

Approved for tabling in the House

*[Signature]*  
SNA  
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



## Contents

LIST OF ANNEXES .....	4
ABBREVIATIONS AND ACRONYMS.....	5
CHAIRPERSON'S FOREWORD.....	6
CHAPTER ONE .....	7
1.0 PREFACE.....	7
1.1 Establishment and Mandate of the Committee .....	7
1.2 Committee Membership .....	9
CHAPTER TWO .....	12
2.0 BACKGROUND .....	12
2.1 Establishment and Functions of the Independent Electoral and Boundaries Commission .....	12
2.2 Appointment of the Selection Panel .....	13
2.3 Litigation with respect to the Nominee of the Law Society of Kenya to the Selection Panel 14	
2.3 Advertisement for the Vacancies in the Position of Member of the Independent Electoral and Boundaries Commission .....	15
2.4 Qualifications for appointment as a member of the Commission.....	16
2.5 Disqualifications for appointment as a member of the Commission.....	17
2.6 Term of office of Members of the Commission .....	17
2.7 Parliamentary approval process for the Office Member of Independent Electoral and Boundaries Commission .....	17
2.8 Vacancy in the office of chairperson and members.....	18
2.8 Notification for Approval Hearing to the Public .....	19
2.9 Submission of Memoranda .....	19
2.10. Memoranda .....	20
CHAPTER THREE .....	24
3.0 ISSUES FOR CONSIDERATION DURING THE APPROVAL HEARING OF MS.....	24
JULIANA WHONGE CHERERA, MR. FRANCIS MATHENGE WANDERI,.....	24
MS.IRENE CHEROP MASIT AND MR. JUSTUS ABONYO NYANG'AYA .....	24
CHAPTER FOUR.....	27
4.1 Ms. Juliana Whonge Cherera.....	27
4.2 Mr. Francis Mathenge Wanderi .....	30
4.3 Ms. Irene Cherop Masit .....	32
4.4 Mr. Justus Abonyo Nyang'aya .....	34
CHAPTER FIVE .....	37

5.0 COMMITTEE'S OBSERVATIONS AND FINDINGS .....	37
5.1 Ms. Juliana Whonge Cherera.....	37
5.2 Mr. Francis Mathenge Wanderi .....	39
5.3 Ms. Irene Cherop Masit .....	41
5.4 Mr. Justus Abonyo Nyang'aya .....	44
5.5 General observations.....	46
5.6 Committee findings.....	48
CHAPTER 6 .....	51
6.0 COMMITTEE RECOMMENDATIONS .....	51
1. Ms. Juliana Whonge Cherera.....	51
2. Mr. Francis Mathenge Wanderi .....	51
3. Ms. Irene Cherop Masit .....	51
4. Mr. Justus Abonyo Nyang'aya .....	51



## **LIST OF ANNEXES**

<b>Annexure 1:</b>	Minutes of Committee Sitzings
<b>Annexure 2:</b>	Newspaper Advertisement for Notification and Public Participation
<b>Annexure 3:</b>	Message from H.E the President
<b>Annexure 4:</b>	Clearance Certificates by State Agencies



# 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, NAIROBI

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

NAME	SIGNATURE
Hon. Clement Muturi Kigano, M.P. - <b>Chairperson</b>	
Hon. T.J Kajwang, M.P -Vice-Chairperson	
Hon. Emmanuel Wangwe, M.P.	
Hon. Junet Sheikh Nuh Mohamed, M.P	
Hon. John Olago Aluoch, MP.	
Hon. Roselinda Soipan Tuyu, MP.	
Hon. Peter Opondo Kaluma, MP.	
Hon. Mwamkale Kamoti, MP.	
Hon. Zuleikha Hassan, MP.	
Hon. Josephine Naisula Lesuuda, M.P.	




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 5<sup>th</sup> 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 5<sup>th</sup> 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 14<sup>th</sup> April, 2021 His Excellency, the President, declared four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission.
14. On 26<sup>th</sup> 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 28<sup>th</sup> 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 11<sup>th</sup> 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 1<sup>st</sup> Respondent, the Parliamentary Service Commission, transmitting to the President the name of the 2<sup>nd</sup> 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 1<sup>st</sup> Respondent to submit to the President of the Republic of Kenya the name of the 1<sup>st</sup> Interested Party, Morris Kimuli for appointment to the Selection Panel for the appointment of Commissioners of the IEBC.*
18. On 26<sup>th</sup> 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 28<sup>th</sup> 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 1<sup>st</sup> 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 20<sup>th</sup> 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 24<sup>th</sup> 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 24<sup>th</sup> August, 2021 and informed the nominees that by the deadline date of 20<sup>th</sup> 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 20<sup>th</sup> 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 NGE**

51. In the advisory by the Chairperson, Dr. Joyce Mwikali Mutinda dated 11<sup>th</sup> 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, 5<sup>th</sup> 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 5<sup>th</sup> 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 28<sup>th</sup> 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 Wanderi, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang'aya appeared before the Committee on Tuesday 24<sup>th</sup> 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 20<sup>th</sup> 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) (2<sup>nd</sup> 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) (2<sup>nd</sup> 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 13<sup>th</sup> 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; 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.

#### **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 Burhaniah 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 202.
- (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 17<sup>th</sup> December, 2020 by the County Government of Mombasa; Remarkable support in Training the Law Enforcement Officers of the County Government of Mombasa on 4<sup>th</sup> 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 9<sup>th</sup> 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 28<sup>th</sup> 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) (2<sup>nd</sup> 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) (2<sup>nd</sup> 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 13<sup>th</sup> 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 29<sup>th</sup>; 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 26<sup>th</sup>; Nyang'aya J. A. (2016). On Adequate Housing Rights "Obsession with shortcuts cause of our tragedies". Appearing in the Standard May 9<sup>th</sup>; Nyang'aya J. A. (2016) On Electoral reforms "Restore credibility in electoral process" appearing in The Standard April 26<sup>th</sup>; 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 15<sup>th</sup> 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:  $\frac{1}{4}$  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

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