

Approved for tabling. *Pat SNA*
3/7/19

REPUBLIC OF KENYA



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DATE: 03 JUL 2019

DAY:
Wednesday

Hon. William Cheptoo
Chairperson

THE NATIONAL ASSEMBLY *Halina Ahmed*

TWELFTH PARLIAMENT – THIRD SESSION, 2019

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

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

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2019

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LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill and adoption of report.
- Annexure 2:** Signed list of Members who attended the sitting that considered and adopted the report on the Bill.
- Annexure 3:** Copy of newspaper advertisement inviting the public to present written submissions on the Bill.
- Annexure 4:** Written submission received from stakeholders

CHAIRPERSON'S FOREWORD

The Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill, 2019 is sponsored by the Departmental Committee on Justice and Legal Affairs through its Chairperson, Hon. William Cheptumo.

The Bill was published in the Kenya Gazette on 8th May, 2019 (National Assembly Bills No. 35/2019). The Bill underwent First Reading on 9th May, 2019 and was immediately committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 127(1).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of 20th May, 2019 invited the public to make representations on the Bill. The Independent Electoral and Boundaries Commission submitted both oral and written representations.

The Committee held two (2) sittings considering the Bill and adopting its report. The first sitting was held on 4th June, 2019 when the Committee deliberated on the Bill clause by clause. The second sitting was held on 15th June, 2019 when the Committee considered and unanimously adopted its report with some few proposed amendments to the Bill.

May I take this opportunity to -

- (i) Commend the Committee Members for their devotion and commitment to duty which made consideration of the Bill successful;
- (ii) Express gratitude to the Offices of Speaker and Clerk of the National Assembly for always providing leadership and guidance;
- (iii) Appreciate the Committee secretariat for exemplary performance in providing technical and logistical support.

Indeed, their roles were critical to the Committee in the consideration of the Bill.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on

the Independent Electoral and Boundaries Commission (Amendment)
(No. 3) Bill, 2019.

HON. WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS

PART 1

1. PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
- (g) examine treaties, agreements and conventions;
- (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and

(j) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;
- (b) The administration of law and Justice
- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

NO	NAME	CONSTITUENCY	PARTY
1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	Baringo North	Jubilee
2.	Hon. Alice Muthoni Wahome, M.P. – <i>Vice Chairperson</i>	Kandara	Jubilee
3.	Hon. John Olago Aluoch, M.P.	Kisumu West	FORD-Kenya
4.	Hon. Roselinda Soipan Tuya, M.P.	Narok County	Jubilee
5.	Hon. Charles Gimose, M.P.	Hamisi	FORD-Kenya
6.	Hon. William Kamoti Mwamkale, M.P.	Rabai	ODM
7.	Hon. Peter Opondo Kaluma, M.P.	Homa Bay Town	ODM
8.	Hon. Ben Orori Momanyi, M.P.	Borabu	Wiper Democratic Movement
9.	Hon. Johana Ng'eno, M.P.	Emurua Dikirr	KANU
10.	Hon. George Gitonga Murugara, M.P.	Tharaka	Democratic Party

11.	Hon. Anthony Githiaka Kiai, M.P.	Mukurueni	Jubilee
12.	Hon. Gladys Boss Shollei, CBS, M.P.	UasinGishu County	Jubilee
13.	Hon. Beatrice Adagala, M.P.	Vihiga County	Amani National Congress
14.	Hon. Jennifer Shamalla, M.P.	Special Interests	Jubilee
15.	Hon. John Munene Wambugu, M.P.	Kirinyaga	Jubilee
16.	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
17.	Hon. Adan Haji Yussuf, M.P.	Mandera West	Economic Freedom Party
18.	Hon. John Kiarie Waweru, M.P.	Dagoretti South	Jubilee
19.	Hon. Zuleikha Hassan, M.P.	Kwale County	ODM

1.3. Committee Secretariat

4. The Committee's secretariat comprises the following officers-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms

5. Minutes of Committee sittings on the consideration of the Bill and adoption of report are annexed to this report as *annexure 1*

PART 2

2. INTRODUCTION AND BACKGROUND

2.1. Memorandum of objects and reasons of the Bill

6. The principal object of the Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill, 2019 is to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 in order to establish a selection panel to oversee the filling of vacant positions in the Independent Electoral and Boundaries Commission. The current First Schedule only applied to the recruitment of the current Commissioners and there is therefore the need to provide for a selection panel to oversee subsequent appointments.
7. Under the Bill, it is proposed that the selection panel comprises four persons nominated by the Parliamentary Service Commission and seven other persons nominated by the Public Service Commission, the Ethics and Anti-Corruption Commission, the Law Society of Kenya, the National Gender and Equality Commission, the Attorney-General, the Kenya National Commission on Human Rights and the Inter-Religious Council of Kenya.
8. It is expected that the eleven member selection panel is representative of cross section of the Kenyan society and its values and that it will ably discharge its core mandate of shortlisting suitable persons for appointment as Commissioners by the President
9. The Bill does not delegate legislative powers neither does it contain provisions limiting fundamental rights and freedoms.
10. The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution. The enactment of the Bill does not occasion additional expenditure of public funds.

PART 3

3. PUBLIC PARTICIPATION IN THE REVIEW OF THE BILLS

11. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

12. Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

13. In line with the Constitution and Standing Orders, the Departmental Committee on Justice and Legal Affairs, in the local daily newspapers of 20th May, 2019 attached as *annexure 3* of the report invited the public to make presentations on the Bill. The Committee received written and oral submissions from Independent Electoral and Boundaries Commission (IEBC) attached as *annexure 4*.

PART 4

4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL AND RECOMMENDATIONS

CLAUSE 2

14. **Clause 2** of the Bill provides that the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended—

- (a) **in paragraph 1(1) by deleting the words “such persons as Parliament shall determine” appearing immediately after the words “consisting of” and substituting therefor the words “eleven persons;”**

Stakeholders Submissions

15. The Independent Electoral and Boundaries Commission submitted that it had no objection to the proposed amendment.

Committee Observations

16. The Committee observed that the effect of the proposed amendment to paragraph 1 (1) of the Schedule is to increase the number of persons to be appointed to the Selection Panel from the current nine (9) to eleven (11).

Committee Recommendation

17. The Committee recommends that the House passes the proposed amendment.

Justification for Committee Recommendation

18. The Committee was of the view that increasing the number of persons to be appointed to the Selection Panel will give Parliament and the President more opportunities to nominate and appoint Selection Panel members who represent the various ethnic, religious and professional diversities of the people of Kenya.

(b) by deleting paragraph 1(2) and substituting therefor the following new subparagraph-

(2) The selection panel shall consist of-

- (i) four persons, being two men and two women, nominated by the Parliamentary Service Commission;
- (ii) one person nominated by the Public Service Commission;
- (iii) one person nominated by the Ethics and Anti-Corruption Commission;
- (iv) one person nominated by the Law Society of Kenya;
- (v) one person nominated by the National Gender and Equality Commission;
- (vi) one person nominated by the Attorney General ;
- (vii) one person nominated by the Kenya National Commission on Human Rights; and
- (viii) one person nominated by the Inter-Religious Council of Kenya.

Stakeholders Submissions

19. The Independent Electoral and Boundaries Commission submitted that it had no objection to the proposed amendment but observed that the allocation of only one slot to the religious sector may make the sector feel underrepresented.

Committee Observations

20. The Committee observed as follows-

- (i) The Committee observed that the selection panel for the first appointment of commissioners upon the commencement of section 5 of the Electoral and Boundaries Commission Act, No. 9 of 2011, consisted of the following persons-

- (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;
 - (b) one person nominated by the Kenya Conference of Catholic Bishops;
 - (c) one person nominated by the National Council of Churches of Kenya;
 - (d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;
 - (e) one person nominated by the Evangelical Alliance of Kenya; and
 - (f) one person nominated by the Hindu Council of Kenya.
- (ii) The Committee noted that there is need to review the composition of the selection panel in order to reduce the number of members nominated by the religious sector and pave way for more members nominated by Constitutional Commissions. The Committee noted that appointing more Selection Panel members to persons nominated by constitutional commissions accords with the objects of the Commissions and independent Offices as set out in Article 249 of the Constitution which include protecting the sovereignty of the people, securing the observance by all State organs of democratic values and the promotion of constitutionalism.
- (iii) The Committee further noted that Article 249(2) of the Constitution provides that the commissions are required to be independent, subject only to the Constitution and the law and not subject to the direction or control of any person. As such, the Committee was of the view that the constitutional commissions were better placed to select and recommend the appointment of persons who will safeguard the independence of the Electoral and Boundaries Commission.

Committee Recommendation

21. The Committee recommends that the House passes the proposed amendment subject to inclusion of the following amendments-

THAT the Clause 2 of the Bill be amended-

- (a) in the proposed new paragraph 2 by deleting subparagraph(f);
- (b) in the proposed new paragraph 2 by deleting the words “one person” appearing in subparagraph (h) and substituting therefor the words “two persons”

Justifications for Committee Recommendations

22. The Committees amendment justification is as follows-

- (i) There is need to review the composition of the selection panel in order to reduce the number of members nominated by the religious sector and pave way for more members nominated by Constitutional Commissions. The Committee noted that appointing more Selection Panel members to persons nominated by constitutional commissions accords with the objects of the Commissions and independent Offices as set out in Article 249 of the Constitution which include protecting the sovereignty of the people, securing the observance by all State organs of democratic values and the promotion of constitutionalism.
- (ii) Article 249(2) of the Constitution provides that the commissions are required to be independent, subject only to the Constitution and the law and not subject to the direction or control of any person. As such, the Committee was of the view that the constitutional commissions were better placed to select and recommend the appointment of persons who will safeguard the independence of the Independent Electoral and Boundaries Commission.
- (iii) The proposed amendments paragraph 2(e) and (f) seek to pave way for the appointment of two persons to represent the religious sector. The amendments also seek to take into consideration the submissions by the Independent Electoral and Boundaries Commission that the allocation of only one slots to the religious sector may make the sector feel underrepresented.

(c)By deleting paragraph 1(3) and substituting therefor the following new subparagraph-

24.(3) The respective nominating bodies under sub-paragraph (2)(b) to (h) 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 President for appointment.

Stakeholders Submissions

25.The Independent Electoral and Boundaries Commission submitted that it supported the amendment noting that the current provision provides no timelines for the nomination Selection Panel members and hence the need for the proposed amendment.

Committee Observations

26.The Committee observed as follows-

(i) The Committee observed that the current provision (paragraph 1(3) provides no timelines within which the nominating organizations must submit the names of their nominees to the Parliamentary Service Commission for onward transmission to the President for appointment.

(ii) The Committee further observed that currently there exists four vacancies for commissioners in the Commission. In this respect, the Committee was of the view that there is need to amend the provision to provide a time limit of seven days of the declaration of a vacancy within which the nominating bodies must submit the names of their nominees to the Parliamentary Service Commission for onward transmission to the President for appointment. The amendment will ensure that the process of filling the vacancies in the Commission kicks off expeditiously upon the declaration of the vacancies by the President.

Committee Recommendation

27.The Committee recommends that the House passes the proposed amendment.

Justifications for Committee Recommendation

28. The Committee's justification for the recommendation is as follows-

- (i) The current provision (paragraph 1(3)) provides no timelines within which the nominating organizations must submit the names of their nominees to the Parliamentary Service Commission for onward transmission to the President for appointment.
- (ii) Currently there exists four vacancies for commissioners in the Commission. In this respect, the Committee was of the view that there is need to amend the provision to provide a time limit of seven days of the declaration of a vacancy within which the nominating bodies must submit the names of their nominees to the Parliamentary Service Commission for onward transmission to the President for appointment. The amendment will ensure that the process of filling the vacancies in the Commission kicks off expeditiously upon the declaration of the vacancies by the President.

(d)in paragraph 1(6) by deleting the words “The Parliamentary Service Commission” and substituting therefor the words “The Clerks of Parliament”.

Stakeholders Submissions

29. The Independent Electoral and Boundaries Commission submitted that the proposed amendment by implication transfers secretariat services for the Selection Panel from the Parliamentary Service Commission to the Clerks of Parliament. The Commission had no objection to the amendment.

Committee Observations

30. The Committee observed as follows-

- (i) The proposed amendment to paragraph 1(6) seeks to transfer provision of secretariat services for the Selection Panel from the Parliamentary Service Commission to the Clerks of Parliament.
- (ii) The Parliamentary Service Commission is an independent Commission established under Article

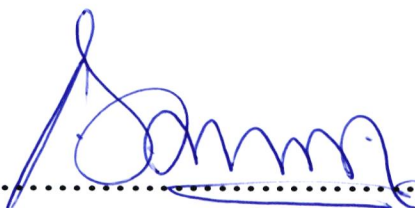

127 of the Constitution. The functions of the Commission include promoting the ideals of parliamentary democracy and performing other functions as may be prescribed by national legislation. The Committee further noted that Article 127(3) provides that the Clerk of the Senate shall be the Secretary to the Commission. As such the Committee was of the view that the Parliamentary Service Commission is better placed to provide the secretariat services and facilities that may be required by the Selection Panel in the performance of its functions under the Act.

Committee Recommendation

- 31. The Committee recommends that the House deletes the proposed amendment to paragraph 1(6) of the Schedule to the Act.

Justifications for Committee Recommendation

- 32. The Committee observed that the Parliamentary Service Commission is an independent Commission established under Article 127 of the Constitution. The functions of the Commission include promoting the ideals of parliamentary democracy and performing other functions as may be prescribed by national legislation. The Committee further noted that Article 127(3) provides that the Clerk of the Senate shall be the Secretary to the Commission. As such the Committee was of the view that the Parliamentary Service Commission is better placed to provide the secretariat services and facilities that may be required by the Selection Panel in the performance of its functions under the Act.

SIGNED..........DATE.....

HON. WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS

ANNEXURE 1

**(Minutes of Committee sittings on consideration of
the Bill and adoption of report)**

MINUTES OF THE ONE HUNDRED AND FORTY-NINE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY, 15TH JUNE, 2019 AT 10.00 A.M. IN OMO ROOM, CROWNE PLAZA HOTEL

PRESENT-

- | | | |
|---|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Peter Opondo Kaluma, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P. | | |
| 6. Hon. Ben Momanyi, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. George G. Murugara, M.P. | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 13. Hon. John Kiarie Waweru, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |
| 15. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Japheth Mutai, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Zuleikha Hassan, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer III |
| 5. Ms. Roselyn Njuki | - | Serjeant-at-Arms |
| 6. Mr. Kimiti James | - | Audio Officer |
| 7. Mr. Simon Maina | - | Support staff |

MIN No. 588/2019:-

PRELIMINARIES

The meeting commenced at 10.00 a.m. with a word of prayer by Hon Peter Kaluma.

MIN No. 589/2019:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON INSTRUMENT FOR
RATIFICATION (ACCESSION) OF THE
AGREEMENT FOR THE ESTABLISHMENT
OF THE INTERNATIONAL ANTI-
CORRUPTION ACADEMY AS AN
INTERNATIONAL ORGANIZATION**

The Committee considered and adopted its report on the Instrument for Ratification (Accession) of the Agreement for the establishment of the International Anti-Corruption Academy as an International Organization.

The adoption was proposed by Hon. Peter Kaluma and seconded by Hon. Jennifer Shamalla.

MIN No. 590/2019:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON THE NATIONAL ETHICS AND
ANTI-CORRUPTION POLICY, 2019**

The Committee considered and adopted its report on the National Ethics and Anti-Corruption Policy, 2019.

The adoption was proposed by Hon. Jennifer Shamalla and seconded by Hon. Adan Haji.

MIN No. 591/2019:

**CONSIDERATION AND ADOPTION OF THE
ON THE PETITION BY MR. JULIUS
KIPKOECH BORES TO AMEND THE
CONSTITUTION OF KENYA TO ALTER
THE SYSTEM OF REPRESENTATION**

Having considered its report on the petition by Mr. Julius Kipkoech Bores to amend the Constitution of Kenya to alter the system of representation.

The Committee adopted its reports with the following recommendations;

- (i) That the petitioner's prayers to amend Articles 93, 94 and 95 of the Constitution of Kenya be rejected
- (ii) That the National Assembly to consolidate and harmonize all the constitutional amendment proposals and process them as a single Bill to save on time, public resources and avoid duplication of efforts.

The adoption was proposed by Hon. Beatrice Adagala and seconded by Hon. John Munene.

MIN No. 592/2019:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON THE IDEPENDENT
ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2019
(NO. 3)**

The Committee considered and adopted its report on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2019 (No. 3) with the following recommendations;

- (i) Clause 2 of the Bill be amended as follows;
 - (a) in the proposed new paragraph 2 by deleting subparagraph (f);
 - (b) in the proposed new paragraph 2 by deleting the words “one person” appearing in subparagraph (h) and substituting therefor the words “two persons”

- (ii) The proposed amendment to paragraph 1(6) of the Schedule to the Act be deleted

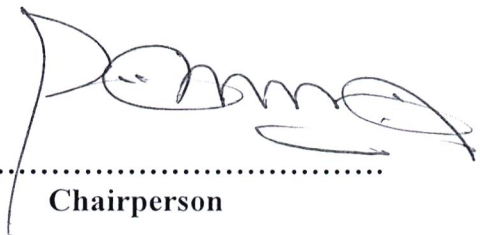
The adoption was proposed by Hon. Beatrice Adagala and seconded by Hon. Adan Haji.

MIN No. 593/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One o'clock.

Signed.....



Chairperson

Date.....

26.06.19

MINUTES OF THE ONE HUNDRED AND FORTY-SIX SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 13TH JUNE, 2019 AT 10.30 A.M. IN THE COMMITTEE ROOM ON SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT-

- | | | |
|-----------------------------------|---|--------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. John Olago Aluoch, M.P. | | |
| 3. Hon. Peter Opondo Kaluma, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Ben Momanyi, M.P. | | |
| 6. Hon. Charles Gimose, M.P. | | |
| 7. Hon. Adan Haji Yussuf, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

- | | | |
|--|---|-------------------------|
| 1. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 2. Hon. Roselinda Soipan Tuya, M.P. | | |
| 3. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 4. Hon. George G. Murugara, M.P. | | |
| 5. Hon. Johana Ng'eno, M.P. | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. John Kiarie Waweru, M.P. | | |

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer III |
| 5. Ms. Roselyn Njuki | - | Sergeant-at-Arms |
| 6. Mr. Simon Maina | - | Support staff |

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

- | | | |
|-------------------------|---|---------------------------|
| 1. Mr. Wafula Chebukati | - | Chairperson, IEBC |
| 2. Mr. Chrispine Owiye | - | Acting Director Legal |
| 3. Ms. Salome Oyugu | - | Manager Political Parties |

- | | | |
|-------------------------|---|----------------------|
| 4. Ms. Ruth Makuthu | - | Senior Legal Officer |
| 5. Mr. Dickson Kwanusu | - | PA to Chairperson |
| 6. Mr. Douglas Bargoret | - | Legal Officer |

MIN No. 575/2019:-

PRELIMINARIES

The meeting commenced at 10.30 a.m. with a word of prayer by the Chairperson which was followed by a round of introduction.

MIN No. 576/2019:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 578/2019:-

APPEARANCE BY THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The Chairperson of IEBC Mr. Wafula Chebukati appeared before the Committee and adduced the following submissions regarding the Independent Electoral and Boundaries Commission (Amendment) Bill, No. 3 of 2019; **THAT-**

- (i) The proposed amendment under clause 2 of the Bill to the first schedule has the effect of increasing the number of persons to be appointed to the Selection Panel from nine (9) to eleven (11) which the Commission has no objection to it.
- (ii) The proposed amendment under clause 3 of the Bill reviews the composition of the Panel to include 4 Persons from Parliamentary Service Commission and 1 representative each from Public Service Commission, Ethics and Anti-Corruption Commission, Law Society of Kenya, National Gender Commission, Attorney General, Kenya National Human Rights Commission and Inter-Religious Council of Kenya. The Chairperson submitted that the Commission has no objection to the amendment.
- (iii) The proposed amendment under clause 4 provides timelines for the appointment of the Select Panel being within 7 days of declaration of vacancy which the Commission supported since current provision in the Act provides no timelines.
- (iv) The proposed amendment under clause 5 of transferring secretariat services from the Parliamentary Service Commission to the Clerks of Parliament to provide Secretariat services to the selection panel, the vetting committee and parliament sittings. The Commission further supported the amendment.

The Chairperson further submitter the following additional amendments to be considered in the Bill;

- (i) under Section 7A (2) of the IEBC Act No. 9 of 2011, the President was obligated to publish a notice of a vacancy in the office of the Chairperson and members of the Commission within Seven (7) days of occurrence of such vacancy. However, there exists a lacuna in the law as to what happens in the event that the President fails to publish the said notice and the Chairperson urged the Committee to consider addressing the gaps.
- (ii) Prior to the enactment of the Electoral laws (Amendment) Act 2016 that amended the Independent Electoral and Boundaries Act No. 9 of 2011, the number of members of the Commission was nine (9) with a quorum of five (5) members. However, when the Act was amended and the number of Members of the Commission reduced from nine (9) to seven (7), the quorum was not adjusted accordingly. The Commission therefore proposed that in the event that the number of members of the Commission are reduced from seven (7), the quorum should be fifty percent (50%) of the members in post, but not less than three (3) in line with provisions of Article 250(1) of the Constitution and the reasoning in Constitutional Petition No. 212 of 2018 Isaiah Biwott Kangwony v Independent Electoral & Boundaries Commission & another and Constitutional Petition No. 165 of 2018 Okiya Omtatah Okoiti v Independent Electoral & Commission & 2 others.

MIN No. 579/2019:-

ANY OTHER BUSINESS

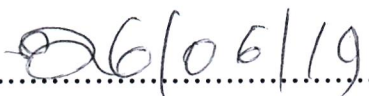
The Committee informed of an invitation from the Attoreny General's Office to hold a joint retreat between the Committee and the Multi- Agency anti-graft team from 27th to 30th June, 2019 in Mombasa. The Committee resolved to attend the retreat.

MIN No. 580/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at one o'clock.

Signed.....
Chairperson

Date.....

ANNEXURE 2

**(Signed list of Members who attended the sitting
that considered and adopted the report on the
Bill)**

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

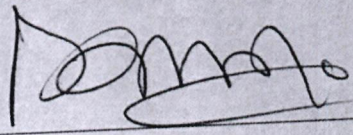
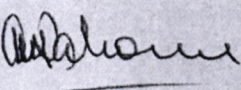
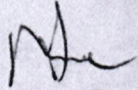
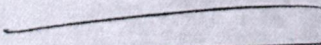
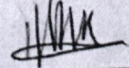
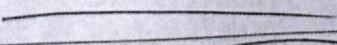
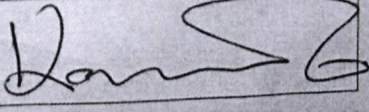
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

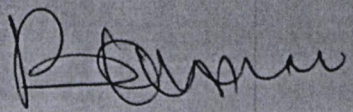


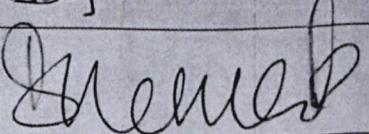
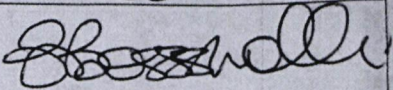

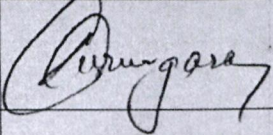
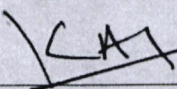

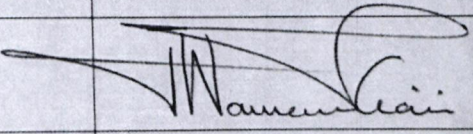
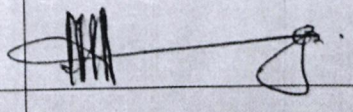
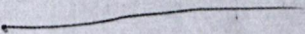
MEMBERS' MEETING ATTENDANCE REGISTER

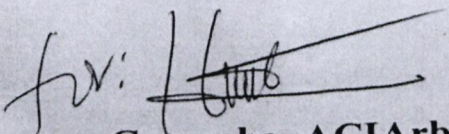
DATE..... 15/06/2019..... TIME.. 10 AM.....

VENUE..... OMO ROOM, CROWNE PLAZA HOTEL.....

AGENDA.. Adoption of the Reports on: Petition by Bore The National Ethics & Anti-corruption Policy 2019 Instrument for Ratification of IBC, Bill No. 3 of 2019

No.	NAME OF MEMBER	SIGNATURE
1.	Hon. William Cheptumo, M.P. - <i>Chairperson</i>	
2.	Hon. Alice Muthoni Wahome, M.P. - <i>Vice Chairperson</i>	
3.	Hon. John Olago Aluoch, M.P.	
4.	Hon. Roselinda Soipan Tuyu, M.P.	
5.	Hon. Charles Gimose, M.P.	
6.	Hon. Johana Ng'eno Kipyegon, M.P.	
7.	Hon. William Kamoti Mwamkale, M.P.	

8.	Hon. Ben Orori Momanyi, M.P.	
9.	Hon. Peter Opondo Kaluma, M.P.	
10.	Hon. Beatrice Adagala, M.P.	
11.	Hon. Jennifer Shamalla, M.P.	
12.	Hon. Gladys Boss Shollei, CBS, M.P.	
13.	Hon. John Munene Wambugu, M.P.	
14.	Hon. George Gitonga Murugara, M.P.	
15.	Hon. Anthony Githiaka Kiai, M.P.	
16.	Hon. Japheth Mutai, M.P.	
17.	Hon. John Kiarie Waweru, M.P.	
18.	Hon. Adan Haji Yussuf, M.P.	
19.	Hon. Zuleikha Hassan, M.P.	

for: 
George Gazemba, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 3

(Copy of newspaper advertisements inviting the public to present written submissions on the Bill)

Ruto, Raila allies clash over gold scam

Deputy President accuses opposition leaders of hypocrisy but Orengo defends ODM leader

by Yusuf Masibo, Eric Juma and DPPS

Deputy President William Ruto and Opposition leader Raila Odinga allies yesterday continued to engage in a war of words over the fake gold scandal.

The Deputy President and several MPs asked the Directorate of Criminal Investigations to thoroughly investigate the matter and bring the "real culprits" to book.

Ruto accused Opposition leaders of hypocrisy, saying they have been preaching water and drinking wine.

"Those who were abusing us that we are corrupt and con men, it has turned out that they were referring to themselves," said Ruto.

They claimed only the "small fish" in the scam were being targeted while the main sus-

pects are walking free and interfering with investigations.

"Small actors are being arrested while the real criminals are walking free," said Kimilili MP Didmus Barasa.

Masterminds

Speaking at St Jude Muanda Catholic Parish in Bungoma county after a church service, the MPs said the masterminds of the scandal were being protected.

Besides Barasa, MPs who accompanied Ruto included Benjamin Washiali (Mumias East), Mwambu Mabonga (Bumula), Didmus Barasa (Kimilili), John Waluke (Sirisia), Mathias Robi (Kuria West), Dan Wanyama (Webuye West) and Fred Kapondi (Mt Elgon).

Others were Aisha Jumwa (Malindi), Owen Baya (Kilifi

GOLD SCANDAL

The gold scam involves the nephew of Sheikh Mohammed bin Rashid Al Maktoum, the ruler of Dubai, who complained to Kenyan authorities that he had lost Sh400 million in a gold deal.

The names of President Uhuru Kenyatta, ODM leader Raila Odinga and Interior CS Fred Matiang'i are mentioned in a leaked phone call between a man who sounds like Senator Moses Wetang'ula and a representative of Maktoum.

North), Rahab Mukami (Womera Rep, Nyeri) and former Kakamega Senator Boni Khalwale.

Baya said the fake gold scandal had tarnished the image of the country and demanded action against the suspects, their status notwithstanding.

Dubious deals

Waluke said some leaders who have been criticising the Deputy President were doing so to hide their dubious deals.

"Kenya's now know who the real thieves and con men are. The gold scandal is a tip of the iceberg," said Waluke.

But Senate Leader of Minority James Orengo told Ruto and



Deputy President William Ruto (left) and Bumula MP Mwambu Mabonga arrive at St. Jude Catholic Church Muanda, Bungoma county, yesterday. PHOTO: DPPS

his allies to stop dragging the names of President Uhuru Kenyatta and Opposition leader Raila into the scam and instead leave police to independently probe the scandal.

Speaking at Ukwala Catholic Church yesterday, Orengo asked the Director of Public Prosecutions to give more information on the matter to end speculations.

"The DPP has claimed that information he holds does not

link Raila and Uhuru to the scam that's why investigating agencies must now release their findings to clear the rumours," said Orengo.

Orengo asked the DPP, whom he claimed was well-versed with the matter, to clear the air on several questions surrounding the matter.

"The primary question that DPP should respond to is where the gold that was on transit to Dubai from Congo is," he said.

Orengo who was accompanied by Senators Ochillo Ayako (Migori) and Moses Kajwang (Homa Bay) and Gem MP Eli-sha Odhiambo, said the issue could jeopardise diplomatic and trade relations between Kenya and Dubai if poorly handled.

Kajwang, Ayako and Odhiambo asked Ruto allies to stop spreading propaganda and trying to make political capital from the scandal.

Kenya's now know who the real thieves and con men are. The gold scandal is just a tip of the iceberg —Waluke

Government officials fall victim to sleek con men

by PD Correspondent @PeopleDailyKE

A syndicate comprising suave and youthful individuals is on the prowl defrauding senior government officials.

Investigators say the con men, who are ingenious at their game, have one virtue and upon—patience.

"They carefully map out activities, pick and lure victims before making a kill," an investigator told *People Daily* on phone yesterday.

They even mimic voices of key government officials who are perceived to wield influence. Among their victims are President Uhuru Kenyatta, Interior Cabinet secretary Fred Matiang'i and his Defence counterpart Raychelle Omamo.

Suffer in silence

Director of Criminal Investigations George Kinoti described the situation as "severe and almost out of control".

Kinoti (pictured) said most of the cases hardly make it to courts as most of the victims opt to suffer in silence because of "public stigma and embarrassment". As a result, the fraudsters walk the streets free.

"We have advised public figures to be wary of individuals they take pictures with. Kenya is almost becoming a stage of



play for con men, who in most cases are young men, leading flashy lifestyles," said Kinoti.

Early this year, Uhuru's name was used to con Sameer Africa chair Naushad Merali of Sh80 million. The suspects are said to have mimicked the President's voice and allegedly effortlessly walked away with the money. Police investigations revealed that the con artists wield power, wealth and influence.

According to details filed by police in court, the suspects, while mimicking Uhuru's voice, called Merali and asked him to facilitate the release of the money for the purchase of land.

The spotlight now is on DCI as it hunts down members of the syndicate.

Last week, investigators arrested 15 suspects in Kileleshwa, Nairobi, who are said to be part of the ring that conned a member of the Dubai royal family of more than Sh400 million with the promise of delivering gold.

DCI officers, who sought anonymity, yesterday confirmed to *People Daily* of obtaining crucial audio and video evidence implicating senior politicians who were also part of the web.

Social media

According to the investigators, the members of the syndicate operate from high-end estates and drive big cars.

They take photos with senior government officials and splash them on their social media pages to convince would-be victims that they enjoy close relationships with the officials.

During the last military recruitment, a man posing as an aide of Defence Cabinet secretary Omamo swindled Kenyans seeking slots in the military. The promised slots never materialised.

By the time police caught up with him, he had conned desperate job seekers of more than Sh6 million.

Investigators say the group recruits ordinary people with the talent of mimicking the voices public figures.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT – THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Constitution of Kenya (Amendment) Bill, 2019
2. The Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill, 2019

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Constitution of Kenya (Amendment) Bill, 2019 seeks to amend Article 90 of the Constitution of Kenya in order to align it with proposed amendment to Section 35 of the Elections Act which seeks to change the timing for submission of party lists by political parties for persons elected under Article 90 of the constitution from at least forty-five days from the date of general election to within twenty-one days after the date of the election.

The Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill, 2019 seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 in order to establish a Selection Panel to oversee the filling of vacant position in the Commission.

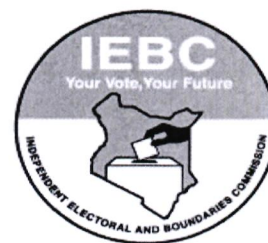
The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118 (1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 28th May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 4

(Written submission received from stakeholders)



CONSIDERATION OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL No.3 OF 2019 BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

A. INTRODUCTION

The IEBC is a Constitutional Commission established under **Chapter 15** of the Constitution with particular reference to **Article 249** which sets out the objects of the Constitutional Commissions.

The general functions of the IEBC and other Commissions, as we are aware are set-out under **Art 252(1)**; however, the specific mandate of the Commission is primarily governed by **Art 88(4)** of the Constitution and the IEBC Act.

B. PROPOSED AMENDMENTS

The Commission notes the Amendments before us -The Independent Electoral and Boundaries Commission (Amendment) Bill, No. 3 of 2019.

1. Clause 2:

The first schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended -

- (a) In paragraph 1(1) by deleting the words “such persons as Parliament shall determine” appearing immediately after the words “consisting of” and substituting therefore the words “eleven persons:

The proposed amendment has the effect of increasing the number of persons to be appointed to the Selection Panel from nine (9) to eleven (11).

The Commission has no objection to the proposed amendment.

2. Clause 3:

- (b) By deleting paragraph 1(2) and substituting therefore the following new subparagraph-

- (2) the selection panel shall consist of-
- a) Four persons, being two men and two women, nominated by the Parliamentary Service Commission
 - b) One person nominated by the Public Service Commission

- c) One person nominated by the Ethics and Anti-Corruption Commission
- d) One person nominated by the Law Society of Kenya
- e) One person nominated by the National Gender and Equality Commission
- f) One person nominated by the Kenya National Commission on Human Rights; and
- g) One person nominated by the Inter-Religious Council of Kenya

The proposed amendment reviews the composition of the Panel to include 4 Persons from Parliamentary Service Commission and 1 representative each from Public Service Commission; Ethics and Anti-Corruption Commission; Law Society of Kenya; National Gender Commission; Attorney General; Kenya National Human Rights Commission and Inter-Religious Council of Kenya:

The Commission has no objection to the proposed amendment, save that the religious sector is allocated only one slot which may make the said sector feel underrepresented.

3. Clause 4:

- (c) By deleting paragraph 1(3) and substituting therefore the following new subparagraph-

The respective nominating bodies under sub-paragraph (2) (b) to (h) shall, within seven days of the declaration of a vacancy 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 President for appointment.

The proposed amendment provides timelines for the appointment of the Select Panel being within 7 days of declaration of vacancy BUT with the qualification that each of the respective nominating bodies submit the names of their nominees to the Parliamentary Service Commission for transmission to the president for appointment.

The Commission acknowledges that the current provision provides no timelines and hence the need for the proposed amendment.

4. Clause 5:

- (d) in paragraph 1(6) by deleting the words “The Parliamentary Service Commission” and substituting thereof the words “The Clerks of Parliament”.

The proposed amendment by implication transfers secretariat services from the Parliamentary Service Commission to the Clerks of Parliament:

The Commission observes that if the proposed amendment is adopted, then the Clerks of Parliament will provide Secretariat services to the selection panel, the vetting committee and parliament sittings.

The Commission has no objection to the proposed amendment.

C. ADDITIONAL CONSIDERATIONS

1. The Commission observes that under S 7A (2) of the IEBC Act No. 9 of 2011, the President is obligated to publish a notice of a vacancy in the office of the Chairperson and members of the Commission within Seven (7) days of occurrence of such vacancy. However, there exists a lacuna in the law as to what happens in the event that the President fails to publish the said notice.

The Commission urges this Honourable Committee to look at ways of addressing this gap in the law.

2. Prior to the enactment of the Electoral laws (Amendment) Act 2016 that amended the Independent Electoral and Boundaries Act No. 9 of 2011, the number of members of the Commission was nine (9) with a quorum of five (5) members. However, when the Act was amended and the number of Members of the Commission reduced from nine (9) to seven (7), the quorum should have been adjusted accordingly. The Commission proposes that in the event that the number of members of the Commission reduces from seven (7), the quorum should be fifty percent (50%) of the members in post, but not less than three (3) in line with provisions of Article 250(1) of the Constitution and the reasoning in *Constitutional Petition No. 212 of 2018 Isaiah Biwott Kangwony v Independent Electoral & Boundaries Commission & another* and *Constitutional Petition No. 165 of 2018 Okiya Omtatah Okoiti v Independent Electoral & Commission & 2 others*.

There is therefore need to make these adjustments in the proposed bill.

CONCLUSION

The Commission requests this Honourable Committee to consider the proposals herein.

W.W CHEBUKATI
CHAIRMAN

