagrees on the need to insert definitions of words which have already been defined elsewhere in other statutes.</p>
	IEBC	Deletion of definitions of similar terms appearing in Sections 32 and deletion of section 33 which is spent	These definitions in section 32 carry similar definitions as provided for under Section 2 of the Act. Section 33 is transitional, and therefore, spent.	The Committee notes the need to delete these obsolete clauses. However the sections were not earmarked for amendment at the time of publication of the Bill hence this cannot be introduced at this stage.
	KPN	Agrees with the proposed amendments in the definition section.	The deletions clean up the Act and remove ambiguities.	The Committee agrees with this view.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	NCKK	Agrees with the proposed amendments in the definition section.	This proposal is necessary since it is an editorial change to introduce more clarity and delete obsolete provisions.	The Committee agrees with this view.
	LSK	In the definition of the word “Chairperson”, the Bill should adopt the definition below: “Chairperson” includes the Vice Chairperson or any other member of the commission when discharging the functions of the chairperson.	The proposal in the Bill opens room for unnecessary confusion especially where there is no chairperson.	The Committee disagrees with the stakeholder as the amendment is in compliance with the court’s judgement in the Katiba Institute case.
	PPLC	The stakeholder opposes the deletion in clause 2(a) as proposed in the Bill and proposes an amendment to section 6 of the Bill in respect of the qualification of the vice chairperson or any member whom the commission would elect to act as chairperson in the case of a vacancy until the position is duly filled.	The amendment seeks to align the definition of the Chairperson as provided for in article 250(2) of the Constitution. It is our considered opinion that there remains a lacuna in law in the event of a vacancy in the office of the chairperson and especially at a time such as during the elections with strict constitutional timelines which would have the effect of creating a national crisis.	The Committee disagrees with the stakeholder as the amendment is in compliance with the court’s judgement in the Katiba Institute case.
3	I-RCK	Delete the proposed amendment to Section 6 to include accounting or ICT experience as additional qualifications for IEBC commissioners.	This is unnecessary and could discriminate against otherwise competent professionals who lack these specific qualifications. IEBC should remain an equal opportunity institution, representing a broad spectrum of professions.	The Committee disagrees with the stakeholder. A diverse skillset and qualifications in ICT is crucial in effective running of the Commission and election affairs.
	IEBC	The Commission welcomes this	The Commission supports the	The Committee agrees with

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>proposal and proposes the merger of accounting and finance under Section 6(2)(c)(iii) as they deal with matters relating to financial management and audit necessary in elections.</p> <p>Further, at least one Member of the Commission besides the Chairperson needs to have legal training because of the legal and quasi- judicial nature of election matters that the Commission handles.</p> <p>IEBC proposes an amendment to section 6 (2) (c); as follows; <i>"Has proven knowledge and at least ten years' experience in matters relating to any of the following fields-"</i></p>	<p>proposal to add ICT as one of the professional areas that one may be trained in given that technology is a key component of the election process.</p> <p>The 10years experience is necessary because under the IEBC's corporate governance structure, the Commissioners are the Chairpersons of Commission Committees. It is expected that, for a commissioner to steer a committee, they must at least possess considerable knowledge and experience in the mandate of the Committee.</p>	<p>the Commission on the need for the Commissioners to have at least 10 years' experience in their fields of qualification.</p>
	KPN	<p>The stakeholder agrees with the proposed additional fields.</p>	<p>This inclusion is a significant positive development and recognizes the importance of information and communication technology and accounting. This proposed amendment will also ensure these two critical areas are adequately addressed within the framework of the act. This also aligns with the current industry standards and future needs thus will enhance effectiveness and</p>	<p>The Committee agrees with the stakeholder's view.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			comprehensiveness of the act.	
	NCKK	The stakeholder agrees with the proposed inclusion of ICT and accounting.	This is a commendable proposal as it accommodates the paradigm shift to technology and a reflection of the societies' adaptation to changes.	The Committee agrees with the stakeholder's view.
	PPLC	<p>The stakeholder proposes a further amendment to section 6 on the qualifications of the Chairperson from the current qualifications which require that he/she be qualified to hold the office of the judge of the Supreme Court.</p> <p>The stakeholder recommends that the qualifications in section 6(2) to be upheld as the basic qualifications but raises the bar for the Chairperson and require the chairperson be a Masters Degree Holder so that in the case of a vacancy in the office, the vice chairperson or a member of the commission with similar qualifications would qualify to act as a chairperson until the vacancy is filled.</p>	Members of the commission only need to hold degrees from recognized institutions of learning. Additional qualifications can be acquired through training and support from the Secretariat that is composed of technical personnel.	The Committee disagrees that Commissioners should only have a first degree and no additional qualifications and experience, as Commissioners need to be highly skilled so as to guide the Commission effectively in policy matters.
4	PPLC	The stakeholder supports the proposed amendments.	This proposal is in line with the constitution.	The Committee agrees with the stakeholder.
	ELOG	The stakeholder supports the proposed amendment to section 7A of the principal Act	This is a welcome proposal as it ensures that the Act is in compliant with the Constitution, which is the grund norm.	The Committee agrees with the stakeholder.
	KPN	The stakeholder supports the proposed amendment to section 7A of the	This will simplify and streamline the	The Committee agrees with the stakeholder.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		principal Act	legal framework potentially removing redundant and outdated provisions enhancing effectiveness and clarity.	
	NCKK	The stakeholder supports the proposal to delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court in <i>Katiba Institute & 3 Others v Attorney-General & 2 Others</i> (2018) eKLR.	This is a welcome proposal as it ensures that the Act is compliant with the Constitution which is the grand norm.	The Committee agrees with the stakeholder.
	IEBC	The stakeholder supports the proposal	The section was declared unconstitutional by the courts.	The Committee agrees with the stakeholder.
5	PPLC	The stakeholder supports the proposed amendments. The stakeholder further proposes that eligibility for renewal of the term of CEO be reviewed against the date of the general election to ensure that the CEO can only oversee one general election. Further, consideration in the case of a renewal be made with an outer limit of not less than one year to the next general election, to allow for the new CEO adequate time to prepare and oversee the general elections, in view of the pronouncement by the courts that elections are a process.	The proposal will enhance diligence and accountability. The secretary will only be able to oversee one general election. If the commissioners are satisfied with the conduct of the office holder, then they will be eligible for another additional single term. The proposed term of four years with eligibility for renewal of one further term of four years may not cure the intention of the drafters which is to ensure that a CEO cannot oversee more than one general election based on the time of the first appointment.	The Committee disagrees with the stakeholder and notes the need for continuity in the Commission.
	KPN	The stakeholder supports reduction of the CEO's term to 3 years.	This introduces a structured term limit for the office of	The CEO's term in the Bill under consideration is 4

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>the secretary establishing a clear tenure of three years with a possibility of re-appointment for an additional term. This will give an opportunity for periodic assessment and potentially a fresh perspective through new appointments.</p>	<p>years not 3.</p>
	NCKK	<p>The Stakeholder does not support the reduction of the term of the CEO to 3 years.</p>	<p>While the proposal to reduce the secretary's term to three years, renewable once, may initially seem conducive to seamless commission functioning, it also raises concerns about the adequacy of this timeframe for fulfilling their mandate as it does not complete the full electoral cycle. Consider a single term of 6 years nonrenewable.</p>	<p>The CEO's term in the Bill under consideration is 4 years, which the Committee considers to be adequate for conduct of affairs in that office.</p>
	ORPP	<p>Retain the term of the CEO to the current 5 years with an opportunity for reappointment.</p>	<p>It's not apparent what mischief is being cured by the proposal to reduce the term of the CEO to four (4) years.</p> <p>Research indicates that a term of office of actors in an Election Management Body that extends an electoral cycle contributes to institutional experience given that actors are able to conduct at least one general election.</p> <p>It would be prudent for the appointment of a CEO to either be beyond an electoral cycle or at the</p>	<p>The Committee disagrees with the stakeholder and supports the term of four years proposed in the Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			very least, coincide with or be equated to one electoral cycle.	
	PPLC	The stakeholder supports the proposed amendment to section 10 of the principal Act to reduce the term of the Secretary to three years but proposes that a clear criterion for consideration of a renewal should be provided to guide the process.	This clause seeks to facilitate smooth transition and reduce interruptions in the execution of the mandate of the Commission. It ensures active oversight over the secretariat affairs by the commission and addresses the balance of power between the commission and the CEO of the EMB, as well as asserts the independence of the latter.	The term in the Bill being considered is 4 years not 3 years.
	IEBC	<p>The Commission proposes that the current term of the Commission Secretary be maintained at five years with eligibility for reappointment in line with what obtains in other constitutional commissions.</p> <p>In the alternative, should there be need to review the term, it is proposed that the same be reviewed to a single term of six (6) years.</p>	<p>Revising the term of office of the Commission Secretary from the current five years to four years shall pose challenges in Commission operations.</p> <p>A longer term will go a long way in ensuring that the Commission Secretary understands what is expected, draws plans, and implements the Commission's policy directives by putting in place the necessary mechanisms in preparation for elections and other processes.</p> <p>It will also go a long way in ensuring accountability by the Commission Secretary. This will</p>	The Committee disagrees with the stakeholder and supports the term of four years proposed in the Bill, as this will be adequate for proper carrying out of functions.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>not be achieved under a four-year contract.</p> <p>Finally, it should be noted that an election is a complex process with legal underpinnings, strategic and operational planning that will take at the very least one (1) to 1½ years to be conversant with the said processes depending on one's election background.</p> <p>Shortening the term of service denies IEBC full benefits of Human Capital invested in the position and suffer experience drain due to shortened period.</p>	
6	ORPP	ORPP agrees with the proposal to provide for the review of the conduct of elections within eighteen months of a general election.	<p>This review will allow the IEBC to benefit from final reports of election observers and monitors and thus conduct a review that appreciates the experiences of external actors.</p> <p>Election petitions would also have been concluded by this time.</p>	The Committee agrees with the stakeholder.
	KPN	KPN agrees with the proposal to provide for the review of the conduct of elections within eighteen months of a general election.	The requirement for the commission to review its operations after every general election ensures a cycle of continuous improvement within the commission. Mandating that the review be completed within one year ensures the improvements	The Committee agrees with the stakeholder.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			are timely and relevant and this swift action gives the commission to address any issues that arose during elections and ensure they are rectified before the next general election. Requiring publication of the review report will allow for scrutiny and feedback from stakeholders.	
	NCKK	NCKK agrees with the proposal to provide for the review of the conduct of elections.	This is a welcome proposal as it resonates with efficient, effective, transparent and accountable operations within the Commission.	The Committee agrees with the stakeholder.
	PPLC	The stakeholder agrees with the proposal on the audit of elections but proposes that such audits be undertaken in partnership with reputable audit firms, PPLC and other relevant stakeholders.	It is good management practice to conduct a review of the Commission's operations after every general elections.	The Committee agrees with the stakeholder on the importance of a review of the elections.
	ELGIA	The Bill should be categorical on the role of Parliament in the review process.	some of the review may need legal and statutory reforms. The Bill should provide timelines for the review of the report by parliament upon submission by the Commission.	The concern is noted. However, the process is IEBC led and driven.
	IEBC	This proposal is noted even though it is usually implemented after every election. The reviewed timelines of 18 months are agreeable. It is also the commission's proposal	It should be noted that it is constitutionally imperative that after every election the Commission prepares and publishes a post-election evaluation report	The Commission's concern is noted.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		that this be carried under the Principal Act on conduct of elections and not the IEBC Act since it's an operational activity.	pursuant to article 88(4)(h) of the Constitution. It is the commission's view that an evaluation of an election seeks to make a critical assessment of the conduct of an election. It identifies what worked, what did not work well and draws lessons learnt for improvement of conduct of future elections. This is achieved through engagement with internal and external election stakeholders.	
	LSK	The side notes states – Review of conduct of the general election. We propose the following: “The commission shall, after every general election, review its operations in the conduct of the general election and make the necessary changes required to make its operations more efficient, effective, transparent, and accountable.	The section and the side note should align and speak to the same review; of the conduct of the general election.	It is not clear what the stakeholder proposes.
7	PPLC	On delimitation of electoral units, public participation is key. To achieve this objective, the stakeholder proposes the following: <ul style="list-style-type: none"> - There is need for clear timelines for conducting public participation during the delimitation exercise. - On public sensitization, the 	Public participation is one of the key principles of governance in the constitution.	The Committee notes this and observes that the IEBC will be duly guided by the Constitution when conducting this exercise.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		commission shall engage the media, avail equipment and prepare materials for effective public participation and engagement.		
	ELGIA	Amend Section 24B of the Bill to make reference to a 'joint Parliamentary Committee' in line with Article 124(2) of the Constitution.	This is to accommodate Senate in the process as ward are devolved units of governance	The Committee agrees with the need to involve the Senate in the delimitation process.
	IEBC	While this has been carried, we propose the following review for synergy and application of the boundaries law. Delete proposed subsection 3-12. Replace it therefore with the following. "The Procedure for delimitation of electoral units shall be as set out under the Fifth Schedule." Replicate the IEBC Rules of Procedure as they carry all the provisions.	The commission welcomes the new change under section 24B and removing boundary provisions under the savings and transitional provisions of the Act and carrying it as substantive stand-alone part. The provisions under subsections 3-12 are procedural hence they are best suited by being placed in the fifth schedule as originally proposed for good order. Having the clauses under the Fifth schedule and section 24B creates confusion. In the alternative, we move all provisions touching on boundary delimitation as provided in the Fifth schedule to the new section 24B.	The concerns are noted.
	ELOG	The stakeholder supports the proposed amendment of section 36 of the principal Act to anchor the fifth schedule to the Act which relates to the procedure for delimitation of electoral units.	This is a welcome proposal as it brings clarity to the procedure for delimitation of electoral boundaries.	The Committee agrees with the stakeholder.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
8	ELOG	The stakeholder supports the proposed amendments with minor additions.	While this proposal intends to bolster inclusivity and build confidence in the recruitment process as well as ensure compliance with the two-thirds gender rule, the proposed panel is politician heavy. Considerations should be made for election related civil society organizations, representation of PWDs, and marginalized communities (in the meaning of article 56 read together with article 260).	The Committee notes that involvement of political parties will build confidence in the selection process and therefore the represented entities are sufficient.
9	PPLC	The stakeholder supports the proposed amendments on the procedure for appointment of Chairperson and members of the commission.	Increasing the membership of the selection panel addresses the deficiency of inclusivity in the selection process. The addition of two extra slots designated for the PPLC will significantly enhance the political parties' participation in shaping the future of the commission.	The Committee agrees with the stakeholder.
	ORPP	Parliament should consider qualifying the phrasing of PPLC to communicate that the representatives are drawn from political parties. Parliament should consider deleting the phrase "coalition of parties" from the provision.	The present clause is ambiguous given that section 38 of the Political Parties Act, 2011 provides that PPLCs is a tripartite platform comprising IEBC, ORPP, and all political parties. Clause 2 of the Bill already defines a parliamentary party to include a coalition of parties.	The Committee disagrees and notes the clause is not ambiguous.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	KPN	KPN affirms proposed amendments to the first schedule	<p>This will enhance the selection panels representativeness and transparency by ensuring a balanced composition, competitive nomination process, and gender diversity. Furthermore, the stipulation that the selection panel completes its task within 90 days will ensure efficiency while also allowing the parliament to extend its tenure, if necessary, provides flexibility. Additionally, the changes on quorum requirements and decision-making process within the commission promote effective and democratic governance by requiring broader participation and consensus among its members.</p> <p>These changes collectively aim to improve the functioning and inclusivity of the selection and decision-making process.</p>	The Committee agrees with the stakeholder.
	LSK	<p>That the selection panel be reconstituted as follows: “Parliamentary service commission – 3 persons; one shall be from a party other than a parliamentary party or coalition of parties; one shall be from the majority party or coalition of parties; one shall be from the minority party or coalition of parties.</p>	The proposed selection as is reflected in clause 9 creates an imbalance since there would be over representation from the political parties.	The Committee disagrees with this proposed reconstitution of the Panel.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>Political Parties Liaison Committee – 1 person</p> <p>Law Society of Kenya – 2 Persons (One female, one male)</p> <p>Institute of Certified Public Accountants of Kenya – 1 person</p> <p>Inter-religious Council of Kenya – 2 persons</p>		
	IEBC	The selection panel needs to be inclusive of all key stakeholders who will give additional value to the process e.g. special interest groups (persons with disabilities), Public Service Commission, other professional entities, among others.	The proposal does not sufficiently include all key stakeholders as it gives most priority to political parties by increasing nominees from PPLC from 1 to 3. In addition, the two nominees from Parliamentary Service Commission are still from the political parties.	The Committee notes that involvement of political parties will build confidence in the selection process and therefore the represented entities are sufficient.
	ICJ - Kenya	The stakeholder opposes the proposed amendment to the composition of the selection panel	The amendments to the composition of the selection panel undermines the constitutional principles of free and fair elections in article 81(e) of the Constitution of Kenya. Considering that the primary function of the selection panel is to recruit the chairperson and commissioners of the IEBC, it undermines the principles of fairness as the Constitution envisions that elections are	The Stakeholder has not demonstrated how constitutional principles have been breached.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			administered in an impartial, neutral, efficient, accurate and accountable manner.	
10	LSK	The provision on quorum be maintained as is in the principal Act which states that – The quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the commission, provided that the quorum shall be not less than three members;	The provision of the principal Act is the one that is closest to the recommendations of Mwongozo Code of Governance which recommends that – The quorum of the Board should be 5 where the total members of the Board is 8-9 and 4 where the total membership is 7 and below. Since the current composition of the commission is 7, quorum of 4 is most practical.	The Committee supports the proposed threshold for quorum in the Bill, as the Commission makes sensitive decisions.
	ELOG	The stakeholder supports the proposed amendments but is concerned with the high threshold for quorum of the commission.	This clause seeks to ascertain the quorum of the conduct of business at a meeting of the Commission. The high threshold for a quorum, while desirable, may lead to procrastination of critical decision-making. It may also be construed to be inconsistent with Article 250 (1) of the Constitution.	The Committee supports the proposed threshold for quorum in the Bill, as the Commission makes sensitive decisions.
	PPLC	The stakeholder supports the proposed amendments on quorum.	In conducting the affairs of the commission, there is need for unanimity in arriving at its decisions.	The Committee agrees with the stakeholder.
	PPLC	The stakeholder supports the proposed amendments.	The period under review has already been extinguished and hence the schedule is rendered	The Committee agrees with the stakeholder.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			obsolete.	
	ELOG	The stakeholder supports the proposed amendments.	This is a welcome proposal as it brings clarity to the procedure for delimitation of electoral boundaries.	The Committee agrees with the stakeholder.
	IEBC	<p>The provision of quorum to be five was applicable when commissioners were nine and therefore not applicable now that the Commissioners are seven (7). We submit that quorum of Commissioners should be dependent on the number of the members in post. Consider the following provisions:</p> <p>“Notwithstanding the provisions of paragraph 5, where a vacancy has occurred and the Commission membership is less than five, the quorum shall not be less than fifty (50%) of the number of commissioners in post”.</p>	This will be in line with the decision of the High Court in <i>Isaiah Biwott Kangwony vs Independent Electoral and Boundaries Commission & another</i> (2018) eKLR at paragraph 44 where the court held that the matter of quorum would be determined by the number of commissioners appointed at any time, apart from the statutory provisions.	The Committee notes the concerns raised on quorum when there is a vacancy.
	NCKK	NCKK does not support the proposed changes to quorum at the Commission.	This proposal will make decision making at the commission cumbersome and raises the quorum exponentially high. If some commissioners are incapacitated or resign, or die, the quorum proposed in this Bill will not be attained thus rendering the entire Commission moribund. It will be prone to abuse and sabotage of the commission and the will of	The Committee notes the concerns raised on quorum when there is a vacancy.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			the people. While the divisions witnessed in 2022 general elections are regrettable, parliament should not respond to a mosquito bite with a hammer.	
	NCKK	The NCKK supports the proposals on the selection panel.	This is a welcome proposal as it will bolster inclusivity and build confidence in the recruitment processes well as ensure compliance with the two-thirds gender rule. Further, the inclusion of members drawn from Political Party Liaison Committee and will widen political consensus and wider buy-in from the political class.	The Committee agrees with the Stakeholder's view.
	LSK	The Bill should not seek to interfere with the existing provision below – Unless a unanimous decision is reached, a decision on any matter before the commission shall be by a majority of the members present and voting.	The principal Act is clear on how a decision would be arrived at, which is a unanimous decision or majority of members present and voting. The new proposal actually creates room for members who are not present and voting to be part of the decision-making process by simply concurring. The provision further does not indicate how this concurrence would be communicated, which leaves room for manipulation. For matters as grave as general elections, it is crucial that members be present to vote when decisions are made.	The Committee notes that this is incorrect as one cannot vote on a matter if they are not part of the quorum for the meeting.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
11	ELGIA	The Bill should provide a framework for the establishment and membership of the County Boundary Panels.	Currently there is no law on the review of County Boundaries under Article 188 of the Constitution that would have provided for such panels.	There's a Senate Bill currently under consideration by the National Assembly on this subject matter.
	IEBC	Amend the schedule with a new title: Procedure for delimitation of electoral units which elaborates the step-by-step procedures to be undertaken during electoral boundary delimitation.	The commission supports the proposal to have a detailed step by step procedure for boundary delimitation under the Fifth Schedule.	The stakeholder's concerns are noted. However, the process as currently in the Bill is clear.
	NCKK	NCKK agrees with the proposed amendments on the fifth schedule on procedures for delimitation of electoral units.	This is a welcome proposal to provide for the procedure of subsequent delimitation of boundaries to allow for expeditious delimitation exercise.	The Committee agrees with the stakeholder.
	KPN	KPN agrees with the proposed amendments on the fifth schedule on procedures for delimitation of electoral units.	These will ensure a comprehensive, transparent, and inclusive process for reviewing and delimiting electoral boundaries. The requirement public notification and solicitation of representations from interested parties fosters greater public participation and accountability. Additionally, the amendments also emphasize the use of reliable reference materials which enhances the accuracy and credibility of the delimitation process. KPN also supports the proposed	The Committee agrees with the stakeholder.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>amendments on the fifth schedule because publicization of the preliminary report and establishment of mechanisms for receiving public feedback further strengthen transparency and public trust in the process. Moreover, the provisions for public sensitization and hearings ensure that the public is adequately informed and engaged, facilitating meaningful participation in the review of electoral boundaries.</p>	
	ICJ - Kenya	<p>The stakeholder opposes the proposal to provide for delimitation of electoral units.</p>	<p>The delimitation of electoral units in Kenya is guided by article 89 of the Constitution which provides in part as follows:</p> <ol style="list-style-type: none"> 1. There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in article 97(1)(e). 2. The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall 	<p>The Committee disagrees with this view and notes that actual boundaries of the electoral areas need to be delimited. There's also no fixed number of wards.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>be completed at least 12 months before a general election of members of Parliament.</p> <p>It's important to note that the timeline given in the constitution for the review lapsed in March 2024. Furthermore, the country does not have a fully constituted IEBC that is mandated to undertake the delimitation exercise which then poses a constitutional crisis. It's our considered opinion that the amendments regarding delimitation have been locked out of time due to constitutional restraints.</p>	
12	I-RCK	Relevant work from the previous panel be preserved to ensure prudent use of public finances.	It is not prudent to discard the work already done by the current selection panel if it is unbiased and valid.	The Committee is not of the same view as it is not clear how this would be done.
	NCKK	NCKK agrees with the clause making members of the existing selection panel eligible for nomination to the next selection panel.	This is a welcome proposal as it sets out provisions relating to the selection panel for the appointment of members of the Commission.	The Committee agrees with this view.
	PPLC	The stakeholder recommends that the unexpired term of the Secretary to the Commission be reviewed with respect to the term of office of the CEO not being eligible for renewal if the expiry period falls within one year to the next	This is to cure genuine contractual expectations for the unexpired term of the Secretary to the Commission.	The Committee disagrees with this view.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>general election.</p> <p>The stakeholder also proposes that appropriate compensation be awarded so as to give full effect to the provisions of the proposed bill on the term of office of the CEO as amended by the bill.</p>		

GENERAL COMMENTS

1. Collins Lusi

The stakeholder generally supports the Bill as it promotes accountability and efficiency in the Commission.

ANNEX 7: Text of proposed Committee stage amendments to the Bill

25th May, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 10 OF 2024)

NOTICE is given that Sen. Wakili Hillary Kiprotich Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 (National Assembly Bill No. 10 of 2024), at the Committee Stage —

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph (e) —

“(g) in the definition of the word “Parliamentary Committee” by inserting the words “and Senate” immediately after the words “the National Assembly””; and

(b) in paragraph (f) in the proposed new definition of the word “parliamentary party” by inserting the words “and Senate” immediately after the words “the National Assembly”.

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause —

3. Section 6 of the principal Act is amended in subsection 2(c)—

(a) by deleting the introductory clause and substituting therefor the following new clause —

(c) has proven knowledge and at least ten years’ experience in any of the following fields –

(b) by inserting the following new subparagraphs immediately after subparagraph (vi)—

(vii) information and communication technology; and

(viii) accounting.

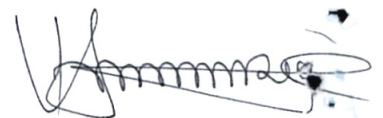
CLAUSE 7

THAT clause 7 of the Bill be amended in the proposed new—

We should also have an amendment to proposed new subsection (5) because as is, it appears to refer to one Committee.

- (a) section 24B(5) by inserting the words “of each House of Parliament” immediately after the words “Parliamentary Committee”;
- (b) section 24B(6)—
 - (i) by inserting the words “of each House of Parliament” immediately after the words “Parliamentary Committee”; and
 - (ii) by deleting the words “the National Assembly” appearing immediately after the words “the report in” and substituting therefor the words “the respective House of Parliament”;
- (c) section 24B(7) by inserting the words “and the Senate” immediately after the words “the National Assembly”;
- (d) section 24B(8) by inserting the words “and the Senate” immediately after the words “the National Assembly”; and
- (e) section 24B(9) by inserting the words “or the Senate” immediately after the words “the National Assembly”.

Dated 28/5/2024 , 2024.



Wakili Hillary Kiprotich Sigei,
Chairperson,
Standing Committee on Justice, Legal Affairs and Human Rights.