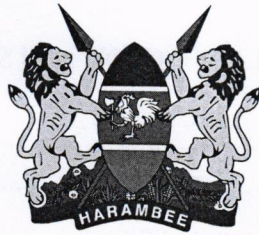


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STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE ELECTIONS (AMENDMENT) (NO. 2) BILL  
(SENATE BILLS NO. 43 OF 2021)

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
NAIROBI.

~~Approved~~  
~~31/03/2022~~

Rt Hon Speaker  
You may approve  
for tabling of 31/03/22  
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## FOREWORD BY THE CHAIRPERSON

1. The Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) seeks to amend the Elections Act (No. 24 of 2011) to ensure equality to all candidates who aspire to vie as members of a county assembly during elections. The Bill addresses the requirement of a degree for one to contest as member of county assembly, considering low literacy levels, especially in marginalized counties.
2. The Bill was read a First Time in the Senate on Tuesday 7<sup>th</sup> September 2021, following which it stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration, pursuant to Senate Standing Order 140(1).
3. A call for submission of memoranda was placed in two newspapers with national circulation on Wednesday 8<sup>th</sup> September, 2021. The advertisement was also posted on the Parliament website and social media platforms. In response to the advertisement, the Committee received written submissions from seven stakeholders.
4. The Committee proceeded to consider the Bill at length, alongside the Elections (Amendment) Bill (Senate Bills No. 42 of 2021), which sought to amend the same provision of the Elections Act. Notably, the Committee had considered both Bills at prepublication scrutiny stage, where it had observed that the two Bills could not be considered and passed at the same time. The Committee had recommended that the proposals in one of the Bills be incorporated in the other Bill.
5. Arising from this, at Committee of the Whole stage on the Elections (Amendment) Bill (Senate Bills No. 42 of 2021), the proposals contained in the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) were incorporated in the former Bill by way of amendments sponsored by the sponsor of the Bill.
6. That being the case, the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) may not be proceeded with in the Senate, unless the Elections (Amendment) Bill (Senate Bills No. 42 of 2021), is not passed by Parliament or assented to.
7. Consequently, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of

2021) be not proceeded with, and that the sponsor withdraws the Bill, pursuant to standing order 154 of the Senate Standing Orders.

8. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill.
9. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021).

Signed.....

Date. 29<sup>TH</sup> MARCH 2022

**SEN. ERICK OKONG'O MOGENI, SC, MP,  
CHAIRPERSON,  
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN  
RIGHTS**

## PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the standing 218 of and the Second Schedule to the Senate Standing Orders, 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.'*

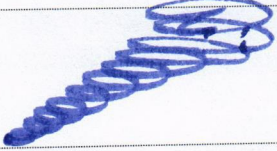

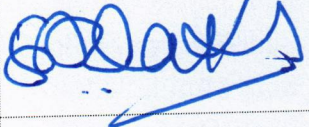
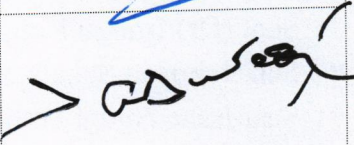
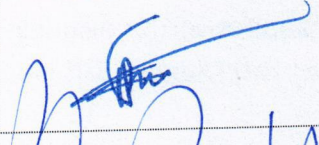
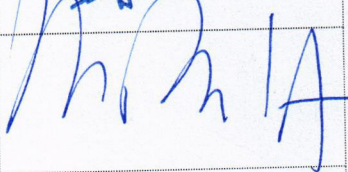
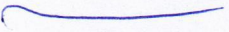
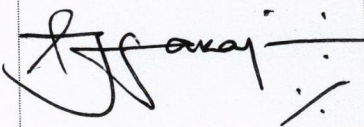

The Committee is comprised of –

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. (Dr) Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP
- 9) Sen. Isaac Ngugi Githua, MP

The Minutes of the Sittings of the Committee in considering the Elections (Amendment) (No. 2) Bill (Senate Bill No. 43 of 2021) are attached to this Report collectively as *Annex I*.

**ADOPTION OF THE REPORT ON THE ELECTIONS (AMENDMENT) (NO. 2)  
BILL (SENATE BILLS NO. 43 OF 2021)**

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

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. (Dr) Irungu Kang'ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	
Sen. Isaac Ngugi Githua, MP	-Member	

## CHAPTER ONE: INTRODUCTION

### A. Prepublication scrutiny

1. The draft Elections (Amendment) Bill, 2021 was submitted to the Honourable Speaker of the Senate on 22<sup>nd</sup> June, 2021 and, pursuant to Senate Standing Order 125(3)(a), referred to the Standing Committee on Justice, Legal Affairs and Human Rights for pre-publication scrutiny and comments.
2. The Committee considered the legislative proposal and noted that the legislative proposal –
  - a) sought to amend section 22 of the Elections Act (No. 24 of 2011) to ensure equality to all candidates who aspire to vie as members of a county assembly during elections. The draft Bill addressed the requirement of a degree for one to contest as member of county assembly, considering low literacy levels, especially in marginalized counties;
  - b) would give rise to a special Bill concerning county governments, pursuant to Articles 110(1)(b) and 110(2)(a)(i), to be processed in accordance with Article 111(2) and (3) of the Constitution; and
  - c) conformed to the Constitution and the law and was in order as to format and style in accordance with the Senate Standing Orders.
3. The Committee noted that it had earlier approved a legislative proposal sponsored by Sen. Kipchumba Murkomen, EGH, MP seeking to amend the same provision of the Elections Act, and that both Bills may not be passed in their current form as that would give rise to conflicting provisions on the qualifications for election as a Member of Parliament or Member of a County Assembly.
4. The Committee therefore recommended that, once the two Bills were published, the amendments proposed in one Bill may be incorporated in the other Bill which would then be passed by the Senate.

### B. Publication, First Reading and Committal of the Bill

5. The Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) is sponsored by Sen. Ledama Olekina, MP. The Bill was published on 9<sup>th</sup> July, 2021 and was read a First Time in the Senate on Tuesday 7<sup>th</sup> September 2021. Following the First

Reading in the Senate, the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration, pursuant to Senate Standing Order 140(1).

6. A copy of the Bill is attached to this Report as *Annex 2*.

**C. Objective of the Bill**

7. The Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) seeks to amend section 22 of the Elections Act (No. 24 of 2011) to ensure equality to all candidates who aspire to vie as members of a county assembly during elections. The Bill addresses the requirement of a degree for one to contest as member of county assembly taking into account low literacy levels, especially in marginalized counties.

**D. Consequences of the Bill**

8. Section 22(1)(b) of the Elections Act No 24 of 2011 provides that a person may be nominated as a candidate for the position of a Member of Parliament or County Assembly if the person holds a degree from a university recognized in Kenya. The Bill proposes to remove the degree requirement for members of county assembly and replaces it with a certificate of secondary education of prior legislative experience as a member of county assembly or member of a local authority under the repealed Local Government Act. By removing the degree requirement, persons who may not have a degree but who may have other attributes of a leader will be eligible to vie for the positions of Member of County Assembly. This will ultimately increase the pool of persons from which the electorate will have an opportunity to choose from.



## CHAPTER TWO: PUBLIC PARTICIPATION

### A. Invitation and consideration of stakeholder submissions on the Bill

9. The Standing Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement placed in two newspapers of national circulation on Wednesday 8<sup>th</sup> September, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
10. In response to the advertisement, the Committee received written submissions from the following stakeholders --
  - a) Independent Electoral and Boundaries Commission;
  - b) National Gender and Equity Commission;
  - c) County Assemblies Forum;
  - d) Centre for Multiparty Democracy – Kenya;
  - e) Elections Observer Group (ELOG) and Mzalendo;
  - f) Young Aspirants Kenya; and
  - g) Mr. James Muriithi Ndwiga.
11. In addition to the submission received on the Bill, the above stakeholders together with the Council of Governors, the Kenya Disability Parliamentary Association (KEDIPA), and Kariobangi Paralegal Network also made submissions on the Elections (Amendment) Bill (Senate Bills No. 42 of 2021), which also sought to amend section 22 of the Elections Act.
12. Copies of both sets of submissions are attached to this Report and collectively marked as *Annex 4*.
13. In considering the two Bills, the Committee noted that the submissions by stakeholders were cross-cutting and that the issues brought forward regarding one Bill would also be applicable to the other. Consequently, the Committee resolved that a combined matrix be prepared to enable the Committee to consider the two Bills simultaneously. The combined matrix is attached to this Report as *Annex 5*.

**CHAPTER THREE: ANALYSIS OF EDUCATIONAL REQUIREMENTS FOR  
ELECTION AS MEMBER OF PARLIAMENT AND MEMBER OF COUNTY  
ASSEMBLY**

**A. Qualification for Election as Member of Parliament**

14. Article 99 of the Constitution sets out qualifications for a person to be elected as a Member of Parliament. With regard to educational requirements, Article 99(1)(b) of the Constitution states as follows --

*99(1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person---*

*(a) ...*

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

15. Additionally, section 24(1)(b) of the Elections Act provides that a person qualifies for nomination as a Member of Parliament if the person satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act.

16. Pursuant to Article 99(1)(b) of the Constitution and section 24(1)(b) of the Elections Act, a person aspiring to be elected as a Member of Parliament is required to satisfy any educational requirements set by the Constitution or an Act of Parliament. Section 22 of the Elections Act has set out the educational requirements, which is a degree from a university recognized in Kenya. Section 22 of the of the Elections Act states as follows --

**22. Qualifications for nomination of candidates**

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

*(a) is qualified to be elected to that office under the Constitution and this Act; and*

*(b) holds---*

*(i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or*

*(ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.*

*(1A) Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.*

*(1B) The provisions of this section apply to qualifications to nomination for a party list member under section 34.*

*(2) Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.*

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

## **B. Qualification for Election as Member of County Assembly**

17. Article 193 of the Constitution sets out qualifications for a person to be elected as a Member of a County Assembly. Article 193(1)(B) of the Constitution states as follows –

*193(1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person—*

*(a) ...*

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

18. Further, section 25(1)(b) of the Elections Act provides that a person qualifies for nomination as a Member of County Assembly if the person satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act.

19. Pursuant to Article 193(1)(b) of the Constitution, a person aspiring to be elected as Member of a County Assembly is required to satisfy any educational requirements set by the Constitution or an Act of Parliament. Section 22 of the Elections Act, referred to above, has set a degree from a university recognized in Kenya as the educational requirements for a person to be nominated for the position of a Member of a County Assembly.

### C. Historical Perspective

20. Under the repealed Constitution, qualifications for election as member of National Assembly were provided for under sections 34 and 35 of the repealed Constitution. Sections 34 of the repealed Constitution provided as follows –

**34. Qualifications for election.**

*34. Subject to section 35, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified unless, at the date of his nomination for election—*

- (a) he is a citizen of Kenya who has attained the age of twenty-one years; and*
- (b) he is registered in some constituency as a voter in elections to the National Assembly; and*
- (c) he is able to speak and, unless incapacitated by blindness or other physical cause, to read the Swahili and English languages well enough to take an active part in the proceedings of the National Assembly; and*
- (d) he is nominated by a political party in the manner prescribed by or under an Act of Parliament.*

21. The National Assembly and Presidential Elections Act (Cap. 7) (now repealed) and regulations made thereunder provided additional qualifications for one to be elected as member of the National Assembly. With regard to educational qualifications, regulation 4 and the Second Schedule to the Presidential and Parliamentary Elections Regulations provided for ‘**language tests**’ conducted by a Board constituted by the Electoral Commission.

22. As regards a member of a local authority (commonly referred to as ‘councillor’), the Local Government Act (Cap 265) (now repealed) provided for the qualifications. Sections 53(5) and 53A provided as follows –

*53(5) A person is qualified to be elected and to be a councillor of a local authority if, and is not qualified unless—*

- (a) at the date of his nomination he is of full age and registered as a voter in elections of elected councillors of that local authority or, in the case of an urban council, he is registered as a voter in elections of elected councillors of the county council of the county within which the urban or area council has jurisdiction; and*

(b) *he is not disqualified for election under any of the other provisions of this Act or any other written law; and*

(c) *he is a member of a political party taking part in the elections and has been nominated by that political party in accordance with the constitution or rules of that political party relating to the nomination of candidates for local government elections.*

*53A. Subject to the Fifth Schedule, any rule made by the Electoral Commission may prescribe, or may provide for the prescription of qualifications to be possessed by persons who are to be nominated, appointed or otherwise selected as councillors for any local authority and may prescribe, or may provide for the prescription of, different qualifications for different classes of such councillors.*

23. Paragraph 3 of the Fifth Schedule to the Local Government Act provided further disqualifications for a person to be elected as a councillor. Paragraph 3(1)(c) provided as follows –

*3. (1) A person shall not be qualified to be elected, nominated, appointed or otherwise selected as a councillor of a local authority if, at the date of his nomination for election or at the date of his nomination, appointment or other selection, as the case may be---*

(a) ...

...

(c) *he cannot read, write and speak the official language, or at least one of the official languages, if there is more than one official language, of the local authority:*

*Provided that the Electoral Commission may direct that such disqualification need not apply to the members of local authorities generally or of any particular class or group of local authorities or of any particular local authority;*

24. During the 2010 Constitution making process, the people desired that there be educational qualifications for Members of Parliament. The Committee of Experts was of the view that these should be set out in an Act of Parliament. On the issue of System of Governance: The Legislature, the Committee of Experts in its Final Report observed the following –

*The substance of the views expressed by the public was:*

(a) ...

(b) ...

(c) *A desire for a statement of the educational qualifications of members of parliament;*

(d) ...

*... As regards qualifications, the CoE's position was that an Act of Parliament should set educational qualifications for Senators and Members of the National Assembly as these could change over time and should therefore not be stipulated in the constitution.*

25. Subsequently, educational qualifications were set out under section 22 of the Elections Act when it was enacted in 2011. At the time of its enactment, section 22 of the Elections Act provided as follows –

**22. Qualifications for nomination of candidates**

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

*(a) is qualified to be elected to that office under the Constitution and this Act; and*

*(b) holds a post-secondary school qualification recognised in Kenya.*

*(2) Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.*

26. The above provision was challenged in court in the **Johnston Muthama -Vs- Minister for Justice & Constitutional Affairs & Another [2012] eKLR**. The Court declared section 22(1)(b) unconstitutional for being unreasonable and unjustifiable in an open and democratic society based on human dignity, equality and freedom. It was observed that the requirement for a post-secondary qualification did not address the real concern of the citizenry and excluded many who may not, through no fault of their own, have been able to achieve post-secondary education.

27. In the year 2012, Parliament *vide* Statute Law (Miscellaneous Amendments) Act, No. 12 of 2012 amended section 22(1) of the Elections Act by deleting paragraph (b) and substituted it with the following paragraph –

**(b) holds a certificate, diploma or other post-secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act.**

28. Later in the year 2012, Parliament vide Elections (Amendment) (No.3) Act, No. 48 of 2012 further amended section 22 of the Elections Act by inserting subsection (2A) exempting Members of Parliament and members of county assemblies as regards educational qualifications during the elections of 2013.
29. The above provision was also challenge in court in **John Harun Mwau -Vs Independent Electoral and Boundaries Commission and Another [2013] eKLR**. The Court found the section to be constitutional and dismissed the matter. The court observed that the nature of the duties and functions performed by the National Assembly and the Senate require higher educational qualifications, skills and wide exposure which is gained through higher education, and that the section was enacted pursuant to Article 99(1) of the Constitution which imposes a duty on Parliament to enact legislation setting out educational qualifications for Members of Parliament. The matter was appealed to the Court of Appeal where the Court agreed with the decision of the High Court and dismissed the matter.
30. Finally, in the year 2017, Parliament *vide* the Election Laws (Amendment) Act (No. 1 of 2017) amended section 22 of the Elections Act by deleting paragraph (b) of subsection (1) and replacing it with a new paragraph (which requires a degree for both a Member of Parliament and Member of County Assembly), and inserting subsections (1A) which provides that the educational requirements will apply after the 2017 elections and subsection (1B) applying educational requirements to nominated members.
31. In the matter of **County Assembly Forum & 6 others v. the Attorney-General & 4 others (Nairobi High Court Constitutional Petition No. E229 of 2021)** the requirement of a degree qualification for a person to be nominated as a candidate for election to the office of a Member of a County Assembly as provided for under section 22(1)(b)(ii) was challenged. The court declared the provision unconstitutional for the reasons that, among others, the provision is irrational, unreasonable and unjustifiable in an open and democratic society and that there is need for differentiated qualifications with respect to the office the President, the Deputy President, Governor, Member of Parliament and MCA since the responsibilities bestowed upon those offices are not the same.

## D. Comparative Analysis

### i) Uganda

32. Article 80 of the Constitution of Uganda sets out qualification and disqualification of members of Parliament. As regards educational qualification, Article 80(1)(c) provides that a person is qualified to be a Member of Parliament if the persons, *'has completed a minimum formal education of Advanced Level standard or its equivalent.'* The educational qualification for a Member of Parliament as set out under Article 80 of the Constitution is replicated in section 4(1)(c) of the Parliamentary Elections Act, 2005.
33. In addition to the national legislature, Uganda has a system of local government based on districts. Pursuant to Article 180(1) of the Constitution, a local government shall be based on a council with both legislative and executive powers. As regards qualifications for elections as member of a local government, Article 18(2) gives Parliament powers to prescribe the qualifications. Additionally, Article 183(2)(a) of the Constitution provides that a person is qualified to be elected as a Chairperson of a District if the person is qualified to be elected as Member of Parliament.
34. Pursuant to Article 180(2) of the Constitution, section 116 of the Local Government Act of 1997 provides for qualifications for councillors. Section 116(1) provides that *'a person is qualified to be a member of a district or city council other than the chairperson if that person is a citizen of Uganda and is a registered voter.'* Therefore, except for a chairperson of a district, there are no educational requirement for a person to be elected as member of local government.



**ii) Tanzania**

35. Qualifications for elections as Member of Parliament in Tanzania is provided for under Article 67 of the Constitution. Article 67(1) of the Constitution provides as follows –

*(1) Subject to the provisions contained in this Article, any person shall be qualified for election or appointment as a Member of Parliament if he –*

*(a) is a citizen of the United Republic who has attained the age of twenty-one years and who can read and write in Kiswahili or English; and*

*(b) is a member and a candidate proposed by a political party.*

36. With regard to qualifications for election as member of a local government, section 39(2) of the Local Authorities (Elections) Act provides that, among others, a person is qualified for election if the person is a citizen of the United Republic, has attained the age of twenty-one years, he can read and write in Kiswahili or English.

**iii) South Africa**

37. The Parliament of South Africa consists of the National Assembly and the National Council of Provinces. Section 40(1) of the Constitution provides that *“Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly ...”*

38. Section 1 of the Elections Act of 1998 defines a voter as a citizen of South Africa who has attained the age of eighteen years and whose name appears on the voters’ roll.

39. Pursuant to sections 60, 61 and 62 of the Constitution the National Council is composed of a single delegation from each Province consisting of a Premier of a Province, three special delegates who are members of a provincial legislature and six permanent delegates appointed by a provincial legislature.

40. Pursuant to section 106 of the Constitution, *“Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a Provincial legislature ...”* Additionally, a Premier of a Province is elected by a provincial legislature from among its members.

**iv) Ghana**

41. Article 94 of the Constitution of Ghana sets out the qualification for a Member of Parliament. Pursuant to Article 94(1) of the Constitution a person is qualified to be elected as a member of parliament if the person is a citizen of Ghana, a registered voter and must be of twenty-one years of age, is a resident or has resided at the constituency he is stands as a candidate for 5 years preceding the election, and has made all his taxes and dues.
42. Chapter 20 of the Constitution for decentralization and local government. Local government is based on Districts into which Ghana is divided. Article 247 of the Constitution provides for qualifications and procedures. Article 247 of the Constitution states as follows –

*Subject to this Constitution, the qualifications for membership of a District Assembly, the procedures of a District Assembly and other local government units lower than a District Assembly that may be created, shall be provided for by law.*

43. Pursuant to Article 247 of the Constitution, section 7 of the Local Governance Act of 2016 provides for the qualifications for election as a member of District Assembly. Section 7(1) of the Local Governance Act provides that a person is qualified to be elected as a member of a District Assembly if the person is a citizen of Ghana, a registered voter and must be of eighteen years of age, is a resident of the District, and has made all his taxes and dues.

**v) Australia**

44. Commonwealth Parliament of Australia is composed of the Senate (the upper House) and the House of Representatives (lower House). Pursuant to Section 7 of the Constitution of Australia, the Senate is composed of Senators elected directly by the people from each of the States. Section 16 of the Constitution provides for the qualifications for elections as a Senator. Section 16 states as follows –

*The qualifications of a senator shall be the same as those of a member of the House of Representatives.*

45. Section 34 of the Constitution sets out the qualifications for election as a member of the House of Representative. Section 34 of the Constitution states as follows –

*Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:*

- i) he must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;*
- ii) he must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.*

46. Further eligibility criteria are provided for under sections 16, 34 and 44 of the Constitution as well as sections 164, 165 and 386 of the Commonwealth Electoral Act. However, there are no educational qualifications stipulated by the Constitution or the Commonwealth Electoral Act.

47. As regards the States, each State has set out the eligibility for election as a legislature. For example, in the States of New South Wales and Tasmania there are no educational qualifications for a person to be elected a member of the respective legislature.

**vi) The US**

48. At the federal level, legislative authority is vested in Congress which is composed of the Senate and the House of Representatives. Pursuant to Article I section 2 of the Constitution of the United States, a person is eligible for election as a member of the House of Representative if the person has been a citizen of the United States for seven years, is of 21 years of age and is an inhabitant of the State. As regards qualification for election as Senator, Article I section 3 of the Constitution provides that a person is eligible for election as a Senator if the person has been a citizen of the United States for nine years, is of thirty years of age and is an inhabitant of the State.
49. With respect of the various States, each State provides for the requirements for election as member of a legislature. For instance, in the State of New York Article III section 7 of the New York State Constitution provides that a person is eligible for election as member Senator or member of New York State Assembly if the person is a citizen of the United States, is of eighteen years, and resident of state for five years and resident of district for twelve months.

**E. Effect of Higher Education on Legislators' Performance**

50. According to Carnes and Lupu in their article titled *'Rethinking the Comparative Perspective on Class and Representation: Evidence From Latin America'*, which examined the relationship between legislators' educational background and their performance in office, they noted that 'There simply is not much empirical research on the link between politicians' educational attainment and their performance in office'. They opine that there is little relationship between educational background and political performance especially in terms of national prosperity, level of corruption and bill enactment. They concluded that 'college-educated leaders perform about the same or worse than leaders with less formal education'.
51. In their research study, they studied change of leadership regimes, elections for members of the United States Congress and randomly selected municipalities in Brazil concluded that there is no evidence that highly educated individuals make better politicians. They made the conclusion that political leaders with college degrees do not lead more prosperous nations, do not pass more bills and are no less likely to be corrupt than the ones without college degrees.

52. In a journal article titled “*Does Higher Education Matter for MPs in their Parliamentary Work? Evidence from the Swedish Parliament, (2019) 55 representation 65*”, Cecilia Joseffson and Josefina Erikson explore whether formal education functions as a resource for political leaders on the individual level. They state “A majority of the Swedish MPs have a college education—72% in comparison with 42% of the adult population (Statistics Sweden). Although Swedish politicians are highly positively selected, Dal Bó et al. (2017) have described Sweden as an ‘inclusive meritocracy’ in which representation across social backgrounds is extraordinarily even and the proportion of legislators without a college education (almost 30%) is comparatively high.”
53. The article assesses whether those leaders who lack formal education are disadvantaged in terms of lower efficiency at individual level and influence, and answer the question on the importance of politics of qualitative resources, such as skills and knowledge, that are associated with formal education. The authors note that “Our findings show that while legislators value the skills they have acquired through higher education, there are little or no systematic differences between legislators with and without a formal higher education in terms of their internal efficacy and influence in the Swedish Parliament. The interviews indicate that legislators with lower levels of formal education possess a number of the skills often associated with higher education and thus do not appear to be significantly disadvantaged because of their educational background. We conclude that although a college degree seems to provide legislators with substantial resources, these resources are not associated exclusively with formal education.”
54. They further note that “In contrast, an absence of differences between legislators with and without a higher education may suggest either (a) that education per se has no effect, and that it might merely be a proxy for something else (such as social status) or (b) that those without a higher education have, through other pathways, acquired skills and political efficacy similar to those with a college education.”
55. Similarly, the results from the ADR-Daksh survey on Indian members of parliament as outlined in the article titled “*Can Educated MPs Do More for Education?*” highlight that there is no correlation between the level of education of MPs and their perceived contribution towards education and employment.

56. However, authors Besley and Reynal-Querol in their research titled "*Do Democracies select more educated leaders? The American Political Science Review, 105(3), 552-566.*" find evidence that economic growth rates of a country are higher when leaders are highly educated.
57. Daniel in his article titled "*When the agent knows better than the principal: the effect of education and seniority on European parliament rapporteur assignment. JCMS: Journal of Common Market Studies, 2013*" also finds that there exists a relationship between political decision-makers' level of formal education and the assignment of highest leadership posts in the European Parliament, and formal education appears to be particularly important for inexperienced legislators. Scholars argue that formal education has an absolute effect upon political engagement because it provides leaders with resources such as beliefs, skills and knowledge that are beneficial for political activity.
58. Verba, Schlozman, & Brady in their article titled "*Voice and equality: Civic voluntarism in American politics (1995), Cambridge MA: Harvard University Press*", argued that 'Education enhances participation more or less directly by developing skills that are relevant to politics—the ability to speak and write, and the knowledge of how to cope in an organisational setting'. They also averred that higher education favours individuals' political efficacy and self-confidence concerning one's political abilities and competence. The concluding theme in the article is that a high level of education improves people's perception about their competence, their ability to understand, engage and influence politics.

## CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

### A. Committee Observations

59. Article 38 of the Constitution provide for political rights. Article 38 of the Constitution states as follows –

#### ***38. Political rights***

*(1) Every citizen is free to make political choices, which includes the right—*

*(a) to form, or participate in forming, a political party;*

*(b) to participate in the activities of, or recruit members for, a political party;*

*or*

*(c) to campaign for a political party or cause.*

*(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—*

*(a) any elective public body or office established under this Constitution; or*

*(b) any office of any political party of which the citizen is a member.*

*(3) Every adult citizen has the right, without unreasonable restrictions—*

*(a) to be registered as a voter;*

*(b) to vote by secret ballot in any election or referendum; and*

*(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.*

60. Whereas Article 38(3)(c) of the Constitution provides that a citizen has a right, without unreasonable restriction, to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office, Articles 99(1)(b) and 193(1)(b) of the Constitution requires that a person intending to vie for the position of Member of Parliament or County Assembly satisfy satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament. The political rights provided for under Article 38 of the Constitution do not fall in the category of rights and fundamental rights that cannot be limited as set out under Article 25 of the Constitution.

61. Pursuant to Articles 99(1)(b) and 193(1)(b) of the Constitution, the educational requirements for a person to vie as Member of Parliament or Member of County

Assembly are provided for under section 22 of the Elections Act, No. 24 of 2011 is as a degree from a university recognized in Kenya.

62. Further, Article 24 of the Constitution provides for limitations of rights and fundamental freedoms. Article 24(1) of the Constitution states as follows –

*(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—*

- (a) the nature of the right or fundamental freedom;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and*
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.*

63. Pursuant to Articles 24, 25, 99(1)(b) and 193(1)(b) of the Constitution, political rights provided for under Article 38 of the Constitution can be limited. However, such a limitation must comply with the requirements set out under Article 24 of the Constitution.
64. With regard to the educational requirements for a Member of a County Assembly as set out section 22(1)(b)(ii) of the Elections Act, the court in *County Assembly Forum & 6 others v. the Attorney-General & 4 others (Nairobi High Court Constitutional Petition No. E229 of 2021)* declared the section unconstitutional and hence inoperational. This decision has not been appealed against.
65. During the 2010 Constitution making process, the people desired that there be educational qualifications for Members of Parliament, Senators and Members of the National Assembly. The Committee of Experts was of the view that these should be set out in an Act of Parliament as this could change over time.
66. The 2019 Kenya Population and Housing census Report indicate that Majority of respondents had attained primary education, followed by secondary education, and



that persons with university education were 1.3 million against a population of 47.6 million. Additionally, the Committee observed that university education is not universally accessible to all Kenyans.

67. The Kenya National Qualifications Framework Act, No. 22 of 2014 and the Regulations made thereunder sets out a framework for educational qualifications. In addition to the conventional qualifications recognized under regulation 18 of the Kenya National Qualifications Framework Regulations, 2018, regulation 11 of the said Regulations provide a procedure for recognition of prior learning and award of an equivalent qualification by the Kenya National Qualifications Authority. Therefore, the educational qualifications provided for under section 22(1)(b) of the Elections Act do not take into account this other form of qualification recognized under regulation 11 of the Kenya National Qualifications Framework Regulations, 2018.
68. The Senate, on 23<sup>rd</sup> February, 2022, passed the Elections (Amendment) Bill (Senate Bills No. 42 of 2021), with amendments. Notably, at Committee of the Whole stage, the Bill was amended to provide that –
- 2. Section 22 of the Elections Act is amended by deleting subsection (1) and substituting therefor the following new subsection –*
- (1) A person is eligible for nomination as a candidate for an election under this Act if that person -*
- (a) is qualified to be elected to that office under the Constitution and this Act; and*
- (b) holds a certificate, diploma or other postsecondary school qualification acquired after undergoing a period of at least three months of study in a recognised institution and in such manner as may be prescribed by the Commission; or*
- (c) has served as a member of Parliament or a member of a county assembly under the Constitution of Kenya or as a councillor under the repealed Local Government Act.*
69. As recommended by the Committee, this amendment effectively incorporated in the Elections (Amendment) Bill (Senate Bills No. 42 of 2021) the amendments proposed in the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021). A copy of the Bill as passed by the Senate, with amendments, on 23<sup>rd</sup> February, 2022, is attached to this Report as *Annex 6*.

70. Standing order 154(1) of the Senate Standing Orders provides that ‘Either before the commencement of business or on the Order of the Day for any stage of the Bill being read, the Senator in charge of a Bill may, without notice, claim to withdraw the Bill.’

**B. Committee Recommendation**

71. Arising from the said observations, and following consultations with the sponsor of the Bill, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021) be **not** proceeded with, and that the sponsor **withdraws** the Bill, pursuant to standing order 154 of the Senate Standing Orders.

## ANNEXES

- Annex 1:** Minutes of the Committee in considering the Bill.
- Annex 2:** The Elections (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021)
- Annex 3:** Advertisement published in the Daily Nation and Standard newspapers on Wednesday, 8<sup>th</sup> September, 2021
- Annex 4:** Copies of submissions received on the Bill
- Annex 5:** Matrix on consideration of public submissions on the Bill
- Annex 6:** The Elections (Amendment) Bill (Senate Bills No. 42 of 2021) as passed by the Senate, with amendments, on 23<sup>rd</sup> February, 2022.

**MIN. NO. 181/2022**      **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Dr.) Irungu Kang'ata, CBS, MP.

**MIN. NO. 182/2022**      **THE POLITICAL PARTY PRIMARIES BILL (SENATE BILLS NO. 35 OF 2020)**

The Committee considered and adopted the Report on the Political Party Primaries Bill (Senate Bills No. 35 of 2020), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 183/2022**      **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO.34 OF 2021)**

The Committee considered and adopted the Report on the Alternative Dispute Resolution Bill (Senate Bills No.34 of 2021), having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.

**MIN. NO. 184/2022**      **THE ELECTION (AMENDMENT) (NO.2) BILL (SENATE BILLS NO. 43 OF 2021)**

The Committee considered and adopted the Report on the Election (Amendment) (No.2) Bill (Senate Bills No. 43 of 2021) having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 185/2022**      **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021)**

The Committee considered and adopted the Report on the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 186/2022**      **PETITION ON AMENDMENT TO THE CONSTITUTION OF KENYA AND OTHER RELEVANT LAWS ON THE ELECTION OF A DEPUTY PRESIDENT AND A DEPUTY GOVERNOR**

The Committee considered and adopted the Report on a Petition by Taratisio Ireri Kawc, regarding proposed amendments to the Constitution and various statutes on the election of a Deputy President and Deputy Governor, whenever such a position became vacant. The Report was proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

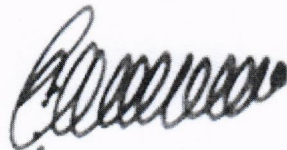
**MIN. NO. 187/2022      ANY OTHER BUSINESS**

Members were informed that the following meetings were scheduled for Wednesday and Thursday that week, and that the respective stakeholders had confirmed attendance. Consequently, Members were urged to avail themselves for the meetings –

<b>No.</b>	<b>Date</b>	<b>Time</b>	<b>Meeting</b>
a)	Wednesday, 23 <sup>rd</sup> March, 2022	8.00 am	Meeting with the Attorney General and the Law Society of Kenya to consider a Statement sought by Sen. Samson Cherarkey, MP on unqualified persons practicing as Advocates in various private companies.
b)	Thursday, 24 <sup>th</sup> March, 2022	8.00 am	Meeting with the Chairperson of the Independent Electoral and Boundaries Commission to discuss the status of preparedness for the 2022 General Elections.

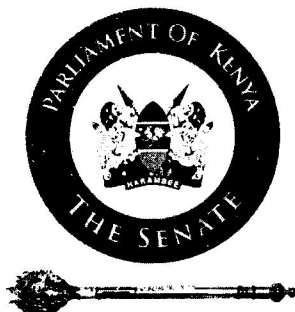
**MIN. NO. 188/2022      ADJOURNMENT**

The meeting was adjourned at 11:14am. The next meeting was scheduled for Wednesday, 23<sup>rd</sup> March at 8:00 am.



**SIGNED:** .....  
**(CHAIRPERSON)**

**DATE:** ..... 30/03/2022 .....



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE NINETY-SIXTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD AT WHITESANDS BEACH RESORT, IN MOMBASA COUNTY, ON FRIDAY, 26<sup>TH</sup> NOVEMBER, 2021 AT 10.00 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP         | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member                          |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member (V)                      |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member                          |
| 5. Sen. Isaac Ngugi Githua, MP               | - Member (V)                      |

**ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson |
| 2. Sen. James Orengo, EGH, SC, MP      | - Member           |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member           |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member           |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Dr. Johnson Okello   | - Director, Legal Services                  |
| 2. Ms. Mercy Thanji     | - Legal Counsel                             |
| 3. Mr. Charles Munyua   | - Clerk Assistant                           |
| 4. Mr. Said Osman       | - Research Officer                          |
| 5. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 6. Ms. Lucianne Limo    | - Media Relations Officer                   |
| 7. Mr. Javan Nang'eyo   | - Sergeant at Arms                          |
| 8. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 9. Ms. Hawa Abdi        | - Sergeant at Arms                          |
| 10. Mr. James Kimiti    | - Hansard Officer                           |

**MIN. NO. 462/2021**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Fatuma Dullo, CBS, MP.

**MIN. NO. 463/2021**      **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 464/2021**      **JUDGMENT BY THE COURT OF APPEAL IN CIVIL APPEAL NO. E084 OF 2021 - SPEAKER OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA & ANOTHER Vs SENATE OF THE REPUBLIC OF KENYA & 12 OTHERS**

The Committee was taken through a brief on the Judgment delivered by the Court of Appeal on 19<sup>th</sup> November, 2021 in Civil Appeal No. E084 of 2021 - *Speaker of the National Assembly of the Republic of Kenya & Another Vs Senate of the Republic of Kenya & 12 Others*.

It was noted that the Judgment had greatly eroded the gains made in the Judgment delivered by the High Court on 29<sup>th</sup> October 2020 in HC Petition No. 284 of 2019. Consequently, it was resolved that an appeal be preferred to the Supreme Court on the aspects of the Court of Appeal Judgment that the Senate was dissatisfied with.

In this regard, the Committee directed the legal team to file the Notice of Appeal within the required timelines. The Committee would convene at a later date to consider the draft Petition and Record of Appeal to be filed at the Supreme Court.

**MIN. NO. 465/2021**      **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO. 34 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

**MIN. NO. 466/2021**      **THE LIFESTYLE AUDIT BILL, (SENATE BILL NO. 36 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

**MIN. NO. 467/2021**

**I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**

**II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021); AND**

**III) THE ELECTION (AMENDMENT) (NO. 3) BILL (SENATE BILLS NO. 48 OF 2021).**

The Committee noted that a public hearing on the three Bills was scheduled to be held in Nairobi on 3<sup>rd</sup> December, 2021. The Committee further resolved to explore the possibility of undertaking public hearings on the Bills, at selected regions outside Nairobi, in January, 2022.

**MIN. NO. 468/2021**

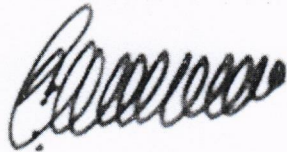
**THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).**

The Committee resolved to explore the possibility of undertaking public hearings on the Bills, in Kitui County and other selected regions, in January, 2022.

**MIN. NO. 469/2021**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.45 pm. The next sitting will be held on Friday, 26<sup>th</sup> November, 2021 at 2.00 pm, in Mombasa County.

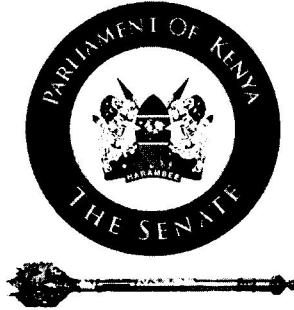


**SIGNED: .....**

**(CHAIRPERSON)**

**DATE: ..... 30/03/2022 .....**





**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE NINETY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 18<sup>TH</sup> NOVEMBER, 2021 AT 8.10 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson                |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                          |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member                          |
| 5. Sen. Isaac Ngugi Githua, MP         | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orendo, EGH, SC, MP            | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 5. Ms. Hawa Abdi        | - Sergeant at Arms                          |
| 6. Mr. James Kimiti     | - Hansard Officer                           |
| 7. Ms. Cynthia Wanjiku  | - Pupil                                     |

**MIN. NO. 457/2021**

**PRAYER**

The sitting commenced with a word of prayer by the Vice Chairperson.

**MIN. NO. 458/2021**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Isaac Ngugi Githua, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 459/2021**

- I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**
- II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021);**
- III) THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021); AND**
- IV) THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).**

The Committee considered the Election (Amendment) Bill (Senate Bills No. 42 of 2021); the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021); the Election (Amendment) (No 3) Bill (Senate Bills No. 48 of 2021); and, the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021).

It was noted that, the Bills being of great public interest, there was need to ensure that adequate public participation was undertaken thereon, to avoid any legal challenges that may be brought up relating to the process for passage of the said Bills.

Consequently, the Committee resolved to hold a public hearing on the Bills on Friday, 3<sup>rd</sup> December, 2021.

**MIN. NO. 460/2021**

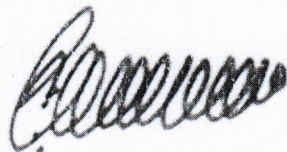
**ANY OTHER BUSINESS**

The Committee noted with concern that, following the tabling and debate on the Committee Reports relating to extrajudicial killings and the delay in appointment of Judges, the Chairperson of the Committee had been targeted in a sustained campaign on social media to malign his name and character. The Committee resolved to not be intimidated in the conduct of its business.

**MIN. NO. 461/2021**

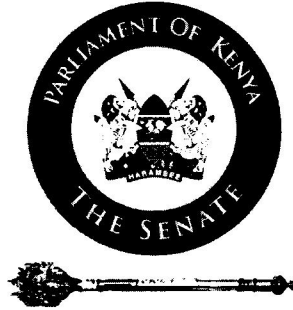
**ADJOURNMENT**

There being no other business, the meeting was adjourned at 8.45 am. The next sitting will be held on Friday, 26<sup>th</sup> November, 2021 at 9.00 am, in Mombasa County.



SIGNED: .....  
(CHAIRPERSON)

DATE: ..... 30/03/2022 .....



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE NINETY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 9<sup>TH</sup> NOVEMBER, 2021 AT 8.15 A.M.**

**PRESENT**

- |  |  |
|--|--|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson                          |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson ( <b>Chairing</b> ) |
| 3. Sen. Fatuma Dullo, CBS, MP          | - Member                               |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                               |
| 5. Sen. Johnson Sakaja, CBS, MP        | - Member                               |
| 6. Sen. Isaac Ngugi Githua, MP         | - Member                               |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orenge, EGH, SC, MP            | - Member |
| 3. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Mr. Mitchel Otoro    | - Legal Counsel                             |
| 5. Mr. Javan Nang'eyo   | - Sergeant at Arms                          |
| 6. Ms. Lucianne Limo    | - Media Relations Officer                   |
| 7. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 8. Ms. Hawa Abdi        | - Sergeant at Arms                          |
| 9. Mr. James Kimiti     | - Hansard Officer                           |
| 10. Ms. Cynthia Wanjiku | - Pupil                                     |

**MIN. NO. 442/2021**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 443/2021**      **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Johnson Sakaja, CBS, MP.

**MIN. NO. 444/2021**      **THE LIFESTYLE AUDIT BILL, (SENATE BILL NO. 36 OF 2021)**

Consideration of the Bill was deferred to a later date.

**MIN. NO. 445/2021**      **THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021)**

The Committee commenced consideration of the Bill and was taken through an overview of the Bill and the submissions received thereon.

Thereupon, the Committee made the following observations –

- a) The Bill, as drafted, conferred on the National Assembly the power to power to consider draft regulations on the use of popular names. There was need to find whether it was possible to grant an entry point to the Senate.
- b) The Independent Electoral and Boundaries Commission (IEBC) had, in its submissions, raised concerns regarding how popular names could be ascertained, and on resolution of disputes relating to use of popular names, particularly where the same name was claimed by more than one candidate. The Committee noted that the said concerns could be addressed by way of regulations formulated under the Bill.

Thereupon, the Committee resolved to consider the matrix on the Bill at a subsequent sitting.

**MIN. NO. 446/2021**      **ANY OTHER BUSINESS**

- a) The Committee considered various options available for capacity building of Members, and resolved to have the same undertaken in Dubai, UAE, in December, 2021.
- b) The Committee further resolved to hold a working retreat, in Kilifi County, to conclude on various legislative business pending before the Committee.
- c) Members were reminded that two Reports by the Committee, that is on extrajudicial killings and on the delay in appointment of Judges, were scheduled for consideration in plenary that afternoon. Members were therefore urged to be present for the debate.

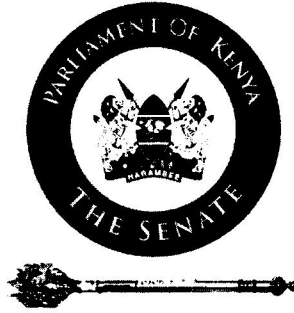
There being no other business, the meeting was adjourned at 9.00 am. The next sitting will be held on Wednesday, 10<sup>th</sup> November, 2021 at 8.00 am.



**SIGNED:** .....

**(CHAIRPERSON)**

**DATE:** ..... 30/03/2022 .....



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE EIGHTY-THIRD SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 12<sup>TH</sup> OCTOBER, 2021 AT 8.10 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson                |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP            | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member |
| 5. Sen. Johnson Sakaja, CBS, MP              | - Member |

**IN ATTENDANCE**

1. Sen. Ledama Olekina, MP

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 5. Mr. James Ngusya     | - Serjeant at Arms                          |
| 6. Mr. James Kimiti     | - Hansard Officer                           |

**MIN. NO. 401/2021**

**PRAYER**

The sitting commenced with a word of prayer by the Vice Chairperson.

**MIN. NO. 402/2021**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.

**MIN. NO. 403/2021**

**THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021); AND THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021).**

The Committee resumed consideration of the Election (Amendment) Bill (Senate Bills No. 42 of 2021); and the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021).

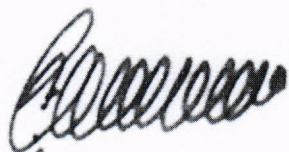
Thereupon, the Committee noted that the sponsors of the two Bills, which sought to amend the same provision of the Elections Act, had failed to agree on a proposal to merge the Bills or incorporate the provisions of one to the other. The Committee therefore resolved to proceed with the Bill that was published first. Consequently, the Secretariat was tasked to schedule meetings with key stakeholders to receive submissions on the Bill.

The Committee further noted that the High Court was scheduled to render its decision later that week on a suit challenging the constitutionality of the said section 22 of the Elections Act, which would likely impact on consideration of the Bills by the Committee.

**MIN. NO. 404/2021**

**ADJOURNMENT**

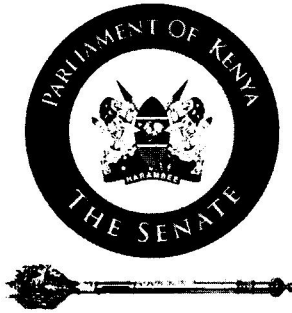
There being no other business, the meeting was adjourned at 8.35 am. The next sitting will be held on Wednesday, 13<sup>th</sup> October, 2021 at 8.00 am.



**SIGNED:** .....

**(CHAIRPERSON)**

**DATE:** ..... 30/03/2022 .....



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE EIGHTY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 7<sup>TH</sup> OCTOBER, 2021 AT 8.05 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson                |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                          |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP            | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Ms. Sylvia Nasambu   | - Clerk Assistant                           |
| 5. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 6. Mr. James Ngusya     | - Serjeant at Arms                          |
| 7. Mr. James Kimiti     | - Hansard Officer                           |

**MIN. NO. 396/2021**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Johnson Sakaja, CBS, MP.

**MIN. NO. 397/2021**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Johnson Sakaja, CBS, MP.



**MIN. NO. 398/2021      THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021); AND THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021).**

The Committee commenced consideration of the Election (Amendment) Bill (Senate Bills No. 42 of 2021); and the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021). It was noted that both Bills sought to amend the same provision of the Elections Act.

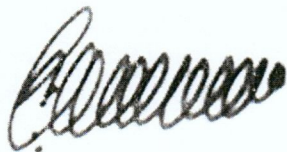
It was therefore resolved that the two Members be invited to appear before the Committee on Tuesday of the following week, to discuss and agree on how to proceed with consideration of the two Bills.

**MIN. NO. 399/2021      ANY OTHER BUSINESS**

Members were reminded of the meeting with the County Assembly of Nandi that was scheduled to be held later that day, at 11.00 am, in the Small Dining.

**MIN. NO. 400/2021      ADJOURNMENT**

There being no other business, the meeting was adjourned at 8.35 am. The next sitting will be held on Tuesday, 12<sup>th</sup> October, 2021 at 8.00 am.



**SIGNED:** .....  
**(CHAIRPERSON)**

**DATE:** ..... 30/03/2022 .....