

REPUBLIC OF KENYA



Approved
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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 APR 2024	DAY: TUE
TABLED BY:	Hon. Gitonga Murugara, MP Chairperson, S.C on Justice and Legal Affairs
THE-TABLED:	Anne Shibuko

NATIONAL ASSEMBLY RECEIVED
23 APR 2024
SPEAKER'S OFFICE P. O. Box 41842, NAIROBI.

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL 2024

TABLE OF CASES

Isaiah Biwott Kangwony v IEBC & Another [2018] eKLR

Katiba Institute and 3 Others v the Attorney General and 2 Others [2018] eKLR

LIST OF ABBREVIATIONS AND ACRONYMS

ELGIA	-	Electoral Law Governance Institute for Africa
ELOG	-	Elections Observation Group
FORD	-	Forum of the Restoration of Democracy
IEBC	-	Independent Electoral and Boundaries Commission
IRCK	-	Inter-Religious Council of Kenya
KLRC	-	Kenya Law Reform Commission
MCCP	-	Maendeleo Chap Chap Party
OAG	-	Office of the Attorney-General
ODM	-	Orange Democratic Movement
ORPP	-	Office of the Registrar of Political Parties
PPLC	-	Political Parties Liaison Committee
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly Bill No. 10 of 2024*) which was published on 4th April 2024.

The Bill seeks to give effect to some of the recommendations and views of the public as submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices*. The Bill aims to amend the IEBC Act (Cap 7C) to delete obsolete provisions and make consequential amendments to align the Act to the judgement of the High Court in *Katiba Institute and 3 Others v the Attorney General and 2 Others [2018] eKLR* where it was held that certain provisions of the Act are unconstitutional.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letter Ref. No. *NA/DDC/JLAC/2024/60* dated 11th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 18th April 2024. The memoranda were to be received on or before Thursday 21st March 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received nine memoranda.

The OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC and the ELGIA gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that the Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue of electoral justice was the proposed amendments to the IEBC Act (Cap. 7C) as provided in the Bill.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC and the ELGIA for submitting views on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly Bill No. 10 of 2024*) and have the honour to report back to the National Assembly with the recommendation that the House approves the Bill with amendments.



Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. 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;*
- ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. To study and review all legislation referred to it;*
- v. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. 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);*
- viii. To examine treaties, agreements and conventions;*
- ix. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider¹:-

¹ National Assembly Standing Orders, 6th Edition.

- a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and
 - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
- a) State Department of Correctional Services;
 - b) State Law Office and Department of Justice;
 - c) The Judiciary;
 - d) Judicial Service Commission;
 - e) Office of the Director of Public Prosecutions;
 - f) Ethics and Anti-Corruption Commission;
 - g) Independent Electoral and Boundaries Commission;
 - h) Commission on Administrative Justice;
 - i) Office of the Registrar of Political Parties;
 - j) Witness Protection Agency;
 - k) Kenya National Commission on Human Rights;
 - l) Kenya Law Reform Commission; and
 - m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mweni, OGW, MP
Kibwezi West Constituency

MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I /Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Ms. Jael Ayiego
Clerk Assistant III

Ms. Mary Kamande
Public Communications Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Peter Mutethia
Audio Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

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

2.1 Background

6. The Bill is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.*
7. The Bill was published on 4th April 2024 and read a First Time in the House on 5th March 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others* [2018] eKLR where the High Court held that certain provisions of the Act were unconstitutional.
9. The Bill further seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.
10. Additionally, the Bill seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups. The Bill also proposes to replace the current Fifth Schedule of the Act with a new and updated Schedule.
11. In particular, —
Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Independent Electoral and Boundaries Commission Bill (*National Assembly Bill No. 10 of 2024*)

- (a) **Clause 1 of the Bill** sets out the short title of the Bill and provides for its commencement upon publication in the *Gazette*;
- (b) **Clause 2 of the Bill** amends section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section;
- (c) **Clause 3 of the Bill** amends section 6(2)(c) of the Act to include information and communications technology and accounting as some of the relevant professional qualifications to be taken into account when nominating persons to be appointed as members of the Commission;
- (d) **Clause 4 of the Bill** amends section 7A of the Act and delete subsections (4), (5), and (6), which the High Court held unconstitutional;
- (e) **Clause 5 of the Bill** amends section 10 of the principal Act to reduce the term of the secretary to the Commission to three years, renewable once;
- (f) **Clause 6 of the Bill** amends section 12 of the principal Act to provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent, and accountable;
- (g) **Clause 7 of the Bill** amends section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units;
- (h) **Clause 8 of the Bill** amends the First Schedule to the Act to increase the number of members of the selection panel from seven to nine to accommodate a wide spectrum of stakeholders and interest groups;
- (i) **Clause 9 of the Bill** amends the Second Schedule to the Act to provide for the quorum of the Commission as five (5) members;
- (j) **Clause 10 of the Bill** deletes and substitutes the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units;
- (k) **Clause 11 of the Bill** sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission. Under the provision, the current selection panel shall cease to exist after the Bill is passed, but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed after the provisions of the Bill commence.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

1. Article 118 (1)(b) of the Constitution provides that:

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

2. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*“(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Bill

3. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Friday, 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. NA/DDC/JLAC2024/60 dated 11th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 18th April 2024.
4. To this end, the Committee received nine (9) memoranda. The memoranda are annexed to this report as *Annexure 7*.
5. The memoranda from the OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC, ELOG and the ELGIA which were largely in agreement with the Bill save for a few reservations which they submitted to the Committee as follows:

Clause 2

6. The **OAG** and the **IEBC** noted that in line with the proposed deletion of obsolete provisions and harmonisation of the Bill with the Act, sections 32, 33 and 34 of the Act be deleted.

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7. The **ORPP** noted the need for clarity on the meaning of a parliamentary party since the Standing Orders cannot be used to interpret statutory terms. Hence, it proposed the introduction of a definition of ‘parliamentary party’ used in clause 8 with respect to the selection panel. It also proposed the inclusion of the definition of ‘electoral unit’ used in clause 10 of the Bill.
8. The **KLRC** submitted that while the proposed amendments are in line with the ruling in *Katiba Institute & 3 Others v AG & 2 Others*, they raise two fundamental issues. One, how IEBC should conduct its business in circumstances where the Chairperson is unable to attend proceedings of the Commission. Two, that when read together with Section 7A and paragraphs 5 and 7 of the Second Schedule of the Act, the amendments shall have the implication that the Chairperson cannot designate a member as a temporary Chairperson. In addition, that in the event that the membership of the Commission drops to below five, no business can be transacted by the Commission.
9. The **IRCK** proposed amending the clause to provide that the Vice Chairperson can act as the Chairperson in the latter’s absence to avoid a lacuna in the event of a vacancy in the office of the Chairperson.

Committee Observation

10. The Committee observed that section 32, 33 and 34 are part of the savings and transitional provisions of the Act. Transitional provisions make rules to ensure transition from the prior law to the new law which may include provisions to retain an existing right or authority that would otherwise be affected by the new law. Therefore, a blind deletion of sections 32, 33 and 34 would result in losing material information, including the legislative history of the Act.
11. The Committee noted that the term “parliamentary party” is substantively used in the Bill but is not defined. It is therefore important to define the words to accord with their definition in the National Assembly. Standing Orders. However, the Committee was of the view that the term “electoral unit” is clear enough and does not warrant a definition.

Clause 3

12. The **IEBC** proposed merging “accounting and finance” under Section 6(2)(iii) of the IEBC Act as the two disciplines deal with matters relating to financial management. Moreover, it Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Independent Electoral and Boundaries Commission Bill (*National Assembly Bill No. 10 of 2024*)

submitted that the nature of election matters is legal and quasi-judicial, and therefore, it proposed that the Bill be amended to provide that one member, besides the Chairperson, be an Advocate of the High Court of Kenya.

13. The IEBC also proposed amending the clause to provide for the appointment of the Commission to consider the two-thirds gender principle.
14. The IRCK noted that the proposed additional qualifications are not essential for the Commission to execute its mandate and should not be a preserve of certain professional cadres but represent a broad spectrum. It added that the qualifications proposed to be added should only be an added advantage and not the core requirements for the role of a Commissioner.
15. The PPLC submitted that additional qualifications can be acquired through training and support from the Secretariat, which is composed of technical personnel. Consequently, it proposed an amendment to only provide for degrees from a recognised university.

Committee Observation

16. The Committee noted that section 6 of the Act specifies that for a person to qualify for appointment as a member of the Commission, the person needs to prove relevant experience in certain fields which are necessary considering the nature of the function of the committee. Therefore, the proposed additional experience in information and communication technology and accounting accords with the various functions of the Commission that include the use of technology in elections and the prudent procurement of goods and services related to the conduct of an election.

Clause 5

17. The IEBC and the ORPP were of the view that the term of the Commission Secretary should be increased to five years or in the alternative, reviewed to a single term of six years. They noted that on account of the complexity of the functions of the Commission, including elections, boundary delimitation, and referendum, it takes one or two years for any Secretary to be conversant with electoral processes. Consequently, their proposal would enhance the security of tenure and independence of the Secretary.

18. It was **ELOG**'s submission that the term of the Secretary be aligned with that of the Commissioners to prevent an overlap with a new Commission and provide a smooth transition and operational continuity.

Committee Observation

19. The Committee observed that a reduction in the term of office of the Secretary from the current five years to three years would jeopardize the performance of the functions of the office as any person appointed as Secretary would require at least one to two years to be well conversant with the electoral processes. In this regard, the Committee noted that it may be necessary to increase the term of the Secretary to a non-renewable term of six years to ensure that the Secretary understands all that is expected in the performance of his or her functions and enhance their competence and independence in the role. It was their further view that the amendments in the Bill ought to provide that the current Secretary of the Commission serve for the remainder of their unexpired term.

Clause 6

20. The **IEBC** proposed the increase of the period in which the Commission is required to review its operations after every general election from one year to eighteen months. This will enable the Commission to have more time to conduct the review and identify areas for reform taking into account the time it takes for settlement of disputes after an election. It was their contention that the decisions of the courts, which may take longer than a year to be rendered, usually inform any legal and operational reforms to the conduct of elections.

21. Furthermore, **IEBC** recommended that the proposal be a new stand-alone Section instead of being subsumed under section 12 as there is not link between the proposal and the current content of section 12.

22. The **ELGIA** submitted that the role of Parliament ought to be clearly stated since some changes may require statutory reforms. Consequently, it proposed amending the Bill to clearly state the role of Parliament in the review process and the timelines for the review process by both Houses of Parliament.

23. The **PPLC** proposed that the proposal be amended to provide that the audit be carried out by a reputable entity appointed by the Commission.

Committee Observation

24. The Committee observed that a review of the conduct of a general election is a sensitive evaluation process. Such a process points out what worked and what did not work and draws lessons learned for improvement of the conduct of future general elections. The Committee also noted that the resolution of disputes is part of the process of a general election. Therefore, there is need to increase the time required for the completion of the review process. Further, the Committee agreed with the view that the proposal under clause 6 should be provided for in a separate stand-alone for purposes of legislative clarity. It was of the further view that the Commission should not be unduly restricted in terms of the manner of carrying out the review. As an independent constitutional body, the Commission ought to be left at liberty to choose between either an external or internal review.

Clause 7

25. The **IEBC** and the **KLRC** noted that the proposed contents of the Fifth Schedule on the procedure of delimitation of electoral units should not be contained in the saving and transition part but should be a substantive stand-alone part. Thus, it proposed the deletion of the proposal to amend Section 36 which provides that the electoral units shall be set out in the Fifth Schedule and incorporation of the procedure immediately after Section 16 as a new Part III.
26. The **KLRC** further noted that the Fifth Schedule lapsed upon publication of the final report of the first delimitation of electoral boundaries.
27. **ELGIA** submitted that the proposal be deleted and amended to repeal Section 36 of the Act because the section was originally intended for the first boundaries review. Additionally, it stated that Part V of the Act is no longer operational since the transitional provisions in the statute became spent upon its enactment.

Committee Observation

28. The Committee noted that the provisions under section 36 of the Act on the procedure for delimitation of electoral boundaries are wrongly placed in the Act under the savings and transition. It was therefore of the view that section 36 of the Act together with the proposed amendments to the section be moved to a new and distinct part of the Act for purposes of legislative coherence and logical flow of the Act. The Committee noted that the Fifth Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Independent Electoral and Boundaries Commission Bill (*National Assembly Bill No. 10 of 2024*)

Schedule should be retained as proposed in the Bill and anchored in the relocated provisions on delimitation.

Clause 8

29. The **IEBC** submitted that the Selection Panel needs to be inclusive of all key stakeholders who will give additional value to the process. According to them, the proposal as drafted gives priority to political parties.
30. The **ORPP** proposed redrafting the proposed sub-paragraph (2)(a) and (2)(e) to provide that the respective nominating bodies should nominate one man and one woman to achieve gender equity contemplated by the proposed paragraph 2C.
31. In addition, the **ORPP** recommended redrafting the proposed sub-paragraph (2)(b) to clarify that the persons nominated shall be political parties within the PPLC which is comprised of the **ORPP**, **IEBC** and political parties.
32. **ELOG** recommended the reconsideration of the composition of the Selection Panel since the representation of parliamentary parties and coalitions may introduce biases, conflict of interest, deadlock and potentially undermine the integrity and independence of the selection process. Consequently, submitted that the provision should prioritise merit-based selection.

Committee Observation

33. The Committee observed that the revision of the membership of the selection panel to give the Political Parties Liaison Committee extra slots for the persons they should nominate is due to the fact that a general election is a political process.
34. Further, the Committee noted that the current subparagraph 1(2C) of the First Schedule ensures that the bodies nominating more than one person to the selection panel must ensure that gender equity is achieved.
35. In line with the proposed increase in the panel's membership from 7 to 9 members, the Committee noted that it is necessary to amend paragraph 1(1) of the First Schedule to amend the reference to seven members.

Clause 9

36. The **IEBC** noted the need to ensure conformity with the High Court decision in *Isaiah Biwott Kangwony v IEBC & Another [2018] eKLR* which provided that the quorum of the Commission be dependent on the number of Commissioners in office. To this end, the IEBC proposed amending the proposal to include a provision that the quorum for conduct of business at a meeting of the Commission shall, where the membership is not less than five, not be less than fifty percent of the number of members in office.
37. The **PPLC** also proposed amending the proposal to provide that the members of the Commission shall endeavour to be guided by the principles of transparency and accountability in the conduct of their business.

Committee Observation

38. The Committee did not agree with the views on quorum. It noted that for decision-making purposes, the quorum ought to be an odd number and that three members would be too low of a requirement. The proposed quorum of five members was therefore ideal.

Clause 10

39. The **IEBC** and **ELGIA** were of the opinion that the procedure for delimitation of electoral units should not be contained in the saving and transition part but should be a substantive stand-alone part. Consequently, the IEBC and ELGIA recommended the deletion of the clause and instead, place the provisions as a separate Part in the Bill. The IEBC specified that the new Part be introduced after Section 16 by amending Section 36 as follows:

“Procedure for delimitation of electoral boundaries

- (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act any other law.*
- (2) The procedure for delimitation of electoral units shall be set out under the Fifth Schedule.”*

40. The **OAG** noted that the Act or any other existing legislation does not provide for the establishment, membership, mandate, and relationship between the County Boundary Review Panels and the Commission and thus recommended that this be clarified in the Bill.
41. The **ORPP** proposed the amendment of paragraph 7 of the proposed Fifth Schedule to make provisions for persons with disabilities with a focus on sign language and access to the Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Independent Electoral and Boundaries Commission Bill (*National Assembly Bill No. 10 of 2024*)

venues of public hearings. In addition, it also proposed amending paragraph 8(2) of the proposed Fifth Schedule be amended to provide for the requirement of the Commission to illustrate how the views of the public have been considered in the revised report. Another proposal was to amend paragraph 10(1) of the proposed Fifth Schedule to limit any challenge of the delimitation exercise to interested parties that were consulted under paragraph 1(b) of the proposed Fifth Schedule.

Committee Observation

42. The Committee observed that a Schedule is a substantive provision in an Act of Parliament, and therefore, the proposals to shift the proposed Fifth Schedule into the main body of the Act were misconceived.
43. The Committee further noted that paragraph 3(2)(a) and paragraph 3(3) of the proposed Fifth Schedule make reference to County Boundary Review Panels which are entities not recognised in any law. Therefore, there is a need to anchor the County Boundary Review Panels in the Act. However, the Committee noted that matters of composition of the panels may be left to the Commission to decide.

Clause 11

44. The **IEBC** submitted that the clause is misplaced and proposed its deletion and relocation to the First Schedule which makes provisions on the Selection Panel.
 45. The **ORPP** noted that the Bill seeks to revise the secretary's term from five to three years, and therefore, it is important to clarify what will happen to the current Secretary. They proposed amending the proposal to include a saving or transition provision for the current Secretary.
 46. The **IEBC Selection Panel** proposed to amend the provision to provide that all members of the Selection Panel existing immediately after the commencement of the Act shall be compensated fully for the work, they performed from the commencement of the Selection Panel to the dissolution of the Selection Panel by way of enactment of this Act in respect to recruiting members of the Commission.
 47. The **IRCK** also submitted that the work done by the current Selection Panel should not be discarded and, in the spirit of prudent use of public funds, the Selection Panel should be allowed to execute its mandate or, if need be, have its mandate renewed with additional panel
- Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Independent Electoral and Boundaries Commission Bill (National Assembly Bill No. 10 of 2024)**

members. To this end, the IRCK proposed amending the proposal to either allow the existing Selection Panel to finalize and hand-over its work to a subsequent panel or to retain the current members of the Panel and appoint the additional two members of the Panel proposed in the Bill.

Committee Observation

48. The Committee observed that clause 11 is a transitional clause and does not form part of the proposed Fifth Schedule. The provision shall be retained in the Bill upon enactment as it does not propose any amendment to the Act.
49. The Committee noted that the clause only deals with the dissolution of the current selection panel. It noted a need for expanding the Clause to provide the manner of activating the appointment of a new selection panel after passage of the Bill in light of already existing vacancies in the membership of the Commission.

General

12. The **Judiciary** noted that the Bill does not address the separate policy and administrative remit of the electoral Commission, nor does it make any proposals on the clarity of the roles of the Chairperson, Commissioners, CEO and staff of the Commission as recommended by the Supreme Court. It therefore, recommended that Parliament develops further legislative reform proposals in line with the observations and recommendations of the Supreme Court in the case of *Katiba Institute & 3 Others v Attorney General & 2 Others [2018] eKLR* which noted that the evidence before the court pointed to a serious malaise in the governance of the IEBC, an institution entrusted with one of the monumental tasks of midwifing our democracy.

Committee Observation

50. The Committee noted that the submissions by the Judiciary were general in nature and did not touch on any specific clause of the Bill or the Act. It further noted that a number of proposals in the Bill and the recommendations made by the Committee in relation to the composition of the selection panel, the additional qualifications for appointment as commissioners, and the term of the Secretary address some of the issues highlighted by the Supreme Court.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

51. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- a) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) which was established to facilitate dialogue and consensus building, and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue of electoral justice was the proposed amendments to the IEBC Act (Cap. 7C) as provided in the Bill;
- b) Despite the fact that the Bill is a politically negotiated document, pursuant to the mandate of the Committee and the requirements of Article 118 of the Constitution and Standing Order 127(3), the Committee is at liberty to propose necessary amendments to the Bill in its report to the House. This is informed by the Communication from the Chair (No. 006 of 2024) which directed the respective committees to ensure strict adherence to the due process in the enactment of legislation; and
- c) To the extent that the Bill only seeks to effect change to the IEBC Act to remedy issues identified by NADCO, it constitutes a piecemeal approach to the review of the Act and other legislation relating to elections. Parliament should consider a comprehensive review of electoral laws to address political, operational and institutional challenges affecting the electoral process in a wholistic manner. At present, there is a high likelihood that the legislative coherence of electoral laws shall be affected through the piecemeal amendments proposed in the Bill.

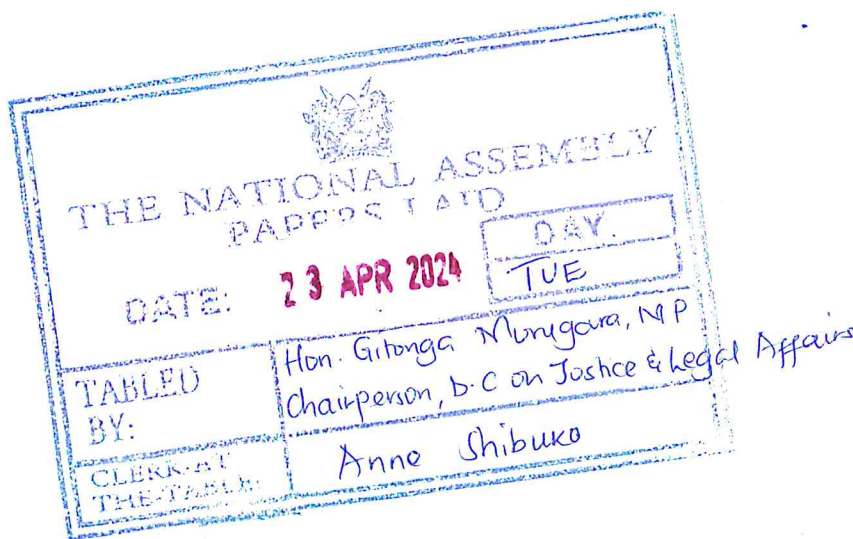
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

52. The Committee, having considered the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly No. 10 of 2024*) recommends that the House approves the Bill with the amendments contained in the SCHEDULE OF AMENDMENTS forming CHAPTER SIX of this report.

SIGNED.......... DATE..... 23-04-2024.....

HON. GEORGE GITONGA MURUGARA, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

53. In view of the observations made, the Committee proposed the following amendments to the Bill—

54. CLAUSE 2

THAT, Clause 2 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

“(f) by inserting the following new definition in proper alphabetical sequence—

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

Rationale: To define the term “parliamentary party”.

55. CLAUSE 5

THAT, Clause 5 of the Bill be amended by deleting the proposed new subsection (4) and substituting therefor the following subsection—

“(4) The secretary shall hold office for a single term of six years and shall not be eligible for re-appointment.”

Rationale: To revise the term of office of the Secretary to single 6 year term.

56. CLAUSE 6

THAT, the Bill be amended by deleting Clause 6 and substituting therefor the following new Clause—

Insertion of a new s. 24A in Cap. 7C.	6. The principal Act is amended by inserting the following new section immediately after section 24—	
	Review of conduct of general election.	24A.(1) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.
		(2) The review shall be completed within eighteen months after every general election and the Commission shall publish the report in the Gazette and submit the report to Parliament.

Rationale: To provide for the review of the conduct of a general election under a separate substantive provision.

57. CLAUSE 7

THAT, the Bill be amended by deleting Clause 7 and substituting therefor the following new Clause—

Insertion of a new PART IIIA in Cap. 7C.	8. The principal Act is amended by inserting the following new Part immediately after section 24—	
PART IIIA—DELIMITATION OF ELECTORAL UNITS		
Procedure for delimitation of electoral boundaries.		24B. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.
		(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—
		(a) review of the names and boundaries of constituencies;
		(b) review of the number, names and boundaries of wards;
		(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
		(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—
		(i) allows for variation of margin of not more than the limits provided under Article 89(6) of the Constitution in relation to cities, sparsely populated areas and other areas;
		(ii) takes into account the provisions of Article 89(7)(b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the

		population quota for the purposes of the each review;
		(iii) is subject to the use of enumerated national census figures.
		(3) The Commission shall prepare and publish a preliminary report outlining—
		(a) the proposed delimitation of boundaries for constituencies and wards; and
		(b) the specific geographical; and
		(c) demographical details relating to such delimitation.
		(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.
		(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.
		(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.
		(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.
		(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.
		(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).
		(10) A person who, being responsible for the publication in the Gazette of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

		(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.
		(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Rationale: To include all provisions on delimitation of electoral units under a substantive Part of the Act.

58. CLAUSE 8

THAT, Clause 8 of the Bill be amended by—

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

“(a) in paragraph 1—

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

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

“(2) The selection panel shall consist of—

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

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

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

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

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

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

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

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

(iii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

“(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.”

(iv) in sub-paragraph (3), by deleting the words “sub-paragraphs (2)(b) and (c)” and substituting therefor the words “sub-paragraphs (2)(b), (c), (d) and (e)”;

(v) by inserting the following new subparagraph immediately after subparagraph (6)—

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

Rationale: (1) To align the number of members of the Selection Panel in paragraph 1(1) with the the nine proposed under paragraph 1(2);

(2) To provide that the expenses of the selection Panel are a charge on the budget of the Parliamentary Service Commission.

59. CLAUSE 11

THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new Clause—

Saving and transition.	11. Upon the commencement of this Act—
Cap. 7C.	(a) The respective nominating bodies under paragraph 1(2)(b), (c), (d) and (e) of the First Schedule to the Independent Electoral and Boundaries Commission Act shall submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment to the selection panel under the Act;
	(b) the selection panel existing immediately before the commencement of this Act shall stand dissolved but the members of the panel may be nominated to serve in any subsequent panel;
Cap. 7C.	(c) the President shall, within seven days of receipt of the names of the nominees under paragraph 1(2) of the First Schedule to the Independent Electoral and Boundaries Commission Act from the Parliamentary Service Commission, appoint a selection panel for the purpose of appointment of the chairperson and members of the Commission; and

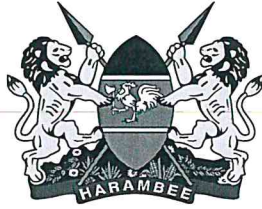
	(d) a person holding the office of the secretary of the Independent Electoral and Boundaries Commission shall continue in office for the remainder of the unexpired period of their term.
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Rationale: (1) To provide a mechanism that activates the appointment of a selection panel in light of already existing vacancies in the Commission. Nominating bodies under the Act shall be required to submit names of their nominees within fourteen days of the commencement of the Act and the President is required to appoint a selection panel within seven days of receipt of the names.

(2) To save the unexpired term of office of the Secretary of the Commission define the term “parliamentary party”.

ANNEXURES

Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION - 2024
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: Adoption of the Report of the Independent Electoral Boundaries Commission (Amendment) Bill, 2024 co-sponsored by Hon. Kimani Ichung'wah, EGH, MP and Hon. Opiyo Wandayi, MGH, CBS, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

10/17
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10/19