

Hon. Speaker
Recommended for
approval for tabling



Approved
20/11/19

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PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT – THIRD SESSION

DC-EG
Recommended for
20/11/19

**REPORT OF THE
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS
ON
THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILLS NO. 35 OF
2019)**

PAPERS LAID	
DATE	<i>21/11/2019</i>
TABLED BY	<i>Vice-Chairperson</i>
COMMITTEE	<i>JLAC</i>
WORK AT THE TABLE	<i>Bill</i>

Clerk's Chambers,
The Senate,
Parliament of Kenya,
Main Parliament Buildings,
NAIROBI.

November, 2019

PREFACE

1. **Mr. Speaker Sir**, the Senate Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to standing order 218(3) of the Senate Standing Orders. According to the said standing order and the Second Schedule to the Senate Standing Orders, the Committee has a mandate to-

Consider all matters related 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.

2. **Mr. Speaker Sir**, the Senate Standing Committee on Justice, Legal Affairs and Human Rights comprises the following Members -

Sen. Samson Kiprotich, MP	-	Chairperson
Sen. Mithika Linturi, MP	-	Vice Chairperson
Sen. Amos Wako, MP	-	Member
Sen. James Orengo, MP	-	Member
Sen. Fatuma Dullo, MP	-	Member
Sen. Susan Kihika, MP	-	Member
Sen. Mutula Kilonzo Junior, MP	-	Member
Sen. Faki Mohamed, MP	-	Member
Sen. Irungu Kang'ata, MP	-	Member

Background

3. **Mr. Speaker Sir**, the Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill (National Assembly Bills No. 35 of 2019), was published by the National assembly on 8th May, 2019. The National Assembly considered the Bill and passed it, with amendments, on 24th September, 2019 and referred it to the Senate for concurrence. The Bill was read a First Time in the Senate on 9th October, 2019 and subsequently stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and facilitation of public participation as per standing order 140(1) and (5).

4. **Mr. Speaker Sir**, the key purpose of this Bill is to make provision for the membership of the Independent Electoral and Boundaries Commission. The Bill amends the First Schedule to the Independent Electoral and Boundaries Commission Act to specify the number of the members of the panel selecting the Commissioners to the Independent Electoral and Boundaries Commission as eleven and further specifies the membership of the panel to include representatives of—

- a) the Parliamentary Service Commission;
- b) the Public Service Commission;

- c) the Ethics and Anti-Corruption Commission;
- d) the Law Society of Kenya;
- e) the National Gender and Equality Commission;
- f) the Kenya National Commission on Human Rights; and
- g) the Inter-religious Council of Kenya.

Public Participation and Submissions by Stakeholders

5. **Mr. Speaker Sir**, as per the provisions of Article 118 of the Constitution and standing order 140 (5), the Committee sought the participation of interested members of the public by inviting them, through newspaper advertisements, to make oral submissions or submit written memoranda on the Bill. The Committee, by an advertisement in the *Star Newspaper* dated 18th October, 2019, invited members of the general public to a public hearing forum on Thursday 24th October, 2019 between 9:00 am and 1:00 pm at Shimba Hills Hall, First Floor, KICC, with the aim of discussing the Bill. The participants included the Committee and representatives from the Media, the Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights.

6. **Mr. Speaker Sir**, the Independent Electoral and Boundaries Commission was in support of the Bill, stating that it had made its submission on the Bill to the National Assembly as they were considering it and are in agreement with the Bill as passed by the National Assembly.

7. **Mr. Speaker Sir**, the Kenya National Commission on Human Rights, however, made the following proposals—
 - a) the number of Commissioners of the Independent Electoral and Boundaries Commission should be retained at seven as a reduction would interfere with its diversity and may also affect its ability to properly discharge its functions noting its wide mandate;
 - b) the Commissioners of the Independent Electoral and Boundaries Commission should be appointed in such a manner that they are staggered and would serve an entire electoral cycle, or in any event be appointed at least two years prior to a general election;
 - c) the Committee should consider amending the Fifth Schedule to expressly include provisions for subsequent reviews of the boundaries as provided for under Article 89 of the Constitution; and
 - d) the Membership of the Selection Panel should widely reflect the diversities of Kenya. The Committee should adhere to the principles of Article 10 of the Constitution particularly inclusiveness and good governance. In addition, the Constitution provides in Article 81 the principles of the electoral systems. The

Committee should therefore take into consideration these principles that are key to securing the right to make free political choices.

Committee Observations

8. Mr. Speaker Sir, the Committee scrutinised the Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill (National Assembly Bills No. 35 of 2019), and made the following observations—

- a) It is important to specify the number of Commissioners of the Independent Electoral and Boundaries Commission as provided in the Bill. This will avoid conflict when Parliament (both Houses) is unable to agree on a number at any particular time.
- b) Eleven members of the selection panel for the Members of the Independent Electoral and Boundaries Commission are too many. The number should be reduced to seven panellists.
- c) Some organisations represented in the selection panel have no role to play and therefore should be removed, granted that all Kenyans are stakeholders in the selection of members of the Independent Electoral and Boundaries Commission. However, not all Kenyan organisations can be represented in the selection panel. The same should therefore be reduced to only represent organisations that will add value to the panel. In any event, the Parliamentary Service Commission represents Parliament which represents all Kenyans and therefore the interests of all Kenyans will be catered for regardless of the other representatives of the panel.

9. Mr. Speaker Sir, the Committee, in response to the proposed amendments, noted that the proposals made by the Commission were on provisions of the Independent Electoral and Boundaries Commission that had not been addressed by the Bill. The Commission seemed to be referring to an older version of the Bill that had subsequently been withdrawn by the National Assembly and a new Bill published in its place.

That notwithstanding, the Committee noted the concerns raised by the Commission and resolved to address them through its forthcoming amendment to election and related laws.

Recommendation(s)

10. Mr. Speaker Sir, after deliberations on the Bill, the Committee recommends that-

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in paragraph (a) by deleting the word “eleven” appearing immediately after the words “therefor the words” and substituting therefor the word “seven”;

(b) in paragraph (b) by—

- (i) deleting paragraph (b) of the proposed new subparagraph 1(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act;
- (ii) deleting paragraph (c) of the proposed new subparagraph 1(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act;
- (iii) deleting paragraph (e) of the proposed new subparagraph 1(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act; and
- (iv) deleting paragraph (f) of the proposed new subparagraph 1(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 2—

3. The First Schedule to the Independent Electoral and Boundaries Commission Act is amended by inserting the following new section immediately after section 1 —

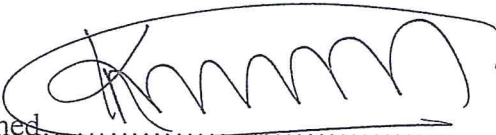
Qualifications of
Members of the
Selection Panel.

1A. A person is qualified for appointment as member of the Selection Panel if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership integrity set out in Chapter Six of the Constitution; and
- (c) holds a degree from a university recognized in Kenya.

11. Mr. Speaker Sir, it is therefore my pleasant duty and privilege, on behalf of the Standing Committee on Justice, Legal Affairs and Human Rights, to table its report on the Independent Electoral and Boundaries Commission (Amendment)

(No. 3) Bill (National Assembly Bills No. 35 of 2019) pursuant to standing order 143(1) of the Senate Standing Orders.

Signed 

Date..... 20/11/19.....

SEN. SAMSON CHERARKEY, MP
CHAIRPERSON, JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS
COMMITTEE