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30/8/2021

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021


DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE APPROVAL HEARING FOR APPOINTMENT OF MS. JULIANA WHONGE
CHERERA, MR. FRANCIS MATHENGE WANDERI MS. IRENE CHEROP MASIT
AND MR. JUSTUS ABONYO NYANG'AYA AS MEMBERS OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION

VOLUME 1

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI
AUGUST, 2021

 THE NATIONAL ASSEMBLY	
DATE: 01 SEP 2021	
DAY: WED	
TABLED BY:	CHAIRPERSON JLAC.
CLERK-AT THE-TABLE:	S. Kalama

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KENYA NATIONAL ASSEMBLY




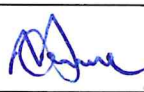
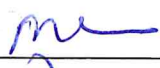
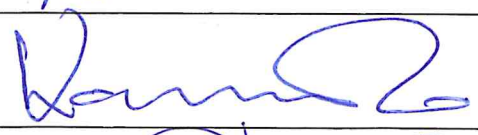
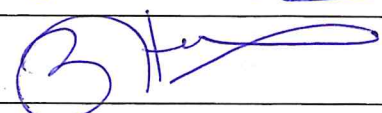
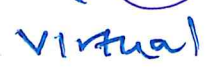
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


ATTENDANCE REGISTER FOR MEMBERS

DATE 27/8/2021 START TIME 10:30 AM END TIME 2:30 PM

VENUE SERENA HOTEL, MOMBASA

ADOPTION OF COMMITTEE REPORT ON APPROVAL HEARING/VETTING OF NOMINEES FOR APPOINTMENT AS IEBC MEMBERS

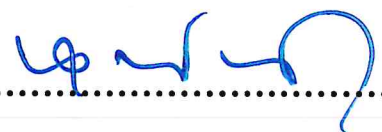
NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - Chairperson	
2.	Hon. T.J Kajwang, M.P - Vice-Chairperson	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
6.	Hon. Roselinda Soipan Tuya, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	
10.	Hon. Josephine Naisula Lesuuda, M.P.	 virtual

11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	
19.	Hon. Robert Gichimu Githinji, M.P.	

COMMITTEE CLERK


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DIRECTOR DEPARTMENTAL COMMITTEES


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ABBREVIATIONS AND ACRONYMS

DCI:	Directorate of Criminal Investigations
HELB:	Higher Education Loans Board
EACC:	Ethics and Anti-Corruption Commission
Hon:	Honourable
H.E:	His Excellency
KRA:	Kenya Revenue Authority
MP:	Member of Parliament
IEBC:	Independent Electoral and Boundaries Commission
NGEC	National Gender and Equality Commission.

CHAIRPERSON'S FOREWORD

Pursuant to Standing Order 42(1), the Speaker communicated to the House a message from His Excellency the President conveying his nomination of Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wanderi, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang'aya for appointment as Members of the Independent Electoral and Boundaries Commission (IEBC).

The Message dated 5th August, 2021 was addressed to the Speaker of the National Assembly and indicated that H.E the President received the report of the Selection Panel for the Appointment of Commissioners to IEBC and in accordance with the procedure set out in section 7A of the Independent Electoral and Boundaries Commission Act, 2011 (Act No. 9 of 2011) as read together with the First Schedule to the Act and sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, (Act No.33 of 2011) seeking approval of the National Assembly on the appointment of the persons nominated as members of the Independent Electoral and Boundaries Commission. The Message together with the nominees' curricula vitae were referred to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to provisions of Standing Order 42 (3) (c).

The Message dated 5th August, 2021 was addressed to the Speaker of the National Assembly in accordance with the provisions of section 5 (2) of Independent Electoral and Boundaries Commission Act, 2011 as read with paragraph 3 (5) of the First Schedule to the Act. The Message also included a copy of a letter to H.E the President conveying the decision by the Selection Panel to nominate the said nominees for consideration for appointment as members of the Commission.

Article 250 (2) (b) of the Constitution and the above provisions require that in making appointments of the chairperson and members of the commission, the President shall seek the approval of the National Assembly. The Committee's Report contains observations, findings and recommendation by the Committee that the nominees are suitable and qualified for appointment as members of the Independent Electoral and Boundaries commission.

The Committee conducted the approval process of the nominees with reference to the Constitution of Kenya 2010, the Public Appointments (Parliamentary Approvals) Act (No.33 of 2011), the Independent Electoral and Boundaries Commission Act, 2011, the Leadership and Integrity Act, 2012 and other relevant provisions of the law.

On behalf of the committee, I wish to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. Finally, pursuant to Standing Order 216 (5) (f), it is my pleasure and duty to present to the House, the Report on the approval for appointment of Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wanderi, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang'aya for appointment to the position of Member of the Independent Electoral and Boundaries Commission (IEBC).

Hon. Clement Muturi Kigano, M.P

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of the Departmental Committees established under Standing Order 216 (1) of the National Assembly Standing Orders. The Committee has mandate to 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).
2. The Committee derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - a) To 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) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - c) To study and review all legislation referred to it;
 - d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
 - e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
 - f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and
 - g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.
 - h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - i) Examine any questions raised by Members on a matter within its matter.
3. The Second Schedule of the Standing Orders, 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.

4. The Committee has overall Mandate over all matters relating to:

- (a) State Law Office;
- (b) The Judiciary;
- (c) Ethics and Anti-Corruption Commission;
- (d) Independent Electoral and Boundaries Commission;
- (e) Commission on Administrative Justice; and
- (f) Political parties.

1.2 Committee Membership

5. The Committee was constituted on Thursday, 14th December, 2017. The current membership is as follows-

Chairperson

Hon. Clement Muturi Kigano, M.P.

Kangema Constituency

Jubilee Party

Vice Chairperson

Hon. Francis Tom Kajwang', M.P

Ruaraka Constituency

Orange Democratic Movement (ODM)

Hon. Emmanuel Wangwe, M.P.

Navakholo Constituency

Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P

Suna East Constituency

Orange Democratic Movement (ODM)

Hon. John Olago Aluoch, M.P.

Kisumu West Constituency

FORD-Kenya

Hon. George Peter Kaluma, M.P.

Homa Bay Town Constituency

Orange Democratic Movement (ODM)

Hon. Roselinda SoipanTuya, M.P.

Narok County

Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P

Samburu West Constituency

KANU-Kenya

Hon. W. Kamoti Mwamkale, M.P.

Rabai Constituency

Orange Democratic Movement (ODM)

Hon. Zuleikha Hassan, M.P.

Kwale County

Orange Democratic Movement (ODM)

Hon. Jennifer Shamalla, M.P.

Nominated MP

Jubilee Party

Hon. Adan Haji Yussuf, M.P.

Mandera West Constituency

Economic Freedom Party (EFP)

Hon. John Munene Wambugu, M.P.

Kirinyaga Central

Jubilee Party

Hon. George Gitonga Murugara, M.P.

Tharaka Constituency

Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.

Mukurueni Constituency

Jubilee Party

Hon. Japheth Mutai, M.P.

Bureti Constituency

Jubilee Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency
Jubilee Party

Hon. Anthony Oluoch, M.P.
Mathare Constituency
Orange Democratic Movement (ODM)

Hon. Robert Gichimu Githinji, M.P.
Gichugu Constituency
Jubilee Party

1.2 Committee Secretariat

6. The Committee secretariat is comprised of:

Mr. Abenayo Wasike
Principal Clerk Assistant
Lead Clerk

Mr. Denis Abisai
Deputy Director, Legal Services

Ms. Halima Hussein
Clerk Assistant II

Dr. Donald Manyala
Research Officer

Ms. Emma Essendi
Legal Counsel I

Mr. Omar Abdirahim
Fiscal Analyst II

Mr. Joseph Okongo
Media Liaison Officer

Ms. Roselyne Ndegi
Senior Sergeant-at-Arms II

7. Minutes of sittings of the Committee on the consideration of the nominees are attached to the report as **annex1**.

CHAPTER TWO

2.0 BACKGROUND

2.1 Establishment and Functions of the Independent Electoral and Boundaries Commission

8. The Independent Electoral and Boundaries Commission (IEBC) is a constitutional Commission established under Article 88 of the Constitution and its mandate is provided for under Article 88(4) of the Constitution and section 4 of the IEBC Act, 2011. It is responsible for supervising referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament and in particular, for-

- a) the continuous registration of citizens as voters;
- b) the regular revision of the voters' roll;
- c) the delimitation of constituencies and wards;
- d) the regulation of the process by which parties nominate candidates for elections;
- e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
- f) the registration of candidates for election;
- g) voter education;
- h) the facilitation of the observation, monitoring and evaluation of elections;
- i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- j) the development of a code of conduct for candidates and parties contesting elections;
- k) the monitoring of compliance with the legislation required by Article 82(1)(b) relating to nomination of candidates by parties;
- l) the use of appropriate technology and approaches in the performance of its functions; and
- m) such other functions as are provided for by the Constitution or any other written law.

9. Section 5 of the Independent Electoral and Boundaries Commission Act, 2011 provides for the composition and appointment of the Commission as follows-

- a) The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.*
- b) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.*
- c) The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.*

d) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission.

10. Section 7A of the Independent Electoral and Boundaries Commission, 2011 provides for circumstances that would occasion a vacancy in the office of the chairperson or a member of the Commission as follows-

(a) The office of the chairperson or a member of the Commission shall become vacant if the holder-

(i) dies

(ii) resigns from office by notice in writing addressed to the President; or

(iii) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(b) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.

(c) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

(d) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such time as the chairperson is appointed.

(e) Where the positions of chairperson and vice chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such time as the chairperson is appointed.

(f) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as the chairperson under this section.

11. Paragraph 1(1) of the First Schedule to the Independent Electoral and Boundaries Act, 2011 provides for the appointment of a Selection Panel for the purposes of the appointment of the chairperson or a member of the Selection Panel. Paragraphs 1 (2) of the Schedule further provides for the membership of the Selection Panel as follows-

(2) The selection panel shall consist of—

i) two men and two women nominated by the Parliamentary Service Commission;

ii) one person nominated by the Law Society of Kenya; and

iii) two persons nominated by the Inter-Religious Council of Kenya.

12. Pursuant to paragraph 1(6) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, the Parliamentary Service Commission shall provide secretariat services and facilities to the Selection Panel in the performance of its functions.

2.2 Appointment of the Selection Panel

13. By *Gazette* Notice No. 3522 of 14th April, 2021 His Excellency, the President, declared four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission.
14. On 26th April, 2021, by *Gazette* Notice No. 4004, in exercise of the powers conferred by paragraph 1(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, His Excellency, the President appointed the following persons as Members of the Selection Panel for the Appointment of Members of the Independent Electoral and Boundaries Commission-
 - i) Elizabeth Muli (Dr.);
 - ii) Gideon Solonka;
 - iii) Awori James Achoka;
 - iv) Elizabeth Odundo Moyo;
 - v) Dorothy Jemator Kimengech;
 - vi) Joseph Ngumbi Mutie (Rev. Fr.); and
 - vii) Faridun Suleiman Abdalla (Dr.).
15. On 28th April, 2021, six members of the Selection Panel took and subscribed to the oath or affirmation of office before the Honourable Deputy Chief Justice at the Supreme Court of Kenya as prescribed under the Third Schedule of the Independent Electoral and Boundaries Commission Act, 2011. Ms. Dorothy Jemator Kimengich, the nominee of the Law Society of Kenya, did not take the oath or affirmation of office owing to various court cases that had been filed challenging her appointment.

2.3 Litigation with respect to the Nominee of the Law Society of Kenya to the Selection Panel

16. Following the nomination of the Members of the Panel by His Excellency, the President, four court cases were filed against the Law Society of Kenya challenging the nomination of Ms. Dorothy Jemator Kimengech as the Law Society of Kenya nominee. The cases filed were as follows-
 - i) In the High Court at Nairobi: Constitutional Petition No. E147 of 2021: Sheila Murugi Mugo versus the Law Society of Kenya, Parliamentary Service Commission & Dorothy Jemator;
 - ii) In the High Court at Machakos: Judicial Review Miscellaneous Application No. 3 of 2021: Alfonse Kilonzo Muli versus the Parliamentary Service Commission & 2 Others (Morris Kimuli and Dorothy Jemator Kimengech joined as Interested Parties);
 - iii) In the High Court at Nairobi: Constitutional and Human Rights Division Petition No. E151 of 2021: Charles Midenga versus Law Society of Kenya, Parliamentary Service Commission and Kimengech Dorothy Jemator; and

- iv) In the High Court at Nairobi: Constitutional and Human Rights Division Petition No. E152 of 2021: Peter Solomon Gichira versus Law Society of Kenya, Parliamentary Service Commission and the Hon. Attorney General, Secretary to the Selection Panel and Kimengech Dorothy Jemator are listed as Interested Parties.
17. On 11th May, 2021, in High Court at Machakos Judicial Review Miscellaneous Application No. 3 of 2021: Alfonse Kilonzo Muli versus the Parliamentary Service Commission & 2 Others, the court delivered its judgement in which it ordered as follows-
- a) *An order of certiorari is hereby issued removing into this Court for the purposes of being quashed and quashing the decision of the 1st Respondent, the Parliamentary Service Commission, transmitting to the President the name of the 2nd Interested Party, Dorothy Jemator for appointment to the Selection Panel for the appointment of Commissioners of the IEBC and any subsequent actions and decisions taken in pursuance of the said transmission.*
 - b) *An order of mandamus is hereby issued directing the 1st Respondent to submit to the President of the Republic of Kenya the name of the 1st Interested Party, Morris Kimuli for appointment to the Selection Panel for the appointment of Commissioners of the IEBC.*
18. On 26th May, 2021, by Gazette Notice No. 5091, His Excellency, the President appointed Mr. Morris Kimuli as a Member of the Selection Panel.
19. Mr. Morris Kimuli was sworn in on 28th May, 2021 by the Honourable Chief Justice at the Supreme Court of Kenya.
20. The Selection Panel consulted a number of stakeholders to enrich its understanding of elections management. It invited and received presentations from various resource persons with expertise in elections management and on other areas relevant to the mandate of the Selection Panel.

2.3 Advertisement for the Vacancies in the Position of Member of the Independent Electoral and Boundaries Commission

21. On 1st May, 2021, pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, the Selection Panel published an advertisement inviting applications from suitably qualified persons for the four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in *Gazette* Notice No. 4198, the Daily Nation and the Standard Newspapers.
22. At the close of the application period, the Selection Panel had received over seven hundred (700) applications by hand delivery, post and email. The Selection Panel collated the

applications and found that some applicants had sent multiple applications, bringing the number of applications to six hundred and sixty-nine (669) .

23. Pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, on 25th May, 2021, the Selection Panel published a list of the names and qualifications of all applicants for the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in Gazette Notice No. 5086, the Daily Nation and the Standard Newspapers.
24. On 12th June, 2021, the Selection Panel published the names of the thirty-six (36) shortlisted candidates for the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in Gazette Notice No. 5770, the Daily Nation and the Standard Newspapers. The advertisement provided for the respective oral interview dates for the candidates and also informed candidates of the case study and psychometric tests.
25. In the advertisement, members of the public were also invited to avail, in writing, by memoranda, any information of interest with respect to the suitability of any of the shortlisted applicants to serve as Member of the Independent Electoral and Boundaries Commission.
26. The Selection Panel received Memoranda on some of the shortlisted applicants. The Memoranda were shared with the candidates in advance of the interview in order to provide the candidates with the right of reply.
27. The Selection Panel further wrote to the relevant state agencies seeking references and background checks relating to the suitability of the shortlisted candidates.
28. The Selection Panel received submissions in respect of Mr. Francis M. Wanderi relating to his tenure as the Director and later Chairman of the Export Processing Zone Authority (EPZA). Mr. Wanderi responded to the allegations both in writing and during the oral interviews. The Selection Panel considered both the complaint against Mr. Wanderi and his response and was satisfied that no issues with regard to his leadership and integrity as contemplated under Chapter Six of the Constitution arose.
29. The Selection Panel also received submissions in respect of Justus Maithya Munyithya relating to his tenure as a Member of the Judges and Magistrates Vetting Board. The Selection Panel considered both the complaint against Mr. Munyithya and his response and was satisfied that no issues with regard to his leadership and integrity as contemplated under Chapter Six of the Constitution arose.

2.4 Qualifications for appointment as a member of the Commission

30. The qualifications for appointment as member of IEBC are set out in section 6 of the Independent Electoral and Boundaries Commission Act, 2011 as follows:

That a person is qualified for appointment as a member of the Commission if such person;

(a) holds a degree from a recognized university;

(b) has proven relevant experience in any of the following fields—

(i) electoral matters;

(ii) management;

(iii) finance;

(iv) governance;

(v) public administration;

(vi) law; and

(vii) meets the requirements of Chapter Six of the Constitution.

2.5 Disqualifications for appointment as a member of the Commission

31. The disqualifications for appointment as member of IEBC are set out in Article 88 (2) of the Constitution which provides that;

A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party; or

(b) holds any State office.

2.6 Term of office of Members of the Commission

32. The term of office of members of the commission is set out in section 7 of the Independent Electoral and Boundaries Commission Act, 2011, which provides as follows;

i) The members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

ii) The members of the Commission shall serve on a full-time basis.

iii) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

2.7 Parliamentary approval process for the Office of Member of Independent Electoral and Boundaries Commission

33. Article 124(4) of the Constitution requires that a committee of a House considers a nomination before making a recommendation to the House on the appointment. The Article provides as follows-

(4) When a House of Parliament considers any appointments for which its approval is required under this Constitution or an Act of Parliament-

(a) the appointment shall be considered by a committee of the relevant House;

(b) the committee's recommendation shall be tabled in the House for approval;

(c) the proceedings of the committee and the House shall be in public.

34. The Committee is thus mandated to consider for approval by the National Assembly, appointments of members of the Commission under Article 88 and Article 250 of the Constitution. Article 250 requires H.E the President to nominate and with the approval of the National Assembly, appoint a member of the commission in accordance with the recommendations of the National Assembly.(H.E the President's message is attached as annex 2)
35. The approval hearing process is guided by the Public Appointments (Parliamentary Approval) Act; 2011. Section 7 of the Act provides that the issues for consideration during the approval hearing by the relevant House shall be: -
- a) the procedure used to arrive at the nominee;*
 - b) any constitutional or statutory requirements relating to the office in question; and*
 - c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.*
36. Section 8(1) of the Public Appointments (Parliamentary Approval) Act; 2011 provides that unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within twenty-eight days from the date on which the notification of nomination was given in accordance with section 5. Section 8(2) of the Act further provides that at the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.
37. Section 9 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that if after expiry of the period for consideration specified in section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.
38. Section 10 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that: *"Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly"*

2.8 Vacancy in the office of chairperson and members

39. Section 7A (1) of the Independent Electoral and Boundaries Commission Act, 2011 provides that the office of the chairperson or a member of the Commission shall become vacant if the holder—
- a) dies;*
 - b) resigns from office by notice in writing addressed to the President; or*
 - c) is removed from office under any of the circumstances specified in Article 251 and*

Chapter Six of the Constitution.

40. The office of member of the Commission fell vacant following the resignation of Ms. Consolata Nkatha Bucha Maina, Dr. Roselyne Kwamboka Akombe, Dr. Paul Kibiwott Kurgat and Ms. Margaret Wanjala Mwachanya as Members of the Commission.

2.8 Notification for Approval Hearing to the Public

41. Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No.33 of 2011) provides that *“any person may, prior to the approval hearing and by a written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated”*.
42. The Clerk of the National Assembly placed an advertisement in the print media on 10th August, 2021 inviting the public to submit memoranda by way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The submissions were to be received latest by Friday 20th August, 2021. The newspaper advertisements are attached to the report as **annex 3**.
43. Pursuant to provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act (No.33 of 2011) and Standing Order 45(3), the general public was also notified in the print media by the Clerk of the National Assembly of the intention of the Departmental Committee on Justice and Legal Affairs to conduct the vetting and approval hearing of the nominees on Tuesday 24th August, 2021.

2.9 Submission of Memoranda

44. Pursuant to Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee, through the Clerk of the National Assembly, invited submissions from the public on the suitability or otherwise of the nominees for appointment to the position of member of IEBC.
45. Further, section 6(10) of the Public Appointments (Parliamentary Approval) Act, 2011 provides that a candidate may at any time, by notice in writing addressed to the Clerk withdraw from the approval process and his or her nomination shall thereupon lapse.
46. The Departmental Committee on Justice and Legal Affairs held a sitting for vetting and approval hearing of the nominees on Tuesday 24th August, 2021 and informed the nominees that by the deadline date of 20th August 2021, the Clerk of the National Assembly had only received an advisory opinion and petition from the National Gender and Equality Commission (NGEC).
47. By the deadline date of 20th August, 2021, the Clerk of the National Assembly had not received any memoranda against the nominees for appointment as member of IEBC.

48. It was further noted that none of the nominees had notified the Clerk of the National Assembly of withdrawal from the approval process as outlined under section 6(10) of the Public Appointments (Parliamentary Approval) Act, 2011.
49. In view of the foregoing and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly, the Departmental Committee on Justice and Legal Affairs resolved to proceed to undertake the approval hearing as required.

2.10. Memoranda

50. The National Gender and Equality Commission submitted an advisory opinion and petition on the approval hearing of the nominees for appointment as members of IEBC.

a) Advisory Opinion on the Vetting by NGEC

51. In the advisory by the Chairperson, Dr. Joyce Mwikali Mutinda dated 11th August, 2011, the Commission submitted that;
 - i) The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act. No.15 of 2011 (NGEC Act) pursuant to Article 59 (4) & (5) of the constitution of Kenya 2010.
 - ii) The mandate of the Commission is set out in Article 59 (2) read together with section 8 of the NGEC Act, 2011 and includes promoting gender equality and freedom from discrimination as stipulated in Article 27 of the Constitution; monitoring, facilitating and advising on the integration of the principles of equality and freedom from discrimination and advising government on all aspects thereof.
 - iii) The Commission's target groups (otherwise referred to as special interest groups (SIGs) includes women, the youth, person with disabilities (PWDs), children, older members of society, minorities and marginalized groups as set out in the Constitution.
 - iv) That in view of the mandate of advising the Government, the National Gender and Equality Commission made reference to the nomination of Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wanderi, Ms. Irene Cherop Masit, and Mr. Justus Abonyo Nyang'aya, by His Excellency the President, on Thursday, 5th August to be members of the Independent Electoral and Boundaries Commission (IEBC).
 - v) That the National Gender and Equality Commission was aware that the Speaker forwarded the said names to the Justice and Legal Affairs Committee for vetting before tabling a report before the whole House for debate and approval in line with Article 250 (2) (b) of the Constitution and the Public Appointments (Parliamentary Approval) Act No. 33 of 2011.

- vi) That the IEBC is currently comprised of a Chairperson and two (2) Commissioners, all being men. With the nomination of two (2) women and two (2) men by His Excellency the President, if approved by the National Assembly and ultimately appointed will create a Commission of seven (7) members: The Chairperson and six (6) commissioners being five (5) men and two (2) women thus violating the two-thirds gender principle as set out in Article 27 (8) of the Constitution.
 - b) That with a maximum of seven (7) members under section 5 (1) of the IEBC Act, 2011 a gender ratio of 4:3 would be the one that does not violate the Constitution. Petition from the National Gender and Equality Commission
52. The National Gender and Equality Commission also sent a petition to the Clerk of the National Assembly stating as follows:
- a) *THAT on 5th August 2021, His Excellency the President of Kenya, nominated Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wanderi, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang'aya to be commissioners of the Independent Electoral and Boundaries Commission (IEBC).*
 - b) *THAT the nomination of the said nominees violates the principle of two thirds as enshrined in Article 27 (8), and section 5 of the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 which provides:*
In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.
 - c) *THAT the IEBC is currently comprised of a chairperson and two (2) commissioners, all being men.*
 - d) *THAT with a maximum of seven (7) members under section 5 (1) of the IEBC Act, 2011 a gender ratio of 4:3 would be one that does not violate the Constitution.*
 - e) *If the nomination of two (2) women and two (2) men by His Excellency the President, is approved by the National Assembly and ultimately appointed by His Excellency, the IEBC will comprise of seven (7) members: Chairperson and six (6) commissioners, five (5) men and two (2) women violating the two-thirds gender principle as set out in Article 27 (8) of the Constitution.*

THAT

- a) *The issue of two-thirds gender principle in appointive positions has been settled by the courts of law in several cases including, Marilyn Muthoni Kamuru & 2 others v Attorney General & another [2016] eKLR and Federation of Women Lawyers Kenya (FIDA-K) & 5 others v Attorney General & Another [2011] eKLR among others.*
- b) *The Commission did issue an advisory dated 28th May 2021 to the IEBC Selection Panel advising them on the requirement of complying with the principle of two thirds when doing the selection process.*

53. The Commission prayer is that: *Parliament returns the names to His Excellency the President for reconsideration and compliance with Article 27 (8) of the Constitution and section 5 of the First Schedule to the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 which states that:*

i. In short listing, nominating or appointing persons as chairpersons and members of the Commission, the Selection Panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance''.

54. That in line with oversight role of the National Assembly under Article 95 (5) (b) and Article 250 (2) (b) of the Constitution and section 5 of the First Schedule to IEBC Act, 2011, the National Gender and Equality Commission advised that the National Assembly stops the vetting process and returns the names to His Excellency the President for reconsideration and compliance with the legal provisions.

c) Committee observations

i) The Committee considered the NGEC advisory opinion and petition and was of the view that Article 250 (4) of the Constitution as read together with Article 10 provides that the composition of the commissions and offices taken as a whole should reflect the regional and ethnic diversity of the people of Kenya. That interpretation of the gender rule should not be confined to appointments in one commission.

ii) The Committee further observed that the National Gender and Equality Commission has cited the following cases:

a) *Marilyn Muthoni Kamuru & 2 others v Attorney General & another [2016] eKLR*- This case was in reference to the Cabinet constituted by His Excellency the President in December 2015 which comprised of eighteen (18) men and five (5) women. The petitioners sought a declaration that the nomination by the President and approval by the National Assembly was in contravention of Article 27 (2) of the Constitution.

The Court in its ruling delivered on December 20, 2016 found that the Cabinet had not met the criteria established under Article 27 (8) of the Constitution. The Court was of the view that the President is enjoined by the Constitution to dismantle the uneven gender attributes of our society when the Constitution demands that public appointments to be made with the two third gender rule at the fore.

b) *Federation of Women Lawyers Kenya (FIDA-K) & 5 others v Attorney General & Another [2011] eKLR*- This case was in reference to the recommendation by the Judicial Service Commission of four men and one woman as Commissioners to the President of June 15, 2011. The Judicial Service

Commission had previously nominated one man and one woman for the position of Chief Justice and Deputy Chief Justice respectively. This would result in a Commission consisting of five men and two women.

The petitioners sought a declaration that the recommendation was in contravention of Articles 2, 3, 10, 27, 163, 166, 172 (2) (b), 248 and 249 of the Constitution.

The Court in its ruling delivered on August 25, 2011 rejected the petition on the grounds that the rights under Article 27 of the Constitution are to be realized progressively.

c) It is also worth noting *Petition No. 446 of 2016 National Gender and Equality Commission and Another Versus the Judicial Service Commission* which was in reference to the nomination of Hon. Mr. Justice Maraga, Hon. Lady Justice Mwilu and Hon. Mr. Justice Lenaola to the positions of Chief Justice, Deputy Chief Justice and Judge of the Supreme Court respectively. The main issue was the nomination of Hon. Mr. Justice Lenaola who the petitioners contended that the Judicial Service Commission should have recommended a female judge in his place. The petitioners were of the view that the Supreme Court as constituted comprising of five men and two women was unconstitutional.

d) The Court in its ruling delivered on May 12, 2017 found the Supreme Court to be properly constituted with two (2) out of the seven judges being female. The Court rounded off the decimal to the nearest whole number, that is, $(1/3 \times 7 = 2.33$ and $2/3 \times 7 = 4.66)$. There is no decimal point in human beings, and taking the figures to the nearest whole numbers would be two (2) and five (5) respectively.

(iii) That in the circumstances, the Committee was of the view that the National Gender and Equality Commission had not taken into consideration the provisions of Article 250 (4) of the Constitution and the decision of the Supreme Court of Kenya in *Petition No. 446 of 2016 National Gender and Equality Commission and Another Versus the Judicial Service Commission* and thus the advisory opinion dated August 11, 2021 and the petition were not merited.

CHAPTER THREE

3.0 ISSUES FOR CONSIDERATION DURING THE APPROVAL HEARING OF MS. JULIANA WHONGE CHERERA, MR. FRANCIS MATHENGE WANDERI, MS.IRENE CHEROP MASIT AND MR. JUSTUS ABONYO NYANG'AYA

55. The Committee noted that the issues for consideration during the approval hearing are set out under section 7 of the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011 which provides as follows-
- i. the procedure used to arrive at the nominee;*
 - ii. any Constitutional or statutory requirements relating to the office in question; and*
 - iii. the suitability of the nominee for appointment proposed with due regard as to whether the nominee's abilities, experience and qualities meets the needs of the body to which the nomination is made.*
56. Section 10 of the Act further provides that: -
“Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly”.
57. The procedure for the appointment of the Member of Independent Electoral and Boundaries Commission requires the Committee to consider that the applicant: -
- (a) holds a degree from a recognised university;
 - (b) has proven relevant experience in any of the following fields—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration;
 - (vi) law; and
 - (vii) meets the requirements of Chapter Six of the Constitution.

The committee considered:

- (a) the steps taken by an applicant in order to be considered for appointment.
- (b) The steps taken by the Selection Panel to ensure that applicants are fairly evaluated and that the most qualified are nominated.
- (c) Background investigation and vetting.
- (d) Publication of the names of applicants.
- (e) Interview scheduling and conduct.

- (f) Criteria for evaluation of qualifications.
- (g) Notification of nominations.
- (h) Possession of the relevant academic, professional training and years of service required for the job and experience requirements for the job.
- (i) Family background on the nature of nominee's citizenship.
- (j) Educational Background: The nominees description on how their education background relates to the need of the current job and whether their academic qualifications are consistent with the demand of the Job.
- (k) Political Activities and Affiliations.
- (l) The Committee considered Constitutional, statutory and professional requirements of the nominees as follows:
 - (i) Whether the nominees appreciate the provisions of Article 10 of the Constitution on national values and principles of good governance.
 - (ii) Whether the nominees are conversant with Article 232 of the Constitution on the values and principles of public service.
 - (iii) If the nominees are of high moral character and integrity and have satisfied the requirements of Chapter Six of the Constitution.
 - (iv) How the nominees personal and work experiences reflect the principles set out under chapter 6 of the Constitution.
 - (v) The vision of the nominees to the Office of Member of the IEBC.
 - (vi) Background information from State Agencies.
 - (vii) Vision, leadership and judicial reforms in IEBC.
 - (viii) Expectations and key priorities.
 - (ix) Overall suitability for the position.
 - (x) Tax compliance.
 - (xi) Professional affiliations.

58. During the approval hearings the committee considered the nominees clearances from state agencies as follows (**annex 4**)

- a) Compliance with tax obligations to the State (KRA)
- b) Clearance with Higher Education Loans Board (HELB)
- c) Clearance with the Ethics and Anti-Corruption Commission (EACC)
- d) Certificate of good conduct (DCI)
- e) Certificate from Registrar of Political Parties
- f) The Independent Electoral and Boundaries Commission (IEBC)

59. The Committee received written communication from the IEBC indicating that none of the nominees had stood for election as a Member of Parliament or a Member of County Assembly in the preceeding five (5) years in line with Article 88 (2) (a) (i) of the Constitution. The letter from IEBC is attached to this report as annexure ...
60. The Committee further received written submission from the ORPP indicating that none of the nominees held office in the governing body of a political party in line with Article 88 (2) (a) (ii) of the Constitution.

CHAPTER FOUR

4.0 APPROVAL HEARING OF MS. JULIANA WHONGE CHERERA, MR. FRANCIS MATHENGE WANDERI, MS. IRENE CHEROP MASIT AND MR. JUSTUS ABONYO NYANG'AYA FOR APPOINTMENT AS MEMBERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

61. The nominees Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wandering, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang'aya appeared before the Committee on Tuesday 24th August, 2021 at a sitting held in the Mini Chamber County Hall, Parliament Buildings.
62. The nominees were informed by the Chairperson that, pursuant to section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee had invited submissions from the public on their suitability or otherwise for appointment to the position of the members of the Commission. By the deadline date of 20th August 2021, the Clerk of the National Assembly had not received any objection against the nominees.
63. The Chairperson informed the nominees that in view of the foregoing and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly, the Committee had resolved to proceed to undertake the approval hearing as required.

4.1 Ms. Juliana Whonge Cherera

64. Ms. Juliana Whonge Cherera the nominee for appointment as member, IEBC appeared before the committee and submitted as follows:-

Self-Introduction, Academic and Professional Qualifications

65. Ms. Juliana Whonge Cherera was born in Mombasa County in 1976. She holds a Bachelor of Education Degree from Kenyatta University, having graduated in 2000; Diploma in ECDE from Coast Institute of Research and Training (2010); Diploma in Project Management from the Kenya Institute of Management (2013) and Master Degree in Education Leadership and Education Management from Kenya Methodist University (2013). She is currently serving as a Chief Officer at the Mombasa County Government.
66. Her long term interest has always been to serve the nation in public service as demonstrated by her profile as a confirmation that she always strives to stand with the people all the time.

On the mandate of IEBC

67. The nominee stated that she understands the mandate of IEBC as provided for in the Constitution and relevant statutes and that she is ready for the task awaiting her if appointed. She added that IEBC mandate includes supervision and conducting elections and referenda,

continuous voter registration, arbitration in party nomination dispute among others including policy and oversight of the secretariat.

Views on Delimitation of Electoral Boundaries

68. The nominee stated that it has been pending because of the gaps in the Commission and hopes if appointed she will help fast track the process. She further noted that the constitutional provision on delimitation of boundaries requires a review between eight and twelve years and that such exercise should be conducted at least twelve months before a general election. We have less than twelve months to the general election indicating that there is no time to conduct the exercise.

Views on pressure that may result into resignation

69. The nominee stated that she lives by her philosophy of never quitting as it is a sign of failure. Further, her people skills enables her to relate well and manage any differences of opinion. She gave an analogy of a ship captain, who cannot let the ship sink on its own but stands by his fellow sailors and steers the ship to stability.

Views on violent extremism especially at the Kenyan coast

70. The nominee submitted that extremism was a global issue and it mostly affects the coastal region as it was a gateway to the country and the region. She opined that they will monitor as a commission and address issues accordingly and to the extent that they affect IEBC operations. She noted Mombasa is a cosmopolitan city susceptible to influence by global events and will integrate the concepts in IEBC voter education.

Views on fairness and partisan conduct

71. The nominee assured that she will maintain fairness and non-partisan approach in election management despite having been a chief officer in Mombasa County Government. She added that she sits in the disciplinary committee of the county government staff, where proper laid down procedures are followed, and has practiced fairness at that level in administering justice. Submitted that technology does also promote fairness in elections and will support adoption of technology as the main and only form of transmission of election results.

Her views on nomination of candidates using party's own voter's register

72. The nominee opined that in furtherance of the vision of strong political parties in Kenya, there was need for them to be encouraged to maintain credible registers which they can use for nominations as per the respective political parties rules.

Her View on Campaign financing

73. Ms.Cherera opined that campaign financing was a constitutional requirement and that she would consult once appointed to the Commission on the way forward.

Her Views on Spoilt votes

74. The nominee stated that she will explore more on voter education to reduce instances of spoilt votes as she believes no voter goes into a polling station to intentionally spoil a ballot but rather does so probably due to less or no knowledge on how to handle his or her vote.

Her Views on the implications of the Court of Appeal ruling on quorum

75. The nominee submitted that she will study what has been done by the Commission and request the full Commission to review decisions affected by the Court of Appeal Judgment and the next general election for validation by the full Commission so as to avoid further legal challenges.

Her views on why Kenyan elections are expensive

76. She stated that we conduct expensive elections in Kenya because of the lack of trust in our election management process and will remain so until we overcome the issue of mistrust among participants in the process.

Her views on transmission of results and technology

77. The nominee stated that transmission of results with the applicable technology and system should be efficient and accurate. That Kenyans have fully embraced technology in other sectors but lack trust in the technology applied in elections. The commission should develop contingency measures in the event of unforeseen setbacks but supports technology as the best means in transmission of results.

Her views on Diaspora voting

78. She stated that Kenyans in diaspora have a fundamental right to vote and will endeavor to have necessary resources and policy to actualize the aspirations of Kenyans in diaspora

4.2 Mr. Francis Mathenge Wanderi

79. Mr. Francis Mathenge Wanderi the nominee for appointment as member, IEBC appeared before the committee and submitted as follows:

Self-Introduction, Academic and Professional Qualifications

80. The nominee was born in 1953 in Nyeri County and is proficient in English, Kiswahili, Kikuyu languages. He holds a Masters in Management Science Degree awarded in 1982 from the Arthur D. Little Management Education Institute(Boston USA); a Bachelor of Education Degree (upper second class) awarded in 1978 from the University of Nairobi; and Graduate Management Training Certificate awarded in 1980 from Kenya Institute of Administration.

On non-partisan conduct following previous interests in Kieni Constituency Elections

81. The nominee stated that his tenure as the first CDF chairman between 2003 and 2007 of Kieni Constituency, served as a best shot in experience in the political cum public office terrain. He further gained experience in electoral management in his failed bid for Member of Parliament for Kieni constituency, thus will import the same to the Commission once appointed.
82. That his experience in campaigns will be an asset as it will help IEBC deliver in critical areas in regulation of election campaigns.

His views on absconding of duty by a Commissioner

83. The nominee stated that he was patriotic enough, not to attempt to leave at the hour of need. He is committed to staying put and solving issues from within rather than running and leaving the institution without direction.

His views on the Media and Political Parties having own tallying centers

84. The nominee affirmed that it was only the IEBC which is mandated to have a tallying center by law. However, for openness and transparency, political parties could tally the results but that shall not offer the final position on the results of an election.

His views on Spoilt votes

85. The nominee affirmed that he will enhance voter education to help manage spoilt votes which are normally too many.

His Views on private business engagement

86. The nominee stated that he is a director on a part time basis in a private company and occasionally engages in consultancies, which he will disengage to focus on IEBC as he appreciates the enormity of what is expected of him in his new role.

His views on a database of signatures of voters

87. The nominee stated that with the advent of technology, signatures can simply be the biometric identification and not physical signatures which are hard to maintain as an electoral agency. He added that electoral technology is the way to go as it is a global trend and IEBC is not an exemption.

His views on Court of Appeal ruling on IEBC quorum

88. The nominee stated that together with other commissioners, he will review and seek to validate the decisions already made by having them considered afresh.

His views on credibility of IEBC

89. The nominee stated that issues of credibility are alive and mostly emanated from nullification of the presidential results in the last general election. He stated that IEBC operates within a political system; as such IEBC would not want to be seen as a policeman for elections but a facilitator where all stakeholders are served equally to enhance credibility. He committed to ensuring that governance issues related to elections are under control and properly managed.

His views on voter education being incorporated in school curriculum

90. The nominee stated that he supports the idea of civic education and voter education aspects being included in school curriculum. That national values expected of public servants should be part of the school curriculum on areas related to elections.

His views on management of IEBC

91. The nominee stated that he will front for the commissioners taking full responsibility of actions or inactions of the IEBC. Further he hopes to introduce regulations to stem the culture of continuous campaigns in order to give room for concentration on development of the country.
92. Mr. Mathenge stated election related activities should be conducted within the elections regulations. That unregulated areas on election matters should be considered for development of regulations.
93. He stated that engagement with political parties as key stakeholders should be held on a regular basis to move together with the Commission as it will help to build trust among the actors in the political process. That close working relationship with the committee in terms of development of relevant rules and regulations for the conduct of elections with improved technology from time to time.

His views on why Kenyan elections are expensive

94. He stated that Kenya's elections are said to be the most expensive in the world and believes there's a way of bringing the cost down by reviewing the processes and requirements related to the electoral process.

4.3 Ms. Irene Cherop Masit

95. Ms. Irene Cherop Masit the nominee for appointment as member, IEBC appeared before the committee and submitted as follows;

Self-Introduction, Academic and Professional Qualifications

96. The nominee was born in Chepkorio Ward in Keiyo South, Elgeyo-Marakwet County in 1967 and is proficient in English, Kiswahili and Kalenjin languages. She holds a Bachelor of Laws (LLB) (2nd Class Upper Division) from the University of Nairobi (2015); a Master of Science (HRM) from The University of Manchester, United Kingdom (1999); a Bachelor of Arts (Social Work) (2nd Class Upper Division) from the University of Nairobi (1993); a Kenya Advanced Certificate of Education (3 Principals and 1 Subsidiary) (1988); and Kenya Certificate of Education (Division III) (1985).

Her views on Delimitation of Boundaries:

97. The nominee stated that the review of Constituency boundaries provisions was stringent as specific timeframe and the number was outlined in the Constitution. However, she noted that the review of Ward boundaries was open and could be done periodically and the Commission could determine the number. Furthermore, the issue of protected constituencies might pose a legal dilemma thus there was need to further protect them for the next general elections.
98. She stated that delimitation of boundaries of constituencies be considered in by giving larger ones additional wards. Protected constituencies should be retained as some are based in marginalized areas and that Parliament should review electoral laws to accommodate competing interests in matters of delimitation of constituency boundaries.

Her views on a position to give up between the NG-CDF Board member and IEBC Member

99. The nominee affirmed that it was illegal to hold two public offices and stated that she will resign as a board member of the NG-CDF Board if appointed to the IEBC.

Her views on handling violence during elections

100. Ms. Masit stated that issues around violence near polling stations need to be addressed openly by sharing information and acting in a transparent and manner and being fair to actors in the electoral process. She assured members that she will work to ensure IEBC has a transparent register of voters.

Her views on spoilt votes

101. The nominee submitted that she will advocate for investment in technology to ensure that every cast vote counts. Further technology would also save time and resources as it would be more effective and efficient.
102. She stated that voter education was key in having an informed voter and that the same should be incorporated in the school curriculum.

Her views on mental health

103. On this issue, the nominee was of the view that mental health was a disease. As such she will advocate for a counseling department at the IEBC and an elaborate policy to help staff cope with the pressure associated with electoral management in Kenya.

Her views on her participation in the 2017 elections

104. The nominee has not stood for any election five years preceding her nomination as a member of IEBC.

Her value at IEBC

105. The nominee affirmed that she will utilize corporate governance principles and capacity building to ensure one can handle issues that would otherwise seem impossible. Further she would encourage consultations with other government agencies even though IEBC is independent it is also inter-dependent in the entire public service system

Views on Court of Appeal ruling on quorum at IEBC

106. The nominee was of the view that they will undertake a review of matters done by the Commission as currently constituted.
107. She stated that the Commission may seek advisory opinion from the Supreme Court of Kenya on some controversial matters that are not clear within the existing framework.

Views on resignation from IEBC

108. The nominee was of the view that for one to resign there has to be a strong reason behind it. She stated that, the only reason she would resign from IEBC would be for public interest and if her position is no longer tenable.

Her views on training and capacity building

109. The nominee stated that continuous professional and work related development process should be encouraged for betterment of the institution and its workforce.

Her views on transmission of results

110. She stated that there is need to streamline the transmission process and also consider the merit of declaration of results at the polling stations.

Her views on Huduma Card

111. She stated that it is a good initiative and it's the way to go as an integrated system that can be used in all services including elections.

4.4 Mr. Justus Abonyo Nyang'aya

112. Mr. Justus Abonyo Nyang'aya the nominee for appointment as member, IEBC appeared before the Committee and submitted as follows;

Self-Introduction, Academic and Professional Qualifications

113. The nominee was born on 13th May 1957 in Homa-Bay County and is proficient in English, Kiswahili and Luo languages.
114. He holds MA in Education (1997) from the Institute of Education, University of London, Diploma in Education (1984), Kagumo Teachers College, Diploma in Education (1991), Institute of Education, University of London and International Leadership Academy, Certificate (1997, United Nations University,) Jordan Amman.
115. The nominee has been affiliated as an officer, director, partner, proprietor, employee or consultant in organizations including: Self Employment at Senior Consultant from 2018 to-date; Amnesty International –Kenya Country Director from 2009 to 2018; Kalasi Consultant – Senior Consultant from 2004 to 2009; Inter Sudanese Consultations on Peace & Justice (ISCOP), Chief Executive Officer, from 2002 to 2004; The Netherlands Development Organization – SNV, Development Advisor from 1999 to 2002; UNESCO-PEER – Peace Education Advisor, from 1997 to 2002; Windle Trust International – Programme Officer, from 1988 to 1996; Teachers Service Commission – Head of English and Literature Department and “O” and “A” level Teacher of English and Literature, from 1984 to 1988.

His views on Governance:

116. The nominee submitted that he had worked on several peace and conflict management projects around the globe and the experiences acquired would add value to IEBC.

His views on Suitability:

117. The nominee stated he meets all the requirements under the Constitution of Kenya and articulated his educational background and qualifications, to be critical in the next role as commissioner at IEBC.

His views on Impartiality

118. The nominee stated that indeed he has interacted with people of high integrity, which has defined his character. He confirmed that he has been impartial in his dealings before at Amnesty International, being the reason why they developed strong reports, as such his previous party engagements would not in any way affect his role as a commissioner at IEBC.

His views on Court of Appeal ruling on quorum

119. The nominee noted that the reason why the quorum rule is in existence in institutions was to avoid cheekiness in decision-making by providing a certain threshold of their merit. To protect the image of IEBC, it will be prudent to review fundamental decisions already made to avoid future litigations.

His views on what he will do differently at IEBC

120. The nominee opined that he will advocate for automation of most process at IEBC adopting relevant technology on need basis.

His views on handling transmission of results

121. The nominee stated that in line with his vision for technology, he will advocate for use of block chain technology for use in transmission of results which is very secure and cannot be changed. He cited Sierra Leone as a country which has applied the technology successfully.

His views on fears that some 2022 candidates are engaging in arms trade for possible violence

122. The nominee informed the Committee that the United Nations voted for Arms trade Treaty which outlawed purchase of arms by individuals and organized criminals. He noted that the same applies to Kenya, as such our security agencies should step up surveillance on the same to stem possible violence supported by illicit arms.

His views on spoilt votes

123. The nominee affirmed the need to involve the media which is critical in supporting voter education on such aspects as voting. As such more engagements with the media shall be encouraged in order to support the critical mandate on voter education.

His views on his lack of a Bachelor's Degree

124. The nominee confirmed that he does not have a Bachelor's degree; however, his qualifications of two diplomas are equated to a Bachelor's degree, which was the basis for his admission to University of London to pursue a Master's degree.
125. He stated that the Commission for University Education confirmed recognition of his diploma qualifications as being recognised in the United Kingdom and by convention in Kenya. The commission noted it is a common practice in a number of universities in Europe that prior learning and work experience are part of admissions criteria.

His views on his strength of character

126. The nominee affirmed that he had a strong character to withstand pressure as evidenced by his tenure at the Amnesty International where he resisted several maneuvers to have him develop system friendly reports. He reported that such attempts nearly cost him his life.

CHAPTER FIVE

5.0 COMMITTEE'S OBSERVATIONS AND FINDINGS

5.1 Ms. Juliana Whonge Cherera

127. The Committee having considered the curriculum vitae of Ms. Juliana Whonge Cherera and having heard her submissions during the approval hearing made the following observations on her suitability for appointment as a Member of the Independent Electoral and Boundaries Commission:

- (a) That Ms. Juliana Whonge Cherera was born in Mombasa County in 1976.
- (b) She holds a Bachelor of Education Degree from Kenyatta University, having graduated in 2000; Diploma in ECDE from Coast Institute of Research and Training (2010); Diploma in Project Management from the Kenya Institute of Management (2013) and Master Degree in Education Leadership and Education Management from Kenya Methodist University (2013).
- (c) On employment record the nominee has worked as a teacher at Almadrasa Burhanah High School from 2001-2004; Lecturer and ECDE Coordinator at Islamic Teachers Training College between 2004-2008; Teacher and Head of Departments (Humanities and Languages), Patron Drama and Christian Union at Kajembe High School between 2008-2013; Teacher and Welfare Chairperson at Mvita Boys High School between 2013 July-2013 November; Acting County Chief Officer Education at the County Government of Mombasa between 2013 November- 2014 December; and a County Chief Officer Executive Department at the County Government of Mombasa from 2014 December to 2020.
- (d) The nominee has been honoured and awarded by the University of Nairobi as a Steering Committee Member of the Socio-Economic impact of operationalization of SGR in the Port City of Mombasa, in October 2019; Outstanding Dedication, Participation and Commitment towards the Annual Governor's Christmas Tree Lighting Committee, on 17th December, 2020 by the County Government of Mombasa; Remarkable support in Training the Law Enforcement Officers of the County Government of Mombasa on 4th May, 2018 by Kituo Cha Sheria (Legal Advice Centre); Acknowledgement of diligence in carrying out the following duties: -HOD Humanities, HOD Kiswahili, Guidance and Counseling Committee member, TLMC Chairperson on 9th January, 2009 awarded by Kajembe High School Administration. Recognition in an award of Certificate of service rendered as a Chaperon of Coast Team during the 2008 Inter Collegiate Athletics & Rugby Championship on 28th May, 2008 awarded by Kenya Teachers' Colleges Sports Association.
- (e) The nominee is a Member of the Kenya Institute of Management Member No. 63984.

- (f) The nominee was a Board Member of Mombasa County Education Board; Member of Rotary Club of Mombasa Down Town; and Member of Presbyterian Church of East Africa (PCEA) Mtwapa Church Health Board.
- (g) The nominee indicated that she co-authored with Prof Sheila Ryanga Ali Ph.D and Eric Mathuva: Implementation of Management Strategies for Teachers Safety in Public Secondary Schools in Mombasa County, Kenya. July, 2017 that was published in the International Journal of Scientific Research and Technological Innovation. ISSN: 2313, 3759 Vol.4 no.7. Other publications include a Position Paper on the Sustainability in Preventive and Counter Violent Extremism (P/CVE) Efforts in Mombasa County; the Executive summary report on the Socio-Economic impact of Operationalization of the Standard Gauge Railway on the Port City of Mombasa; and a Report on Progress and Challenges in Advancing the Whole of society Approach to P/CVE Agenda, presented in a P/CVE Conference in Brussels in December, 2018 organized by European Union.
- (h) The nominee indicated that she was a Member of the Mombasa County Education Board by appointment; and County Chief Officer Executive Department.
- (i) The nominee does not have any linkage to a political party at present; never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution; and has never been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties.
- (j) On deferred income/future benefits, the nominee listed income arrangements from Safaricom Shares (10,000 Shares); Mwalimu Sacco Shares (Ksh. 328,000/=) and Jubilee Insurance Saving Scheme (Ksh. 24,000/= per month to mature in 2023).
- (k) On Sources of income, the nominee indicated that she has been receiving a salary from the County Government of Mombasa with a Gross Pay of Ksh. 227,480x12 months totalling to Ksh.3, 305,592.
- (l) On statement of net worth, the nominee indicated the following to account for her wealth: 1 Car worth Ksh. 2.4 Million owned by family; Land: 11 Acres in Kwale Ksh (200,000x 11) owned by the family; 1.5 Acres in Kilifi unregistered worth ksh 3 million; 1 Acre in Mackinnon Market registered worth ksh. 500,000; 2.0 Acres in Muthambi Meru South; Tea Farm worth Ksh. 1.5 Million; Family House in Mtwapa, Lease not registered worth Ksh.3 Million; Safaricom shares 10,000; and Mwalimu Sacco Shares Ksh. 328,000/.
- (m) The nominee confirmed that she does not have anything that can present potential conflict of Interest when she assumes the position nominated for.
- (n) On Pro-Bono/Charity Work/Donations to charity, the nominee stated that she has contributed for Rotary Club of Mombasa Down Town Ksh. 10,000 towards provision of a water tank at an informal settlement in Bangla -Jomvu Sub County during Covid 19

Outbreak. Building of an ECDE in Mwakirunge- Kisauni. Further, she had engaged in sensitization on AGPO in Government to Church Women meeting in Mombasa, contributed ksh. 10,000 towards provision of Thermo guns to 3 churches in Bamburi upon the first reopening of worship centers after lock down was lifted in Mombasa. Finally, she had paid University fees for Derrick Mwikai. Taita Taveta University and Macdonald Deche at Masinde Muliro University. Ksh. 80,000 in a year collectively.

- (o) The nominee confirmed that she has never been charged in a court or law in the last three years and has never been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years.

5.2 Mr. Francis Mathenge Wanderi

128. The Committee having considered the curriculum vitae of Mr. Francis Mathenge Wanderi and having heard his submissions during the approval hearing made the following observations on his suitability for appointment as a Member of the Independent Electoral and Boundaries Commission:

- a) The nominee was born in 1953 in Nyeri County and is proficient in English, Kiswahili and Kikuyu languages.
- b) The nominee holds a Masters in Management Science Degree awarded in 1982 from the Arthur D. Little Management Education Institute (Boston USA); a Bachelor of Education Degree (upper second class) awarded in 1978 from the University of Nairobi; and Graduate Management Training Certificate awarded in 1980 from Kenya Institute of Administration.
- c) The nominee has worked in the following government agencies: Export Processing Zones Authority (EPZA) - Chairman of Board of Directors (July 2008-2014); Export Processing Zones Authority Director (2003-2007); Endarasha Boys High School Chairman Board of Management (2016 to current); Endarasha Boys High School Chairman of the Board of Director (1990-2001); CDF Chairman Kieni Constituency (2003-2007); Lecturer Kenya Institute of Administration (KIA) (1980-1984). The nominee has further been engaged in the following private organizations: Spartans Consultancy Services (1992 to current); Roots Credit Limited Board of Directors (2016 to current); Savannah Group Executive Director (1998-2001); Continental Credit Finance (CCF) (1984-1986); AMREF Administration manager (1986-1990).
- d) On Honours and Awards, the nominee has not been awarded any scholarships, fellowships, honorary degrees, academic or professional honours, honorary society memberships, military awards and any other special recognition for outstanding service or achievement.
- e) On Professional Associations, the nominee is a member of the Kenya Institute of Management. Further the nominee does not hold any membership to professional, business, fraternal, scholarly, civic, charitable or other organizations.

- f) On published writings, the nominee indicated that he was the Managing Director of the Star Newspapers between 1997 and 1998 where he wrote several articles in the newspaper.
- g) On Public Office, Political Activities and Affiliations, the nominee indicated that he has been involved as Civic educator during the Constitution of Kenya 2010; Chairman of the Democratic Party of Kenya-Kieni Constituency (1998-2002); Member of the professional group of the Democratic Party (1992-1997), and was part of the team that organized the first ever Democratic Party presidential candidates' debate; Secretary to DEMO 2000 a lobby group of professionals formed to support the election of H.E. Mwai Kibaki in 2002; and finally, the Chairman NARC Kieni constituency (2003-2005).
- h) The nominee was an observer during the CKRC constitutional process. After the promulgation of the COK 2010, the nominee was elected the secretary of Nyeri County Forum, which was a voluntary body that was formed by the professionals to kick start the development agenda for the devolved unit and bring together the professionals from the county.
- i) In 2002 NARC elections he was one of the coordinators of the Presidential elections in Nyeri county as well as the leader of the campaign for Hon Murungaru in Kieni in 1998 and 2002 elections. The nominee was actively involved in the formation of Democratic Party of Kenya and later in the Presidential campaign in 1992. He managed the campaigns for the late Hon. Munene Kairu in Kieni constituency in 1992 and 1997.
- j) The nominee was actively involved in planning and implementation of various development projects in the vast Kieni constituency. Finally, the nominee stated that in 2007 general elections, he offered himself to represent Kieni constituency as the MP but he lost.
- k) The nominee stated that he has never been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution and has never been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties.
- l) On Deferred Income/Future Benefits, the nominee listed Rental Income of Kshs 200,000; Farming Activities Kshs 300,000; Dividends Kshs 100,000; Consultancy services of Kshs 2,000,000; and other amount of Kshs 200,000 as the sources and amounts of all anticipated receipts from deferred income arrangements.
- m) On outside commitment during service in office, the nominee indicated that he intends to continue sitting in the selected school Boards and selected boards of private corporations and Not For Profit organizations like KDDA (Kenya Defeat Diabetes and Hypertension Association without compensation.

- n) On Statement of Net Worth and Sources of Income the nominee indicated his net worth to be estimated at 100 million Kenya Shillings with sources of income including rental income of Kshs 150,000 pm, board sitting allowances of Kshs 75,000 pm, dividends of Kshs 105,000 and Farming of Kshs 80,000 pa.
- o) On potential conflicts of interest, the nominee stated that he does not envisage any family members or other persons, parties, categories obligation or financial arrangements that are likely to present potential conflicts-of-interest.
- p) On Pro-Bono/Charity Work/Donations to charity, the nominee stated that he supports needy children in paying school fees; supports community projects; supports church projects here in Nairobi and upcountry; he's a director of Kenya Defeat Diabetes and Hypertension Association (KDDA) which is a not- for- profit association, that is formed by the people who are at the base of pyramid and suffering from diabetes and hypertension, and he supports the association financially as well; and holds positions in the Board of Management (BOM) for some school boards.
- q) The nominee indicated that together with other people has started environmental sustainability projects called Kieni Climate Change Initiative to help with the afforestation of Kieni. They have so far developed 4 tree nurseries within 4 schools which have a total of approximately 2 million seedlings.
- r) Finally the nominee indicated that he has never been charged in a court or law in the last three years and has never been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years.

5.3 Ms. Irene Cherop Masit

129. The Committee having considered the curriculum vitae of Ms. Irene Cherop Masit and having heard her submissions during the approval hearing made the following observations on her suitability for appointment as a Member of the Independent Electoral and Boundaries Commission:

- a) The nominee was born in Chepkorio Ward in Keiyo South, Elgeyo-Marakwet County in 1967 and is proficient in English, Kiswahili and Kalenjin languages.
- b) The nominee holds a Bachelor of Laws (LLB) (2nd Class Upper Division) from the University of Nairobi (2015); a Master of Science (HRM) from the University of Manchester, United Kingdom (1999); a Bachelor of Arts (Social Work) (2nd Class Upper Division) – the University of Nairobi (1993); a Kenya Advanced Certificate of Education (3 Principals and 1 Subsidiary) (1988); and Kenya Certificate of Education (Division III) (1985).

- c) The nominee indicated organizations that she has been affiliated to as an officer, director, partner, proprietor, employee, or consultant to include: Member (part-time) of National Government CDF Board; March 2019 to March 2022; Member (full-time) of the Interim Independent Boundaries Review Commission (May 2009 to August 2010); Deputy Secretary (full-time) Constitution of Kenya Review Commission; March 2002 to April 2006; Program Operations Manager (full-time) The NGO Coordination Board (Office of the President): (March 1996 to March 2002); Board Member (part-time) for Koptega Girls Secondary School (April 2019 to April 2022), Koptega Girls Secondary School (2012 to 2015), Koptega Girls Secondary School (30th July 2008 to 19th September 2011); Board Member (part-time) St Agatha Mokwo Girls Secondary School (August 2012 to August 2015). The Nominee has also been a Board Member (part-time) for Athnas Kandie Boys Secondary School (2011 to 2014); Board Member (part-time) Elgeyo- Marakwet County Land Management Board (November 2014 to 2016); Returning Officer (part-time) Westland's and Langata Constituencies within Nairobi County (January 2008 to December 2008); Deputy Returning Officer (part-time) the larger Embakasi Constituency (before Boundary Review) (January 2007 to December 2007); and a Program Officer (full-time) Development Alternatives Network (a logical DAN) a local registered NGO; January 1994 to January 1995.
- d) The nominee's honours and awards include Government scholarship for Master of Science at the University of Manchester (1998) through the Department of Personnel Management (DPM); and Certificate of award by the National Youth Service on pre-university training program – service woman number 12894 (1989).
- e) On professional associations, the nominee indicated that she is a member of the Institute of Internal Auditors of Kenya, membership number 2223343 (2019); and a Member of the International Certified Addiction Professional (Global Centre for Credentialing and Certification) – Treatment, membership number 1389 (2019).
- f) On Memberships to professional, business, fraternal, scholarly, civic, charitable, or other organizations, the nominee indicated that she is Alumni of the University of Nairobi and the University of Manchester; She is a life member Maendeleo ya Wanawake Organization (M.Y.W.O) in recognition of working with grassroots women (2006); and a member of ISSUP – International Society for Substance Use Professional.
- g) On Published writings, the nominee listed materials authored to include: Matters of Foreign Employment and Management of Labour Migration Taskforce on Administration of Foreign Employment & Management of Labour Migration in part fulfilment of requirements for the Degree of Bachelor of Laws at the University of Nairobi (2015) *Unpublished*; Report and Recommendations on The Delimitation of Constituencies and Recommendations on Local Authority Electoral Units and Administrative Boundaries for Districts & other units by the Interim Independent

Boundaries Review Commission on (2010) *Reference*.; and Dissertation on Employee Counselling and Stress at Work: An Investigation into some factors which Influence Employee Performance in the Public Service of Kenya in part fulfilment of requirements for The Degree of Master of Science in Human Resources Management in The Faculty of Education UK. (1999) *Reference*.

- h) On Public Office, Political Activities and Affiliations, the nominee highlighted the offices held to include: Member (part-time) appointed for a 3-year contract at the National Government CDF Board; Member (full-time) appointed for fixed term and served for 15 months at the Interim Independent Boundaries Review Commission; Deputy Secretary (full-time) appointed for a term of 4 years at the Constitution of Kenya Review Commission; and a Program Operations Manager (full-time) on permanent and pensionable terms at the NGO Coordination Board (Office of the President).
- i) The nominee indicated that she has never been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution and has never been adversely associated with practices that depict bias, favoritism, or nepotism in the discharge of public duties.
- j) The nominee also stated that she does not have any deferred income arrangements, stock, options, uncompleted contracts, and other future benefits which she expects to derive from previous business relationships, professional services or firm memberships.
- k) On sources of Income, the nominee informed the Committee that her income was derived from NG-CDF Board and National Assembly Select Committee activities and programs 2019/2020 with a total amount of Kshs 1,600,000.00 (PAYE – 427,000) and 2020/2021 total amount of Kshs 1,280, 000.00 (PAYE – Kshs 365, 000).
- l) The nominee indicated her net worth to be estimated at Kshs 47 million itemized as a residential house at Kshs 20Million, land in Eldoret at Kshs 5 Million, land in Kajiado at Kshs 20 Million and vehicle at Kshs 2 Million.
- m) On Pro-Bono/Charity Work/Donations to charity the nominee indicated that as a certified drug addiction professional, she offers free counseling and guidance services to immediate colleagues, family, friends, and neighbours whenever her assistance or service is required free of charge. The nominee is in the process of establishing a drug addiction center to offer the same service in a regulated environment. Further, the nominee serves in several school board dedicating time, experience, skills, and knowledge to uplift the standards and capacity of learners and community at large and works with grassroots communities (especially women

and youth) by dedicating time and resources in raising funds for school fees, food stuff, hospital bills and capacity building.

- n) The nominee confirmed that she has never been charged in a court of law in the last three years and has never been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years.

5.4 Mr. Justus Abonyo Nyang'aya

130. The Committee having considered the curriculum vitae of Mr. Justus Abonyo Nyang'aya and having heard his submissions during the approval hearing made the following observations on his suitability for appointment as a Member of the Independent Electoral and Boundaries Commission:

- a) The nominee is a male adult born on 13th May 1957 in Homa-Bay and is proficient in English, Kiswahili and Luo languages.
- b) The nominee holds MA in Education (1997) from the Institute of Education, University of London, Diploma in Education (1984), Kagumo Teachers College, Diploma in Education (1991), Institute of Education, University of London and International Leadership Academy, Certificate (1997, United Nations University,) Jordan Amman.
- c) The nominee has been affiliated as an officer, director, partner, proprietor, employee or consultant in organizations including: Self Employment at Senior Consultant from 2018 to-date; Amnesty International –Kenya Country Director from 2009 to 2018; Kalausi Consultant – Senior Consultant from 2004 to 2009; Inter Sudanese Consultations on Peace & Justice (ISCOP), Chief Executive Officer, from 2002 to 2004; The Netherlands Development Organization – SNV, Development Advisor from 1999 to 2002; UNESCO-PEER – Peace Education Advisor, from 1997 to 2002; Windle Trust International – Programme Officer, from 1988 to 1996; Teachers Service Commission – Head of English and Literature Department and “O” and “A” level Teacher of English and Literature, from 1984 to 1988.
- d) On Honours and Awards, the nominee stated recognitions to include: Amnesty International in Partnership with UKaid recognition for outstanding contribution to the Human Rights Education Project in Africa; Nominee for the Munir Mazrui Lifetime Achievement Award 2018, for commitment and continuous contribution towards promotion of Human Rights; and Rotary club – certificate of recognition July 2021.
- e) On Professional Associations, the nominee indicated affiliations with Rotary Club of Ongata Rongai East as Director of Resource Mobilization. 2020 & 2021; Centre for Rights Education and Awareness as Vice Chair Person from 2017 – to date; and a member of Amnesty International.

- f) On Memberships, the nominee is the Patron of Ugwe, a Community (civic) Society that provides social and spiritual support to its members and a member of the Karen Community SDA church.
- g) On Published writings, the nominee indicated to have authored several materials including: Nyang'aya J.A. and Prof. Nyong'o P.A (1995): Comprehensive Solutions to Refugee Problems in Africa: Bilateral, Regional and Multilateral Approaches. Published in the International Journal of Refugee Law, special issue – July 1995, OUP; Nyang'aya J.A. (1996) "A Social Democratic Alternative for Kenya". In Politics of Basic Needs. A Social Democratic Foundation Publication; Nyang'aya J.A. (1996) A review of "Adam, Eve and the Serpent" by Dr. Fred Sai, former President of IPPF, on the burden of African women, sexuality and family planning. In Africa Link Publication; Nyang'aya J. A. (2012). "Only a strong Arms Trade Treaty can stop our children becoming cannon fodder". carried as an opinion piece in the East African issue of July 23 -29, 2012; Nyang'aya J. A. (2012). International Justice System. "An important milestone, but the quest for justice should not stop here in the Independent Newspaper in the UK on January 24th 2012; Nyang'aya J. A. On regional insecurity. "Tackling the insecurity that affects us all"; Nyang'aya J. A. (2016). "Accidents – Cultural revolution needed on road use", Appearing in the opinion pages of The Standard issue of August 15th, 2016 and Daily Nation of August 17th 2016; Nyang'aya J. A. (2016). "Education Curriculum Reforms Overdue" appearing in The Standard July 29th; Nyang'aya J. A. (2016) On Politics in South Sudan "Leaders bloated egos to blame for senseless killings in Juba". Appearing in the Daily Nation; Nyang'aya J. A. (2016). On Human Rights "Even according to African culture, expelling refugees is not an option". Appearing in the Daily Nation May 26th; Nyang'aya J. A. (2016). On Adequate Housing Rights "Obsession with shortcuts cause of our tragedies". Appearing in the Standard May 9th; Nyang'aya J. A. (2016) On Electoral reforms "Restore credibility in electoral process" appearing in The Standard April 26th; Nyang'aya J. A. (2016) On Housing Rights "Enact new laws to curb inhumane evictions". Appearing in the Daily Nation March 17th and the Standard March 15th and Nyang'aya J. A. 2016. On Access to Justice "Free legal services will help protect rights". Appearing in the Daily Nation February 4th.
- h) On Public Office, Political Activities and Affiliations, the nominee confirmed that he does not hold any political office nor a member of any political party. However, the nominee was elected and held the position of National Chairman of Social Democratic Party of Kenya from 1994 to 2003 when the operations of the party were disbanded to merge with other political parties to form National Rainbow Coalition (NARC). Since then, the nominee has not been active in political party activities.
- i) The nominee indicated that he has never been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution; and has never been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties.

- j) The nominee indicated that he does not have any Deferred Income/Future Benefits and does not have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office.
- k) On sources of income, the nominee indicated to have income from consultancy contracts, amounting to KES 670,000.
- l) On Statement of net worth, the nominee estimated total Net Worth is at 49.5 million Kenya shillings itemized as: ¼ of an acre piece of land located in Acacia Estate, Olekasasi in Kajiado County worth 7 million Kenya Shillings; A Toyota Prado car worth 2 million Kenya shillings; 25% Shares in a residential property valued at approximately 100 Million Kenya Shillings in the Milimini area of Nakuru town. (20,000,000 Kenya shillings); An approximate 3 acre piece of land in Kojwach, Homabay County worth 1.5 million; and A rural residence (Main house) with other properties on the land is worth 19,000,000 Kenya shillings.
- m) The nominee confirmed that he does not have anything that can present potential conflict of Interest when he assumes the position nominated for.
- n) On Pro-Bono/Charity Work/Donations to charity, the nominee is a member and Director of the Rotary club of Ongata Rongai East, where he dedicates approximately 2 hours a week and approximately kshs 20,000/= a month. He is also a Member of the Board and the Vice Chairperson of CREAW, where he dedicates approximately 5 hours a month to this pro-bono work. Further the nominee is a church elder of the Karen Community SDA church and the leader of the Family life Ministry, where he dedicates approximately 2 hours a week to this work; a member of Amnesty International Kenya; and the Patron of Ugwe, a Community Society that provides social and spiritual support to its members. The nominee provides direct financial support to individual needy members of the community by way of school fees, health support, and other social needs.
- o) The nominee confirmed that he has never been charged in a court or law in the last three years and has never been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years.

5.5 General observations

5.5.1 Quorum of the Commission

131. The Committee observed that section 8 of the IEBC Act, 2011, provides that the regulation of the business and affairs of the Commission shall be as provided in the Second Schedule. Further, upon enactment Paragraph 5 of the Second Schedule to the Act further provided as follows: -

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

132. The Committee further observed that Parliament passed the Election Laws (Amendment) Act, No. 34 of 2017 and reduced the quorum of the Commission to *“half of the existing members of the Commission, provided that the quorum shall not be less than three members.*
133. The Committee further observed that in Katiba Institute & 3 Others v Attorney General & 2 Others [2018] eKLR, the High Court declared the amendment to Paragraph 5 of the Second Schedule as fundamentally flawed and unconstitutional.
134. The Committee was of the view the High Court nullification of Paragraph 5 of the Second Schedule to the Act had created a lacuna in the law and currently there is no legal provision in force setting out the quorum of the Commission. The Committee recommends that Parliament moves urgently and amends the IEBC Act, 2011 to rectify the situation in order to ensure the proper conduct of the business of the Commission.

5.6 Committee findings

a) Ms. Juliana Whonge Cherera

135. After conducting the approval hearings, the Committee made the following findings:

- (i) Ms. Juliana Whonge Cherera has the requisite qualifications and experience which qualifies her for appointment to the position of member of IEBC.
- (ii) Ms. Juliana Whonge Cherera according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
- (iii) The candidate exhibited impressive knowledge of topical issues including understanding of administration and management principles required to address the challenges facing the IEBC.
- (iv) Members of the public were invited by the Office of the Clerk to submit any information of interest on any of the candidates. The Committee did not receive any written statement on oath contesting suitability of the nominee as required under section 6 (9) of the Public Appointments (Parliamentary Approval) Act, 2011.
- (v) The selection panel exercised due diligence and contacted vetting bodies for confidential reports on the candidate. The Commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation and the National Intelligence Service.
- (vi) The nomination of Ms. Juliana Whonge Cherera was in compliance with Article 88 and 250(2) (b) of the Constitution and the statutory requirements set out in section 7A of the Independent Electoral and Boundaries Commission Act, 2011 (Act No.9 of 2011) as read with the First Schedule to the Act and sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act (Act No.33 of 2011).

b) Mr. Francis Mathenge Wanderi

- (i) Mr. Francis Mathenge Wanderi has the requisite qualifications and experience which qualifies him for appointment to the position of member of IEBC.
- (ii) Mr. Francis Mathenge Wanderi according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on his part.
- (iii) The candidate exhibited impressive knowledge of topical issues including understanding of administration and management principles required to address the challenges facing the IEBC.

- (iv) Members of the public were invited by the Office of the Clerk to submit any information of interest on any of the candidates. The Committee did not receive any written statement on oath contesting suitability of the nominee as required under section 6 (9) of the Public Appointments (Parliamentary Approval) Act, 2011.
- (v) The selection panel exercised due diligence and contacted vetting bodies for confidential reports on the candidate. The commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation and the National Intelligence Service.
- (vi) The nomination of Mr. Francis Mathenge Wanderi was in compliance with Article 88 and 250(2) (b) of the Constitution and the statutory requirements set out in Section 7A of the Independent Electoral and Boundaries Commission Act, 2011 (Act No.9 of 2011) as read with the First Schedule to the Act and sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act (Act No.33 of 2011).

c) Ms. Irene Cherop Masit

- (i) Ms. Irene Cherop Masit has the requisite qualifications and experience which qualifies her for appointment to the position of member of IEBC.
- (ii) Ms. Irene Cherop Masit according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
- (iii) The candidate exhibited impressive knowledge of topical issues including understanding of administration and management principles required to address the challenges facing the IEBC.
- (iv) Members of the public were invited by the Office of the Clerk to submit any information of interest on the candidate. The Committee did not receive any written statement on oath contesting suitability of the nominee as required under section 6 (9) of the Public Appointments (Parliamentary Approval) Act, 2011.
- (v) The selection panel exercised due diligence and contacted vetting bodies for confidential reports on the candidate. The commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation and National Intelligence Service.
- (vi) The nomination of Ms. Irene Cherop Masit was in compliance with Article 88 and 250(2) (b) of the Constitution and the statutory requirements set out in section 7A of the Independent Electoral and Boundaries Commission Act, 2011 (Act No.9 of 2011) as read with the First Schedule to the Act and sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act (Act No.33 of 2011).

d) Mr. Justus Abonyo Nyang'aya

- (i) Mr. Justus Abonyo Nyang'aya has the requisite qualifications and experience which qualifies him for appointment to the position of member of IEBC.
- (ii) Mr. Justus Abonyo Nyang'aya according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on his part.
- (iii) The candidate exhibited impressive knowledge of topical issues including understanding of administration and management principles required to address the challenges facing the IEBC.
- (iv) Members of the public were invited by the Office of the Clerk to submit any information of interest on the candidate. The Committee did not receive any written statement on oath contesting their suitability of the nominee as required under section 6 (9) of the Public Appointments (Parliamentary Approval) Act, 2011.
- (v) The selection panel exercised due diligence and contacted vetting bodies for confidential reports on the candidate. The commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation and National Intelligence Service.
- (vi) The nomination of Mr. Justus Abonyo Nyang'aya was in compliance with Article 88 and 250(2) (b) of the Constitution and the statutory requirements set out in Section 7A of the Independent Electoral and Boundaries Commission Act, 2011 (Act No.9 of 2011) as read with the First Schedule to the Act and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act (Act No.33 of 2011).

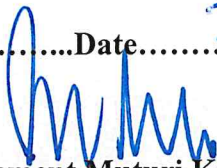
CHAPTER 6

6.0 COMMITTEE RECOMMENDATIONS

136. **THAT** Pursuant to Article 250 (2) (b) of the Constitution, the provisions of the Public Appointments (Parliamentary Approval) Act, 2011, the Independent Electoral and Boundaries Commission Act, 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that; **the House approves the nomination of the following persons for appointment by H.E the President as members of the Independent Electoral and Boundaries Commission (IEBC);**

- (i) Ms. Juliana Whonge Cherera
- (ii) Mr. Francis Mathenge Wanderi
- (iii) Ms. Irene Cherop Masit
- (iv) Mr. Justus Abonyo Nyang'aya

Signed Date 27/8/2021



Hon. Clement Muturi Kigano, M.P
(Chairperson)

Departmental Committee on Justice and Legal Affairs

3) FILLED QUESTIONNAIRE

SCHEDULE

[Section 6(8).]

**CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR
APPOINTMENT TO PUBLIC OFFICE BY PARLIAMENT QUESTIONNAIRE**

Notes:

- a) This questionnaire applies to appointments to public office arising by or under the Constitution or any other law where parliamentary approval is required.
- b) The questionnaire shall be used by the relevant parliamentary committee to vet a nominee appearing before the committee in the process of parliamentary approval.
- c) The questionnaire shall be filled and submitted by the nominee to the relevant parliamentary committee through the Clerk of the relevant House of Parliament on or before a date set by the committee.
- d) The submission of false information in the questionnaire is an offence and may result in prosecution.
- e) Any form of canvassing by a nominee shall lead to disqualification.
- f) The nominee must answer all the questions.

1. **Name:** (State full name) Irene Cherop Masit

2. **Position:** (State office to which you have been nominated).

Member (Commissioner) of The Independent Electoral and Boundaries Commission

3. **Sex:** Female

4. **Date of Birth:** (State year and place of birth)

Born 1967 in Chepkorio Ward in Keiyo South, Elgeyo-Marakwet County.

5. **Marital Status:** Single Parent of adult children

6. **Daytime phone number:** 0722 522 499

7. **Mobile phone number:** 0722 522 499
8. **Email Address:** masitirene@gmail.com
9. **ID Number:** 8032980
10. **PIN Number:** A002500016U
11. **Nationality:** Kenyan
12. **Postal Address:** P.O Box 5858, Eldoret 30100.
13. **Town/City:** ELDORET
14. **Knowledge of Languages:** (Specify Languages): Kalenjin, Kiswahili, and English.
15. **Education:** (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).
1. Bachelor of Laws (LLB) (2nd Class Upper Division) – The University of Nairobi (2015)
 2. Master of Science (HRM) – The University of Manchester, United Kingdom (1999)
 3. Bachelor of Arts (Social Work) (2nd Class Upper Division) – The University of Nairobi (1993).
 4. Kenya Advanced Certificate of Education (3 Principals and 1 Subsidiary) (1988)
 5. Kenya Certificate of Education (Division III) (1985).

Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms, or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee, or consultant)

1. Member (part-time)
National Government CDF Board; March 2019 to March 2022.
2. Member (full-time)
Interim Independent Boundaries Review Commission; May 2009 to August 2010.
3. Deputy Secretary (full-time)
Constitution of Kenya Review Commission; March 2002 to April 2006.

4. Program Operations Manager (full-time)
The NGO Coordination Board (Office of the President); March 1996 to March 2002.
5. Board Member (part-time)
Koptega Girls Secondary School; April 2019 to April 2022.
Koptega Girls Secondary School; 2012 to 2015
Koptega Girls Secondary School; 30th July 2008 to 19th September 2011.
6. Board Member (part-time)
St Agatha Mokwo Girls Secondary School; August 2012 to August 2015.
7. Board Member (part-time)
Athnas Kandie Boys Secondary School; 2011 to 2014
8. Board Member (part-time)
Elgeyo- Marakwet County Land Management Board; November 2014 to 2016
9. Returning Officer (part-time)
Westland's and Langata Constituencies within Nairobi County; January 2008 to December 2008
10. Deputy Returning Officer (part-time)
The larger Embakasi Constituency (before Boundary Review); January 2007 to December 2007
11. Program Officer (full-time)
Development Alternatives Network (a logical DAN) a local registered NGO; January 1994 to January 1995.

16. Honours and Awards: (List any scholarships, fellowships, honorary degrees, academic or professional honours, honorary society memberships, military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).

1. Government scholarship for Master of Science at the university of Manchester (1998) through the Department of Personnel Management (DPM).
2. Certificate of award by the national youth service on preuniversity training program – service woman number 12894 (1989)

17. Professional Association (where applicable): (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).

1. Member of the Institute of Internal Auditors of Kenya, membership number 2223343 (2019).

2. Member of the International Certified Addiction Professional (Global Centre for Credentialing and Certification) – Treatment, membership number 1389 (2019).

18. **Memberships:** (List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).

1. Alumni of the University of Nairobi and the University of Manchester.
2. Life member Maendeleo ya Wanawake Organization (M.Y.W.O) in recognition of working with grassroot women (2006)
3. ISSUP – International Society for Substance Use Professional.

19. **Published Writings:**

(a) List the titles, publishers and dates of books, articles, reports, letters to the editor, editorial pieces, or other published materials you have authored or edited.

1. Matters of Foreign Employment and Management of Labour Migration Taskforce on Administration of Foreign Employment & Management of Labour Migration in part fulfilment of requirements for the Degree of Bachelor of Laws at the University of Nairobi (2015). Unpublished.
2. Report and Recommendations on The Delimitation of Constituencies and Recommendations on Local Authority Electoral Units and Administrative Boundaries for Districts & other units by the Interim Independent Boundaries Review Commission on (2010). Reference.
3. Dissertation on Employee Counselling and Stress at Work: An Investigation into some factors which Influence Employee Performance in the Public Service of Kenya in part fulfilment of requirements for The Degree of Master of Science in Human Resources Management in The Faculty of Education UK. (1999). Reference.

(b) Supply four (4) copies of any reports, memoranda, or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

20. **Public Office, Political Activities and Affiliations:**

(a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.

1. Member (part-time) – Appointed for 3-year contract, renewable.
National Government CDF Board.
2. Member (full-time) – Appointed for fixed term and served for 15 months.

- Interim Independent Boundaries Review Commission.
- 3. Deputy Secretary (full-time) – Appointed for a term of 4 years.
Constitution of Kenya Review Commission.
- 4. Program Operations Manager (full-time) – Permanent and Pensionable.
The NGO Coordination Board (Office of the President).
- 5. Board Member (part-time) – Appointed for a term of 3 years
Koptega Girls Secondary School; April 2019 to April 2022.
Koptega Girls Secondary School; 2012 to 2015
Koptega Girls Secondary School; 30th July 2008 to 19th Sep 2011.
- 6. Board Member (part-time) - Appointed for a term of 3 years
St Agatha Mokwo Girls Secondary School.
- 7. Board Member (part-time) - Appointed for a term of 3 years
Athnas Kandie Boys Secondary School.
- 8. Board Member (part-time) - Appointed for a term of 3 years but served 2 years.
Elgeyo- Marakwet County Land Management Board.
- 9. Returning Officer (part-time) – Appointed for 9 months
Westland's and Langata Constituencies within Nairobi County.
- 10. Deputy Returning Officer (part-time) – Appointed for 6 months
The larger Embakasi Constituency (before Boundary Review)
- 11. Program Officer (full-time) – Appointed for 3-year term contract.
Development Alternatives Network (a logical DAN) a local registered NGO.
- 12. County Secretary (Continuous) – Elected for 5 years renewable.
Maendeleo ya Wanawake Organization (M.Y.W.O).

(b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.

- 1. Unsuccessfully Vied for Women Representative seat (2013) in Elgeyo-Marakwet County.

(c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?

- 1. No

(d) Have you ever been adversely associated with practices that depict bias, favoritism, or nepotism in the discharge of public duties?

1. No

21. **Deferred Income/Future Benefits:** (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts, and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc).

1. None

22. **Outside commitment during service in office:** (Do you have any plans, commitments, or agreements to pursue outside employment with or without compensation during your service in office? If so explain).

1. None

23. **Sources of Income:** (List sources and mounts of all income received during the calendar year preceding your nomination and in the current calendar year).

1. NG-CDF Board and National Assembly Select Committee activities and programs 2019/2020 (Kshs 1,600,000, PAYE – 427,000) and 2020/2021 (Kshs 1,280, 000, PAYE – Kshs 365, 000) derived from namely:
 - a. Board Meetings sittings
 - b. NASC meetings
 - c. Committee Meetings sittings
 - d. Night-out allowances (Workshops, Inductions, Trainings, Visits, Seminars etc.)
 - e. Mileage
 - f. Monitoring and Evaluation field visits

24. **Tax Status:** (State whether you have fully complied with your tax obligations to the State up to the end of the financial year immediately preceding the nomination for appointment).

1. Tax Compliant with a Certificate Number KRANON1221394021 valid for 12 months up to 25/04/2022.

25. **Statement of Net Worth:** (State your financial net worth).

1. Residential House - Kshs 20Million
 2. Land Eldoret - Kshs 5 Million
 3. Land Kajiado - Kshs 20 Million
 4. Vehicle - Kshs 2 Million
- Total – Kshs 47 Million

26. Potential Conflicts of Interest:

- (a) Identity the family members or other persons, parties, categories obligation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to rise.

1. None

- (b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern

1. Act according to the Constitution and all relevant/attendant Legislations and governing Laws.
2. Disclose any potential conflict of interest.
3. Record any potential conflict of interest.
4. Report to relevant authorities any conflict of interest where/when the situation demands.

27. Pro-Bono/Charity Work/Donations to charity: (Describe what you have done by way of pro bono or charity work, listing specific instances, the amount contributed, and the amount of time devoted to each).

1. As a certified drug addiction professional, I offer free counselling and guidance services to immediate colleagues, family, friends, and neighbors whenever my assistance or service is required free of charge. Already I'm in the process of establishing a drug addiction center to offer the same service in a regulated environment.
2. Serve in several School Board dedicating time, experience, skills, and knowledge to uplift the standards and capacity of learners and community at large.
- 3: Work with grassroot communities (especially women and youth) by dedicating time and resources in raising funds for school fees, food stuff, hospital bills and capacity building.

28. Have you ever been charged in a court or law in the last three years? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.

1. No

29. Have you ever been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years?

1. No

30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?

1. No

31. **References:** (List three persons who are not your relatives who are familiar with your character, qualification, and work).

1. Mr. Robert Masese (OGW)
The Chairman
National Government Constituencies Development Fund Board
P.O Box 46682-00100
Nairobi
Email: maseserm@gmail.com
2. Jennifer J. Murgor
Deputy Director (HR)
National Council of Science, Technology, and Innovation (NACOSTI)
P.O. Box 30623-00100
Nairobi
Email: jjmurgor@gmail.com
3. Nancy Nyatichi Nyamwamu
Legal Counsel
Judicial Service Commission of Kenya
P.O. Box 75560-00200
Nairobi
Email: nyatichi.nancy@gmail.com
4. Hon. Omondi Anyanga
Director NG-CDF Board
National Government Constituencies Development Fund Board
P.O Box 46682-00100
Nairobi.
Email: panyanga@ngcdf.go.ke

REPUBLIC OF KENYA



SELECTION PANEL FOR THE APPOINTMENT OF COMMISSIONERS OF
THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (2021)

COUNTY HALL, 1ST FLOOR, P. O. BOX 41842 - 00100 NAIROBI.

TEL: (020) 2848000 EMAIL: IEBCselectionpanel2021@gmail.com

Ref: SP/CORR/216

29th July, 2021

His Excellency Hon. Uhuru Kenyatta, CGH,
President and Commander-In-Chief of the Defence Forces
of the Republic of Kenya,
Office of the President, Harambee House,
NAIROBI.

Your Excellency,

REPORT OF THE SELECTION PANEL FOR THE APPOINTMENT OF
COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (2021)

Paragraph 3(4) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 provides as follows-

After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

Pursuant to this provision of the law, the Selection Panel recommends to Your Excellency the following eight (8) persons for consideration for nomination for appointment to the four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission, in alphabetical order-

	NAME	GENDER	I.D/ PP NO.	AGE	COUNTY	FIELD
1.	Francis M. Wanderi	M	1737467	68	Nyeri	Management
2.	Irene Cherop Masit	F	8032980	54	Elgeyo-Marakwet	Management
3.	Juliana Whonge Cherera	F	14492597	45	Mombasa	Public Administration
4.	Justus Abonyo Nyang'aya	M	4315948	64	Homa Bay	Governance
5.	Justus Maithya Munyithya	M	9691902	53	Kitui	Law
6.	Kagwiria Mbogori	F	7010401	56	Meru	Law
7.	Naisiae Paloshe Tobiko	F	20904589	42	Kajiado	Electoral Matters
8.	Richard Okoth Oduor (Prof.)	M	14719722	45	Siaya	Public Administration

The names are forwarded for Your Excellency's further action in terms of paragraphs 3(4) and (5) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011.

The Selection Panel is confident that the nominees recommended for the position of Member of the Independent Electoral and Boundaries Commission are the most suitable candidates for the position and that they possess the necessary skills and knowledge to competently steer the Independent Electoral and Boundaries Commission in discharging its mandate.

We take this opportunity to thank you for the opportunity given to serve our country.

Yours faithfully,

Signed: Date: 29-7-2021..

DR. ELIZABETH MULI,
CHAIRPERSON, SELECTION PANEL FOR THE APPOINTMENT OF
COMMISSIONERS OF THE IEBC (2021).

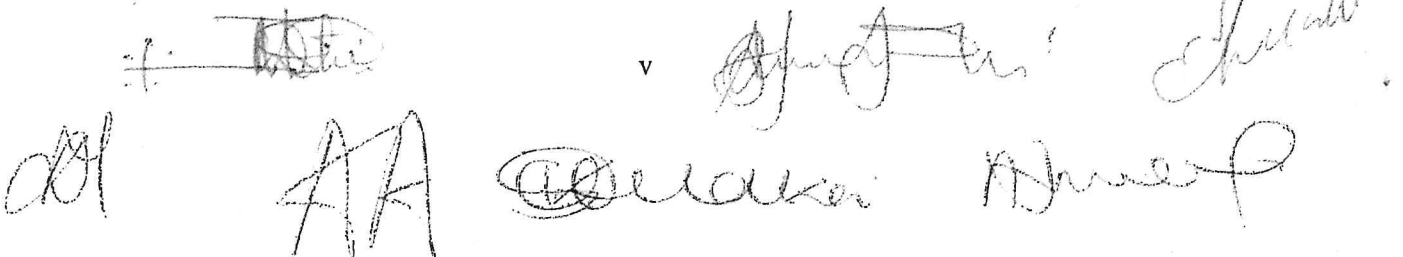
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- Annex 1** *Gazette* Notice No. 3522 of 14th April, 2021- Declaration of vacancies
- Annex 2** *Gazette* Notice No. 4004 of 26th April, 2021- Appointment of the Selection Panel
- Annex 3** *Gazette* Notice 5091 and published on 27th May, 2021- Appointment of Law Society nominee to the Selection Panel
- Annex 4** Minutes of the Meetings of the Selection Panel
- Annex 5** Rules of Procedure of the Selection Panel
- Annex 6** Report on consultative meetings with experts and stakeholders and presentations made
- Annex 7** *Gazette* Notice No. 4198 dated 1st May, 2021- Advertisement for the vacancy in the position of Member of the Independent Electoral and Boundaries Commission
- Annex 8** Advertisement carried in the Daily Nation Newspaper dated 1st May, 2021
- Annex 9** Advertisement Carried in the Standard Newspaper dated 1st May, 2021
- Annex 10** *Gazette* Notice No. 5086 dated and published on 25th May, 2021- publication of the list of names and qualifications of all applicants
- Annex 11** Advertisement Carried in the Daily Nation Newspaper dated 25th May, 2021- publication of the list of names and qualifications of all applicants
- Annex 12** Advertisement Carried in the Standard Newspaper dated 25th May, 2021- publication of the list of names and qualifications of all applicants
- Annex 13** *Gazette* Notice No. 5769 dated and published on 12th June, 2021 - Republication of the list of names and qualifications of all applicants
- Annex 14** Advertisement Carried in the Daily Nation Newspaper dated 12th June, 2021 - Republication of the list of names and qualifications of all applicants
- Annex 15** Advertisement Carried in the Standard Newspaper dated 12th June, 2021 - Republication of the list of names and qualifications of all applicants
- Annex 16** *Gazette* Notice No. 5770 dated and published on 12th June, 2021 - Publication of names of shortlisted candidates
- Annex 17** Advertisement Carried in the Daily Nation Newspaper dated 12th June, 2021 - Publication of names of shortlisted candidates



- Annex 18 Advertisement Carried in the Standard Newspaper dated 12th June, 2021 - Publication of names of shortlisted candidates
- Annex 19 *Gazette* Notice No. 7148 dated and published on 17th July, 2021 – Rescheduling of interviews slated for Tuesday, 20th July, 2021 to Friday, 23rd July, 2021
- Annex 20 Advertisement Carried in the Daily Nation Newspaper dated 17th July, 2021 - Rescheduling of interviews slated for Tuesday, 20th July, 2021 to Friday, 23rd July, 2021
- Annex 21 Advertisement Carried in the Standard Newspaper dated 17th July, 2021 - Rescheduling of interviews slated for Tuesday, 20th July, 2021 to Friday, 23rd July, 2021
- Annex 22 Memoranda on Candidates Shortlisted for the Position of Member of the Independent Electoral and Boundaries Commission and Responses Received from Candidates
- Annex 23 Responses from Agencies on Candidates Shortlisted for the Position of Member of the Independent Electoral and Boundaries Commission
- Annex 24 Interview Results
- Annex 25 Copies of the applications of persons recommended for consideration for nomination for appointment to the position of Member of the Independent Electoral and Boundaries Commission

ABBREVIATIONS AND ACRONYMS

CGH	Chief of the Order of the Golden Heart
DCI	Directorate of Criminal Investigations
EBS	Elder of the Order of the Burning Spear
EACC	Ethics and Anti-Corruption Commission
Fr.	Father
HELB	Higher Education Loans Board
HSC	Head of State Commendation
ICT	Information and Communication Technology
IEBC	Independent Electoral and Boundaries Commission
IREC	Independent Review Commission
KEPSA	Kenya Private Sector Alliance
KICC	Kenyatta International Convention Centre
KRA	Kenya Revenue Authority;
LSK	Law Society of Kenya;
OGW	Order of the Grand Warrior of Kenya
Prof.	Professor
Rev.	Reverend
Rtd.	Retired

LIST OF STATUTES

1. Constitution of Kenya, 2010
2. Elections Act, 2011
3. Election Laws (Amendment) Act, 2016
4. Independent Electoral and Boundaries Commission Act, 2011

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

1. The Independent Electoral and Boundaries Commission (IEBC) is a constitutional Commission established under Article 88 of the Constitution and its mandate is provided for under Article 88(4) of the Constitution and section 4 of the IEBC Act, 2011. It is responsible for supervising referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament and in particular, for-
 - (a) the continuous registration of citizens as voters;
 - (b) the regular revision of the voters' roll;
 - (c) the delimitation of constituencies and wards;
 - (d) the regulation of the process by which parties nominate candidates for elections;
 - (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
 - (f) the registration of candidates for election;
 - (g) voter education;
 - (h) the facilitation of the observation, monitoring and evaluation of elections;
 - (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
 - (j) the development of a code of conduct for candidates and parties contesting elections;
 - (k) the monitoring of compliance with the legislation required by Article 82(1)(b) relating to nomination of candidates by parties;
 - (l) the use of appropriate technology and approaches in the performance of its functions; and
 - (m) such other functions as are provided for by the Constitution or any other written law.
2. Section 5 of the Independent Electoral and Boundaries Commission Act, 2011 provides for the composition and appointment of the Commission as follows-
 - (1) *The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.*
 - (2) *The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.*

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- (3) *The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.*
- (4) *The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission.*

3. Section 7A of the Independent Electoral and Boundaries Commission, 2011 provides for circumstances that would occasion a vacancy in the office of the chairperson or a member of the Commission as follows-

- (1) *The office of the chairperson or a member of the Commission shall become vacant if the holder-*
 - (a) *dies*
 - (b) *resigns from office by notice in writing addressed to the President; or*
 - (c) *is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.*
- (2) *The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.*
- (3) *Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).*
- (4) *Whenever a vacancy occurs in the office of the chairperson, the vice chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such time as the chairperson is appointed.*
- (5) *Where the positions of chairperson and vice chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such time as the chairperson is appointed.*
- (6) *The provisions of section 6(1) shall not apply to the vice-chairperson or member acting as the chairperson under this section.*

4. Paragraph 1(1) of the First Schedule to the Independent Electoral and Boundaries Act provides for the appointment of a Selection Panel for the purposes of the appointment of the chairperson or a member of the Selection Panel. Paragraphs 2 (b) and (c) and (3) of the Schedule further provides for the membership of the Selection Panel as follows-

- (2) *The selection panel shall consist of—*
 - (a) *two men and two women nominated by the Parliamentary Service Commission;*
 - (b) *one person nominated by the Law Society of Kenya; and*
 - (c) *two persons nominated by the Inter-Religious Council of Kenya.*

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5. Pursuant to paragraph 1(6) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, the Parliamentary Service Commission provided secretariat services and facilities to the Selection Panel in the performance of its functions.

1.2 APPOINTMENT OF THE SELECTION PANEL

6. By Gazette Notice No. 3522 of 14th April, 2021 (*Annex 1*), His Excellency, the President, declared four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission as follows-

IN EXERCISE of the powers conferred by section 7A(2) of the Independent Electoral and Boundaries Commission Act, 2011, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, declare vacancies in the positions of four members of the Independent Electoral and Boundaries Commission.

7. On 26th April, 2021, by Gazette Notice No. 4004 (*Annex 2*), in exercise of the powers conferred by paragraph 1(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, His Excellency, the President appointed the following as Members of the Selection Panel for the Appointment of Members of the Independent Electoral and Boundaries Commission-

*Elizabeth Muli (Dr.),
Gideon Solonka,
Awori James Achoka,
Elizabeth Odundo Moyo,
Dorothy Jemator Kimengech,
Joseph Ngumbi Mutie (Rev. Fr.),
Faridun Suleiman Abdalla (Dr.)*

8. On 28th April, 2021, six members of the Selection Panel took and subscribed to the oath or affirmation of office before the Honourable Deputy Chief Justice at the Supreme Court of Kenya as prescribed under the Third Schedule of the Independent Electoral and Boundaries Commission Act, 2011. Ms. Dorothy Jemator Kimengich, the nominee of the Law Society of Kenya, did not take the oath or affirmation of office owing to various court cases that had been filed challenging her appointment.

1.3 ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

9. Pursuant to paragraph 1(4) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, at the first meeting of the Selection Panel held on Wednesday, 28th April, 2021, the Selection Panel conducted the election of its Chairperson and Vice Chairperson. Dr. Elizabeth Muli, was elected as the

Chairperson of the Selection Panel while Mr. Awori James Achoka, was elected as the Vice-Chairperson of the Selection Panel.

1.4 LITIGATION WITH RESPECT TO THE NOMINEE OF THE LAW SOCIETY OF KENYA TO THE SELECTION PANEL

10. Following the nomination of the Members of the Panel by His Excellency, the President, four court cases were filed against the Law Society of Kenya challenging the nomination of Ms. Dorothy Jemator Kimengech as the Law Society of Kenya nominee. The cases filed were as follows-
 - (1) In the High Court at Nairobi: Constitutional Petition No. E147 of 2021: Sheila Murugi Mugo versus the Law Society of Kenya, Parliamentary Service Commission & Dorothy Jemator;
 - (2) In the High Court at Machakos: Judicial Review Miscellaneous Application No. 3 of 2021: Alfonse Kilonzo Muli versus the Parliamentary Service Commission & 2 Others (Morris Kimuli and Dorothy Jemator Kimengech joined as Interested Parties);
 - (3) In the High Court at Nairobi: Constitutional and Human Rights Division Petition No. E151 of 2021: Charles Midenga versus Law Society of Kenya, Parliamentary Service Commission and Kimengech Dorothy Jemator; and
 - (4) In the High Court at Nairobi: Constitutional and Human Rights Division Petition No. E152 of 2021: Peter Solomon Gichira versus Law Society of Kenya, Parliamentary Service Commission and the Hon. Attorney General, Secretary to the Selection Panel and Kimengech Dorothy Jemator are listed as Interested Parties.
11. On 11th May, 2021, in High Court at Machakos Judicial Review Miscellaneous Application No. 3 Of 2021: Alfonse Kilonzo Muli versus the Parliamentary Service Commission & 2 Others, the court delivered its judgement in which it ordered as follows-
 - a) *An order of certiorari is hereby issued removing into this Court for the purposes of being quashed and quashing the decision of the 1st Respondent, the Parliamentary Service Commission, transmitting to the President the name of the 2nd Interested Party, Dorothy Jemator for appointment to the Selection Panel for the appointment of Commissioners of the IEBC and any subsequent actions and decisions taken in pursuance of the said transmission.*
 - b) *An order of mandamus is hereby issued directing the 1st Respondent to submit to the President of the Republic of Kenya the name of the 1st Interested Party, Morris Kimuli for appointment to the Selection Panel for the appointment of Commissioners of the IEBC.*

12. On 26th May, 2021, by Gazette Notice No. 5091 (*Annex 3*), His Excellency, the President appointed Mr. Morris Kimuli as a Member of the Selection Panel as follows-

IN EXERCISE of the powers conferred by paragraph 1(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces appoint—

MORRIS KIMULI

to be a member of the Selection Panel for the selection of nominees for the appointment of members of the Independent Electoral and Boundaries Commission. The appointment of Kimengech Dorothy Jemator is revoked.

13. Mr. Morris Kimuli was sworn in on 28th May, 2021 by the Honourable Chief Justice at the Supreme Court of Kenya.

1.5 MEETINGS OF THE SELECTION PANEL

14. In the execution of its mandate, the Selection Panel held fifty-three (53) Meetings. The Minutes of the Meetings of the Selection Panel are attached at *Annex 4*.

1.6 RULES OF PROCEDURE

15. Pursuant to paragraph 1(5) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, at its meeting held on Friday, 30th April, 2021, the Selection Panel adopted the Rules of Procedure for the Selection Panel which are attached at *Annex 5*.

CHAPTER TWO

STAKEHOLDER CONSULTATIONS

16. During its Second Meeting held on Friday, 30th April, 2021, the Selection Panel resolved that it would benefit the Selection Panel and enrich its understanding of elections management if the Panel invited and received presentations from various resource persons with expertise in elections management and on other areas relevant to the mandate of the Selection Panel.
17. In this regard, the Selection Panel invited stakeholders from various sectors who made presentations to the Selection Panel. The stakeholders and resource persons made presentations on the areas identified by the Selection Panel as set out below—

Resource Persons

- (a) Mr. Felix Odhiambo, Executive Director, Electoral Law and Governance Institute for Africa (ELGIA): *Effective Management of Elections: Critical Issues and Implications for the Selection of IEBC Commissioners*, on 6th May, 2021;
- (b) Dr. Collins Odote, Senior Lecturer, School of Law, University of Nairobi & Director, CASELAP: *Effective Management of Elections: Critical Issues and Implications for the Selection of IEBC Commissioners*, on 6th May, 2021; and
- (c) Amb. (Dr.) Yusuf Nzibo, Former IIEC and IEBC Commissioner: *Effective Management of Elections: Insights from a Former Commissioner* on 12th May, 2021.

Constitutional Commissions

- (d) Mr. Wafula Chebukati, Chairman, Independent Electoral and Boundaries Commission and Prof. Abdi Yakub Guliye, Commissioner, Independent Electoral and Boundaries Commission: *Managing Elections in Kenya: An Insider's Perspective*, on 10th May, 2021;
- (e) Ms. Anne Amadi, Chief Registrar, Judicial Service Commission: *Effective Guidelines and Criteria for Recruitment and Selection of Applicants: Shared Experiences from Recruitment in the Judicial Service Commission*, on 10th May, 2021;
- (f) Mr. Patrick Owiny, Deputy Director, Ethics and Compliance, Ethics and Anti-Corruption Commission: *Effective Management of Elections: Ethics and Integrity in Managing Elections*, on 11th May, 2021; and
- (g) Dr. Joyce Mwikali Mutinda, Chair, National Gender and Equality Commission: *Effective Management of Elections: Gender and Equality in Elections*, on 12th May, 2021.

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Signature

Signature

Signature

The Judiciary

- (h) Hon. Zipporah Gichana, Secretary, Judiciary Committee on Elections (JCE) on behalf of Hon. Mr. Justice Daniel Musinga J.A Chairperson JCE.: *Effective Management of Elections: Experiences and Reflections from the Judiciary*, on 11th May, 2021.

The Legislature

- (i) Hon. Clement Muturi Kigano, MP, Chairperson of the Departmental Committee on Justice and Legal Affairs, National Assembly: *Effective Management of Elections: The Parliamentary Perspective and Legal Framework on Election Management*, on 11th May, 2021; and
(j) Sen. Okong'o Mogeni, SC, MP, Chairperson of the Standing Committee on Justice and Legal Affairs Committee, Senate: *Effective Management of Elections: The Parliamentary Perspective and Legal Framework on Election Management*, on 11th May, 2021.

County Governments

- (k) Hon. Ndegwa Wahome, Chairman, County Assemblies Forum: *Effective Management of Elections: Election Management in a Devolved Government*, on 11th May, 2021; and
(l) Memorandum from the Council of Governors: *Election Management in a Devolved Government*.

Private Sector








- (m) Ms. Carole Kariuki Karuga, CEO, Kenya Private Sector Alliance (KEPSA): *Effective Management of Elections: Perspectives from the Private Sector*, on 11th May, 2021.

Media

- (n) Mr. Churchill Otieno, President, Editor's Guild: *Effective Management of Elections: Perspectives from the Media*, on 12th May, 2021.

Persons with Disability

- (o) Dr. Lawrence Mute, Lecturer, University of Nairobi: *Effective Management of Elections: Disability and the Management of Elections*, on 12th May, 2021; and
(p) Ms. Miriam Opondo, representative of the Deaf Community: *Effective Management of Elections: Disability and the Management of Elections*, on 12th May, 2021.

7.  7. 
    

Youth

- (q) Mr. Kevin Osido, Executive Director/CEO County Governments Watch Youth Affairs: *Effective Management of Elections: Perspectives of the Youth*, on 12th May, 2021.

Religious/ Community Leaders

- (r) Mr. Hassan Ole Naado, Chairman, Supreme Council of Kenya Muslims (SUPKEM): *Effective Management of Elections: Perspectives of a Religious Leader*, on 7th May, 2021;
- (s) Mr. Zahir Abbas, Chairman, Shia Community; *Effective Management of Elections: Perspectives of a Religious Leader*, on 7th May, 2021;
- (t) Mr. Nitin Malde, Representative of the Hindu Council of Kenya: *Effective Management of Elections: Perspectives of a Religious Leader*, on 7th May, 2021;
- (u) Archbishop Jackson Ole Sapit, Anglican Community: *Effective Management of Elections: Perspectives from Religious Leaders*, on 17th May, 2021;
- (v) Bishop Dr. John Warari, Evangelical Community: *Effective Management of Elections: Perspectives from Religious Leaders*, on 17th May, 2021; and
- (w) Archbishop Anthony Muheria, Catholic Community: *Effective Management of Elections: Perspectives from Religious Leaders*, on 17th May, 2021.

ICT Sector

- (x) Mr. Phillip Irode, Head of Information Security at ICT Authority: *Effective Management of Elections: Use of ICT in Managing Elections*, on 17th May, 2021.

Corporate Governance

- (y) CS Obare Nyaega, CEO, Institute of Certified Secretaries: *Effective Management of Elections: Enhancing Good Governance in the IEBC*, on 17th May, 2021.

18. The detailed Report of the Selection Panel on the consultative meetings and the presentations received are attached at *Annex 6*.

CHAPTER THREE

COURT CASES INVOLVING THE SELECTION PANEL

19. The Selection Panel did, in the course of its work, face several challenges in Court. The cases broadly fell in the following categories-
- (a) Cases challenging the enabling law that established the Selection Panel;
 - (b) A case challenging the short-listing process and in particular, the alleged failure to short-list an applicant; and
 - (c) Cases challenging the representative of the Law Society of Kenya to the Selection Panel – these are discussed at Chapter 1.4 (paragraphs 10 to 13) above.

3.1 CASES CHALLENGING THE ENABLING LAW THAT ESTABLISHED THE SELECTION PANEL

(1) HIGH COURT AT NAIROBI: CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. E364 OF 2020: OKIYA OMTATA VERSUS THE HON. ATTORNEY GENERAL, NATIONAL ASSEMBLY, THE SENATE AND PARLIAMENTARY SERVICE COMMISSION AND OTHERS

20. This case was filed even before the appointment of the Selection Panel and challenged, among other issues, the constitutionality of sections 2(2)(a) and 3 of the Independent Electoral and Boundaries Commission (Amendment) Act, No. 18 of 2020.
21. The grounds of the Petition were that the involvement of the Parliamentary Service Commission in the recruitment of the Selection Panel for the Appointment of Commissioners of the Independent Electoral and Boundaries Commission violates the principles of separation of powers, the rule of law and good governance as well as violating the independence of the Independent Electoral and Boundaries Commission and violation of the rights under Article 38.
22. The Petition, which was opposed by the Attorney General, the National Assembly and the Senate, came up for hearing on 26th July 2021 and as at the date of the adoption of this Report, was due for delivery of judgment on 28th October 2021.

(2) HIGH COURT AT NAIROBI: CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. E165 OF 2021: ADRIAN KAMOTHO NJENGA OKIYA OMTATA VERSUS THE SELECTION

del AA 9 [Signature] [Signature] [Signature]

**PANEL, PARLIAMENT OF KENYA, THE HON. ATTORNEY
GENERAL AND THE IEBC**

23. This suit was filed by the Petitioner, Adrian Kamotho Njenga, against the Selection Panel, the Parliament of Kenya, the Attorney General and the IEBC. The Petitioner sought for conservatory orders to suspend the *Gazette* Notice declaring vacancies in the IEBC and inviting applications for the position of the Members of the IEBC on the grounds that there was no legal provision on the filling of vacancies in the IEBC and nor was there provision for the number of nominees to be submitted to President for appointment. He further alleged that section 7 of the IEBC Act is unconstitutional to the extent that it imposes a requirement that Commissioners are serve on full-time basis.
24. In a ruling delivered on 3rd June 2021, the High Court declined to issue the conservatory orders sought and instead ruled that it was in the public interest for the recruitment process to proceed.
25. As at the time of the adoption of this Report, the main petition was pending for hearing.

**(3) HIGH COURT AT NAIROBI: CONSTITUTIONAL AND HUMAN
RIGHTS DIVISION PETITION NO. E154 OF 2021: SUSAN MWENDE
MUTHONI VERSUS THE HON. ATTORNEY GENERAL AND
PARLIAMENTARY SERVICE COMMISSION AND OTHERS**

26. The above Petition was filed in the High Court of Kenya at Nairobi by the Petitioner, Susan Mwende Muthoni, against the Attorney General and the Parliamentary Service Commission, as the 1st and 2nd Respondents, respectively, while Members of the Selection Panel: Dr. Elizabeth Muli, Mr. Gideon Solonka, Mr. Awori James Achoka and Ms. Elizabeth Odundo Meyo, were were listed as Interested Parties. The Petitioner filed a Petition and an Application by way of Notice of Motion under a Certificate of Urgency supported by the Affidavit of Susan Mwende Muthoni, all dated 28th April 2021.
26. The Petitioner challenged, among other issues, the nomination and appointment of the Interested Parties as Members of the Selection Panel for the Appointment of the Members of the Independent Electoral and Boundaries Commission on the grounds, among others, that the process of nominating them was not transparent as their posts were not advertised.
27. The Respondents and Interested Parties opposed the suit and the High Court declined to issue conservatory orders in the first instance. On 12th May, 2021, the Petitioner served upon the Selection Panel's Advocates a Notice of Withdrawal of Suit.

(4) NAKURU PETITION NO E11 OF 2021: SUSAN MWENDE MUTHONI VS THE ATTORNEY GENERAL AND THE PARLIAMENTARY SERVICE COMMISSION & MEMBERS OF THE SELECTION PANEL

28. After failing to obtain conservatory orders in Nairobi High Court Petition No. E154 of 2021, the Petitioner moved to the High Court in Nakuru and filed the above Petition.
29. The Advocates for the Selection Panel pointed out to the High Court at Nakuru the fact that the Petitioner had already filed another suit raising the same facts and legal issues at the High Court at Nairobi. The High Court at Nakuru consequently declined to issue any conservatory orders against the Selection Panel and as at the time of adoption of this Report, this Petition was fixed for mention on 20th September, 2021 for further directions.

3.2 A CASE CHALLENGING THE SHORT-LISTING PROCESS AND IN PARTICULAR, THE ALLEGED FAILURE TO SHORT-LIST AN APPLICANT

HIGH COURT AT NAIROBI JUDICIAL REVIEW APPLICATION NO. E105 OF 2021 TIMOTHY AYIEKO OLINGO -V- THE CHAIRPERSON, SELECTION PANEL FOR THE APPOINTMENT OF COMMISSIONERS IN THE IEBC & THE ATTORNEY GENERAL

30. On 22nd July 2021, the penultimate day of the Selection Panel's oral interviews, the Chairperson of the Selection Panel was served with pleadings in respect of the above suit. The Applicant, Mr. Timothy Ayieko Olingo, was one of the applicants for the position of Commissioner of the IEBC who had been long-listed but had failed to make it to the short-list.
31. Mr. Timothy Ayieko Olingo therefore filed the above application for Judicial Review at the High Court at Nairobi complaining that he had not been shortlisted yet he met all the requirements for appointment to the position of Commissioner of the IEBC.
32. The Selection Panel instructed its Legal Advisers to oppose the suit. At the time of adoption of this Report, the suit was still pending for hearing

CHAPTER FOUR

ADVERTISEMENT FOR VACANCIES IN THE POSITION OF MEMBER OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

4.1 ADVERTISEMENT FOR THE VACANCIES IN THE POSITION

33. Paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 provides as follows-

The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the Gazette, two newspapers of national circulation and on the website of the Parliamentary Service Commission.

34. On 1st May, 2021, pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, the Selection Panel published an advertisement inviting applications from suitably qualified persons for the four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in Gazette Notice No. 4198 (*Annex 7*), the Daily Nation and the Standard Newspapers (*Annexes 8 and 9*). The advertisement was also posted in the Parliament Website at www.parliament.go.ke.

4.2 PUBLICATION OF THE NAMES AND QUALIFICATIONS OF ALL APPLICANTS

35. At the close of the application period, the Selection Panel had received over seven hundred (700) applications by hand delivery, post and email. The Selection Panel collated the applications and found that some applicants had sent multiple applications, bringing the number of applications to six hundred and sixty-nine (669) applications.
36. Pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, on 25th May, 2021, the Selection Panel published a list of the names and qualifications of all applicants for the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in Gazette Notice No. 5086 (*Annex 10*), the Daily Nation and the Standard Newspapers (*Annexes 11 and 12*) and the Parliament Website at www.parliament.go.ke.
37. Following the publication of the names and qualifications of the applicants, the Selection Panel received feedback from applicants. Upon review of the feedback, the

Selection Panel noted and corrected misspelt names, removed duplications, one wrong citation of qualifications and included one name that had been omitted.

38. Thereafter, pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, on 12th June, 2021, the Selection Panel re-published, with corrections, the names of the six hundred and sixty (660) persons who applied for the vacancies in the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in *Gazette Notice No. 5769 (Annex 13)*, in the Daily Nation and Standard Newspapers (*Annexes 14 and 15*) and the Parliament Website at www.parliament.go.ke.

CHAPTER FIVE

SHORTLISTING CRITERIA AND PROCESS

5.1 SHORTLISTING CRITERIA

39. Paragraph 3(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 provides as follows-

The selection panel shall consider the applications, shortlist and interview the applicants.

40. Paragraph 1(5) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 further provides as follows-

Subject to the provisions of this Schedule, the selection panel shall determine its own procedures.

41. Pursuant to these provisions of the Act, before embarking on the task of consideration and shortlisting of the applicants for the vacancies in the position of Member of the Independent Electoral and Boundaries Commission, the Selection Panel developed and unanimously adopted a shortlisting criteria based on the applicable constitutional and statutory requirements and thus undertook the shortlisting process in the following stages-

STAGE	CRITERIA	PROVISION OF LAW	SCORE
1 Eligibility	(a) Holds a degree from a recognized university.	Section 6(2)(b) of the IEBC Act	Yes/No
	(b) Has proven relevant experience in any of the following fields: electoral matters, management, finance, governance, public administration and law	Section 6(2)(c) of the IEBC Act	Yes/No
	(c) Has not, at any time within the preceding five years, held office, or stood for election as- (i) a member of Parliament or of a county assembly; or (ii) a member of the governing body of a political party.	Article 88(2) (a) of the Constitution	Yes/No

STAGE	CRITERIA	PROVISION OF LAW	SCORE
2 Consideration of experience	<p>(a) Has at least ten (10) years proven relevant experience in any of the following fields: electoral matters, management, finance, governance, public administration or law.</p> <p><i>Rating Scale:</i> Under 3 years – 1 Marks 4-5 years – 2 Marks; 6-7 years – 3 Marks; 8-9 years – 4 Marks; Over 10 years – 5 Marks</p>	Section 6(2)(c) of the IEBC Act	(Maximum Score: 5)
	<p>(b) Leadership experience –</p> <p>(i) Span of control –</p> <ul style="list-style-type: none"> • area of activity e.g. Chief Executive Officer, Director, Head of Department, etc; • number of functions / responsibilities; • number of people or things for which the person is responsible (supervision); and • outstanding achievements. <p><i>Rating Scale</i> ○ Leadership position & policy oversight - Maximum Score of 3 ○ Responsibility - Maximum Score of 3</p>	Chapter Six of the Constitution	(Maximum Score: 6)
TOTAL SCORE UNDER STAGE 2			(Maximum Score: 11)
3 Balancing of Diversities	<p>Balancing of diversities-</p> <ul style="list-style-type: none"> • The two-thirds gender requirement; ethnic and regional diversities; persons with disability; youth; minority and marginalized groups and diversity of skills. • The Selection Panel will set a cut-off point for candidates who may be considered at this stage. • Where it is found that any group is over-represented or under-represented, the Selection Panel may substitute applicants as necessary. It is proposed 	Articles 10, 27, 55, 56, 232 and 250(4) of the Constitution	Not scored

STAGE	CRITERIA	PROVISION OF LAW	SCORE
	that such substitution be merit based; for instance, the Panel may remove the lowest ranking shortlisted applicant(s) and pick the next ranking applicant(s) who fall(s) within the category that requires representation in the list.		

5.2 PUBLICATION OF NAMES OF SHORTLISTED CANDIDATES

42. On 12th June, 2021, the Selection Panel published the names of the thirty-six (36) shortlisted candidates for the position of Member of the Independent Electoral and Boundaries Commission. The advertisement was carried in *Gazette* Notice No. 5770 (*Annex 16*), the Daily Nation and the Standard Newspapers (*Annexes 17 and 18*) and the Parliament Website at www.parliament.go.ke. The advertisement provided for the respective oral interview dates for the candidates and also informed candidates of the case study and psychometric tests. Following the declaration of Tuesday, 20th July, 2021 as a public holiday, a further advertisement was published on 17th July, 2021 rescheduling the interviews slated for that day to Friday, 23rd July, 2021. The advertisement was carried in *Gazette* Notice No. 7148 (*Annex 19*) and in the Daily Nation and Standard Newspapers (*Annexes 20 and 21*).
43. In the advertisement, members of the public were also invited to avail, in writing, by memoranda, any information of interest with respect to the suitability of any of the shortlisted applicants to serve as Member of the Independent Electoral and Boundaries Commission. The Selection Panel received Memoranda on some of the shortlisted applicants. The Memoranda were shared with the candidates in advance of the interview in order to provide the candidates with the right of reply. The Memoranda and the responses of the candidates are set out at *Annex 22*.
44. The Selection Panel further wrote to the following agencies seeking references and background checks relating to the suitability of the shortlisted candidates-
- (1) The Higher Education Loans Board;
 - (2) The Kenya Revenue Authority;
 - (3) The Independent Electoral and Boundaries Commission;
 - (4) The Registrar of Political Parties;
 - (5) The Ethics and Anti-Corruption Commission;
 - (6) The Advocates Complaints Commission;
 - (7) The National Intelligence Service;
 - (8) The Directorate of Criminal Investigations;
 - (9) Various universities;
 - (10) Professional organizations; and

(11) Applicants' referees.

45. The Selection Panel received responses from the vetting agencies which are attached at *Annex 23*.

CHAPTER SIX

INTERVIEW PROCESS AND RESULTS

6.1 INTERVIEW PROCESS

46. The interview process was conducted as follows-
- (a) Psychometric Test;
 - (b) Case Study; and
 - (c) Oral Interviews.

6.2 PSYCHOMETRIC TESTING

47. The Selection Panel administered Psychometric Testing on 30th June, 2021 at the Kenyatta International Convention Centre, Nairobi at 11:00 a.m. The Selection Panel partnered with the Institute of Human Resource Management which is the statutory body established under the Human Resource Management Professionals Act, 2012, to provide the required services.

6.3 CASE STUDY

48. The Selection Panel administered the Case Study on 30th June, 2021 at 2:00 p.m.

6.4 ORAL INTERVIEWS

49. At its meetings held on 24th and 25th June, 2021, the Selection Panel developed and adopted an Interview Tool and an Interview Score Sheet for the position of Member of the Independent Electoral and Boundaries Commission.

50. The candidates were assessed as follows-

- (1) Election laws (10 marks);
- (2) The IEBC (as an institution) (10 marks);
- (3) Electoral processes (15 marks);
- (4) Stakeholder engagement and voter education (12 marks);
- (5) Leadership (15 marks);
- (6) Integrity and moral standards (15 marks);
- (7) Personal attributes (10 marks);
- (8) General knowledge (3 marks);
- (9) Case study (10 marks); and
- (10) Personal traits and moral character (-3).

6.5 CONSIDERATION AND ADOPTION OF INTERVIEW RESULTS

51. Paragraph 3(4) to the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 provides as follows-

After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

52. The Selection Panel observed that the Schedule did not provide for the number of names to be forwarded to the President where the vacancies arising in the Commission are less than the full membership of the Commission, which is the Chairperson and six other members.
53. Consequently, for purposes of the filling of the four vacancies in the position of Member of the Independent Electoral and Boundaries Commission, Rule 12(2) of the Rules of Procedure of the Selection Panel (*Annex 5*), initially provided as follows-
The report of the Selection Panel shall have the names of six persons selected as being qualified for appointment as members of the Commission.
54. At its meeting held on 28th July, 2021, pursuant to paragraph 1(5) of the First Schedule to the IEBC Act, 2017, which provides that the Selection Panel shall, subject to the provisions of the Schedule determine its own procedure, the Selection Panel resolved to amend Rule 12(2) of the Rules of Procedure of the Selection Panel to increase the number of names to be forwarded to the President from six (6) to eight (8) names for the following reasons-
- (a) Following the advertisement for the vacancy in the position of Member of the Independent Electoral and Boundaries Commission, the Selection Panel observed that there was an overwhelming interest in the position. The Selection Panel received a total of six hundred and sixty (660) applications for the position. The applicants who met the minimum qualifications were five hundred and seven (507) applicants and the Panel eventually shortlisted thirty-six (36) applicants, necessitating the amendment of Rule 12(2) of the Rules of Procedure of the Selection Panel;
 - (b) The Selection Panel resolved to select two (2) candidates for each of the four (4) vacancies; thus a total of eight (8) candidates; and
 - (c) Section 6(2)(c) of the IEBC Act, 2011 provides that a person is qualified for appointment as a Member of the Independent Electoral and Boundaries Commission if such a person has proven experience in any of the following fields-
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration; and

(vi) law.

Subject to Articles 10, 27, 55, 56, 232 and 250(4) of the Constitution, the Selection Panel resolved to select the best ranked candidates in the respective fields.

55. The Selection Panel set a pass mark of sixty per cent (60%) for candidates to remain eligible for further consideration for selection. The following are the candidates who scored sixty per cent (60%) and above-

	NAME OF CANDIDATE	AGE	GEN DER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
1	Naisiae Paloshe Tobiko	42	F	20904589	Kajiado	Electoral Matters	75.14
2	Juliana Whonge Cherera	45	F	14492597	Mombasa	Public Administration	74.43
3	Kagwiria Mbogori	56	F	7010401	Meru	Law	73.29
4	Koki Muli Grignon (Amb.)	54	F	8629110	Kitui	Law	72.14
5	Richard Okoth Oduor (Prof.)	45	M	14719722	Siaya	Public Administration	71.43
6	Irene Cherop Masit	54	F	8032980	Elgeyo-Marakwet	Management	68.00
7	Florence Simbiri-Jaoko	61	F	CK26027	Nairobi City	Law	67.43
8	Francis M. Wanderi	68	M	1737467	Nyeri	Management	67.43
9	Roseline Doreen Adhiambo Odhiambo Odede	54	F	8016341	Siaya	Law	67.43
10	Zippy Nzisa Musyimi	60	F	1092716	Embu	Management	67.29
11	Catherine Muchiru Kamindo (Dr.)	59	F	3726509	Nyeri	Electoral Matters	66.71
12	Maurice N. Amutabi (Prof.)	56	M	4413713	Vihiga	Public Administration	66.71

	NAME OF CANDIDATE	AGE	GEN DER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
13	Justus Maithya Munyithya	53	M	9691902	Kitui	Law	66.14
14	Dinah Jeruto Kipkebut (Dr.)	55	F	8591410	Nakuru	Public Administration	66.00
16	Justus Abonyo Nyang'aya	64	M	4315948	Homa Bay	Governance	65.43
15	Con Omore Osendo	42	M	21364506	Kisumu	Governance	65.29
17	Sellestine Anna Mbii-Kiuluku, CS	58	F	13500293	Makueni	Finance	64.86
18	Timothy Tipila Ole Naeku	42	M	21793090	Narok	Law	64.86
19	Saeed Khamees Saeed (Col.)	56	M	8387867	Mombasa	Public Administration	64.57
20	Lucy Jebet Chelimo(Amb.)	42	F	20904459	Baringo	Public Administration	62.71
21	Murshid Abdalla Mohammed	57	M	8460816	Mombasa	Law	62.43
22	Joseph Gitile Naituli (Prof.)	60	M	184072	Meru	Public Administration	62.00
23	Caroline E. Njeri Ng'ang'a	36	F	24068737	Murang'a	Management	61.86
24	Joseph Kang'ethe Ng'ang'a (Dr.)	53	M	10087481	Kiambu	Public Administration	61.43
25	Simeon Pkiyach Pkatey Muket	57	M	7103602	West Pokot	Management	61.43

56. The Selection Panel further categorized the candidates in the six (6) respective fields set out in section 6(2)(c) of the IEBC Act, 2011 as follows-

(1) ELECTORAL MATTERS

NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
Naisiae Paloshe Tobiko	42	F	20904589	Kajiado	Electoral Matters	75.14
Catherine Muchiru Kamindo (Dr.)	59	F	3726509	Nyeri	Electoral Matters	66.71

(2) LAW

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
WOMEN							
1	Kagwiria Mbogori	56	F	7010401	Meru	Law	73.29
2	Koki Muli Grignon (Amb.)	54	F	8629110	Kitui	Law	72.14
3	Florence Simbiri-Jaoko	61	F	CK26027	Nairobi City	Law	67.43
4	Roseline Doreen Adhiambo Odhiambo Odede	54	F	8016341	Siaya	Law	67.43
MEN							
1	Justus Maithya Munyithya	53	M	9691902	Kitui	Law	66.14
2	Timothy Tipila Ole Naeku	42	M	21793090	Narok	Law	64.86
3	Murshid Abdalla Mohammed	57	M	8460816	Mombasa	Law	62.43

(3) MANAGEMENT

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
WOMEN							
1	Irene Cherop Masit	54	F	8032980	Elgeyo-Marakwet	Management	68.00

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
2	Zippy Nzisa Musyimi	60	F	1092716	Embu	Management	67.29
3	Caroline E. Njeri Ng'ang'a	36	F	24068737	Murang'a	Management	61.86
MEN							
1	Francis M. Wanderi	68	M	1737467	Nyeri	Management	67.43
2	Simeon Pkiyach Pkatey Muket	57	M	7103602	West Pokot	Management	61.43

(4) PUBLIC ADMINISTRATION

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
WOMEN							
1	Juliana Whonge Cherera	45	F	14492597	Mombasa	Public Administration	74.43
2	Dinah Jeruto Kipkebut (Dr.)	55	F	8591410	Nakuru	Public Administration	66.00
3	Lucy Jebet Chelimo(Amb.)	42	F	20904459	Baringo	Public Administration	62.71
MEN							
1	Richard Okoth Oduor (Prof.)	45	M	14719722	Siaya	Public Administration	71.43
2	Maurice N. Amutabi (Prof.)	56	M	4413713	Vihiga	Public Administration	66.71
3	Saeed Khamees Saeed (Col.)	56	M	8387867	Mombasa	Public Administration	64.57
4	Joseph Gitile Naituli (Prof.)	60	M	184072	Meru	Public Administration	62.00

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
5	Joseph Kang'ethe Ng'ang'a (Dr.)	53	M	10087481	Kiambu	Public Administration	61.43

(5) FINANCE

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
1	Sellestine Anna Mbii-Kiuluku, CS	58	F	13500293	Makueni	Finance	64.86

(6) GOVERNANCE

	NAME OF CANDIDATE	AGE	GENDER	ID/PP NO.	COUNTY	FIELD	SCORE (%)
1	Justus Abonyo Nyang'aya	64	M	4315948	Homa Bay	Governance	65.43
2	Con Omoro Osendo	42	M	21364506	Kisumu	Governance	65.29

57. In addition, the Selection Panel adopted the results of the Psychometric Test as presented by the Institute of Human Resource Management (IHRM) and noted that from the parameters that were tested, the candidates displayed different strengths and competencies in some or all of the competencies required for the position of Member of the Independent Electoral and Boundaries Commission.

58. In making its selection of candidates for the position of Member of the Independent Electoral and Boundaries Commission, the Selection Panel considered-

- (1) The interview results as set out in *Annex 24*, including the case study;
- (2) the results of the psychometric test; and
- (3) the provisions of Articles 10, 27, 55, 56, 232 and 250(4) of the Constitution.

59. Articles 10, 27, 55, 56, 232 and 250(4) of the Constitution provides for the balancing of diversities which was undertaken according to the following constitutional principles-

- (1) The two-thirds gender requirement, ethnic and regional diversities, persons with disability, youth, minority and marginalized groups and diversity of skills; and
- (2) Where it was found that any group was over-represented or under-represented, the Selection Panel substituted applicants as necessary. The substitution was merit based such that where the Panel removed the highest ranking candidate, the Panel picked the next ranking applicant who fell within the category that required representation in the list.

60. Consequently, the Selection Panel selected the following eight (8) candidates for consideration for nomination to the position of Member of the Independent Electoral and Boundaries Commission-

	NAME	GENDER	LD/ PP NO.	AGE	COUNTY	FIELD	SCORE (%)
1	Naisiae Paloshe Tobiko	F	20904589	42	Kajiado	Electoral Matters	75.14
2	Juliana Whonge Cherera	F	14492597	45	Mombasa	Public Administration	74.43
3	Kagwiria Mbogori	F	7010401	56	Meru	Law	73.29
4	Richard Okoth Oduor (Prof.)	M	14719722	45	Siaya	Public Administration	71.43
5	Irene Cherop Masit	F	8032980	54	Elgeyo-Marakwet	Management	68.00
6	Francis M. Wanderi	M	1737467	68	Nyeri	Management	67.43
7	Justus Maithya Munyithya	M	9691902	53	Kitui	Law	66.14
8	Justus Abonyo Nyang'aya	M	4315948	64	Homa Bay	Governance	65.43

61. The Selection Panel noted that there was no person with disability who met the pass mark of sixty per cent (60%). The two persons with disability, who are registered with the National Council of Persons With Disability and who were shortlisted, were Michael Napoo Ilukwot Lokoruka (Prof.) and Rose Mumbua Musyoka (Dr.), whose scores were 57.29% and 55.86%, respectively. The candidates were therefore not selected.

62. The Selection Panel received submissions in respect of Francis M. Wanderi relating to his tenure as the Director and later Chairman of the Export Processing Zone Authority (EPZA). Mr. Wanderi responded to the allegations both in writing and

during the oral interviews. The Selection Panel considered both the complaint against Mr. Wanderi and his response and was satisfied that no issues with regard to his leadership and integrity as contemplated under Chapter Six of the Constitution arose. The submissions relating to Mr. Wanderi and his response are contained in *Annex 22*.

63. The Selection Panel also received submissions in respect of Justus Maithya Munyithya relating to his tenure as a Member of the Judges and Magistrates Vetting Board. Mr. Munyithya responded to the allegations during his oral interview and stated that the complainant was a Magistrate who was found unsuitable to continue serving by the first panel of the Board. Mr. Munyithya stated that he sat on the appeals panel of the Board which upheld the finding of unsuitability. He further stated that he stood by that finding and that the complainant was the fourth on the list of persons found and determined to be unsuitable. He stated that the Board had vetted over two hundred Magistrates and there had been no complaints against him by those Magistrates or by the Kenya Judges and Magistrates Association. The Selection Panel considered both the complaint against Mr. Munyithya and his response and was satisfied that no issues with regard to his leadership and integrity as contemplated under Chapter Six of the Constitution arose. The submissions relating to Mr. Munyithya are contained in *Annex 22*.

CHAPTER SEVEN

OBSERVATIONS AND RECOMMENDATIONS

64. The Selection Panel made several observations and recommendations during the course of the discharge of its mandate-

(1) Term of Office of the incoming Members of the Independent Electoral and Boundaries Commission

65. The Selection Panel observed that if the incoming Members of the Independent Electoral and Boundaries Commission are appointed in August, 2021, their term of office would end in August, 2027, at the time of the 2027 General Elections. The Selection Panel observed that there would be need for the Independent Electoral and Boundaries Commission and all other relevant authorities and agencies to take cognisance of this matter and to make adequate plans for the successful conduct of the 2027 General Elections and for the transition in the four positions of Member of the Independent Electoral and Boundaries Commission.

(2) Authenticity of Certificates

66. In the course of the discharge of its mandate, the Selection Panel thoroughly scrutinized the documentation submitted by the candidates and noted that some candidates had provided academic certificates whose authenticity was in question. Consequently, the Selection Panel liaised with the relevant universities and received information to the effect that some of the certificates submitted to the Panel had not been issued by the universities as had been claimed by the candidates. The Selection Panel took note of this information as it proceeded to consider the suitability of the shortlisted candidates.
67. From this experience, the Selection Panel recommends that it is necessary for panels or similar bodies conducting recruitment exercises to ensure that a thorough scrutiny of documentation received is conducted.
68. The Selection Panel further observed that it would be useful to request applicants to submit copies of certificates that are certified by the respective issuing bodies while making their applications.

(3) The Bio Data Form

69. The Selection Panel observed that the position of Member of the Independent Electoral and Boundaries Commission is one that requires high levels of leadership, patriotism and public service. Consequently, the Selection Panel recommends that

future panels may consider amending the Bio Data Form (SP1) that candidates were required to fill while making their applications in order to make provision for submission by candidates of more information relating to leadership competencies as well as community service.

CHAPTER EIGHT

RECOMMENDATIONS IN RESPECT OF THE POSITION OF MEMBER OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

70. Pursuant to paragraph 3(4) of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011, the Selection Panel recommends to His Excellency, the President, the following eight (8) persons for consideration for nomination for appointment to the four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission-

	NAME	GENDER	I.D/ PP NO.	AGE	COUNTY	FIELD	SCORE (%)
1	Naisiae Paloshe Tobiko	F	20904589	42	Kajiado	Electoral Matters	75.14
2	Juliana Whonge Cherera	F	14492597	45	Mombasa	Public Administration	74.43
3	Kagwiria Mbogori	F	7010401	56	Meru	Law	73.29
4	Richard Okoth Oduor (Prof.)	M	14719722	45	Siaya	Public Administration	71.43
5	Irene Cherop Masit	F	8032980	54	Elgeyo-Marakwet	Management	68.00
6	Francis M. Wanderi	M	1737467	68	Nyeri	Management	67.43
7	Justus Maithya Muniyithya	M	9691902	53	Kitui	Law	66.14
8	Justus Abonyo Nyang'aya	M	4315948	64	Homa Bay	Governance	65.43

71. Copies of the applications submitted to the Selection Panel by the eight (8) persons afore-mentioned are attached at *Annex 25*.

SIGNED

Dr. Elizabeth Muli	- Chairperson
Mr. Awori James Achoka	- Vice-Chairperson
Mr. Gideon Solonka	- Member
Ms. Elizabeth Odundo Meyo	- Member
Rev. Fr. Joseph Ngumbi Mutie	- Member
Dr. Faridun S. Abdalla EBS, OGW, HSC	- Member
Mr. Morris Kimuli	- Member

[Handwritten signatures of the members listed above]

ACKNOWLEDGMENTS

The Selection Panel wishes to thank the six hundred and sixty (660) applicants who applied for the position of Member of the Independent Electoral and Boundaries Commission for expressing their interest in serving Kenyans in the Commission.

The Selection Panel further appreciates and thanks the following agencies for their cooperation in providing references and background checks relating to the suitability of the shortlisted candidates

- (1) The Higher Education Loans Board;
- (2) The Kenya Revenue Authority;
- (3) The Independent Electoral and Boundaries Commission;
- (4) The Registrar of Political Parties;
- (5) The Ethics and Anti-Corruption Commission;
- (6) The Advocates Complaints Commission;
- (7) The National Intelligence Service;
- (8) The Directorate of Criminal Investigations;
- (9) Various universities;
- (10) Professional organizations; and
- (11) Applicants' referees.

The Selection Panel also wishes to thank the media which ensured that the public was kept informed of the Selection Panel's work. It was important for the Selection Panel that the process remained transparent and open to the public throughout the interview process. The media was a critical partner in this regard.

The Selection Panel further wishes to thank the members of the public for their interest and active participation in the process by following the processes through the media and by submitting Memoranda on the various candidates. The Selection Panel also appreciates the various resource persons, stakeholders and religious/ community leaders who appeared before the Panel and made various presentations as well as the service providers who facilitated the Selection Panel in the course of the discharge of its mandate.

Further, the Selection Panel appreciates and acknowledges the role of the Parliamentary Service Commission which, pursuant to paragraph 1(6) of the First Schedule to the Independent Electoral and Boundaries Commission, 2011, provided the secretariat services and facilities required by the Selection Panel in the performance of its functions. The Selection Panel further wishes to thank the secretariat for the support throughout the entire process.

Lastly, the Selection Panel thanks the various nominating bodies for their confidence in the individual and collective membership of the Selection Panel.

GOD BLESS KENYA