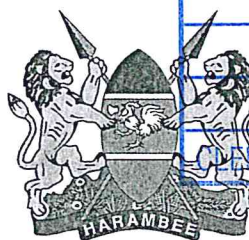


REPUBLIC OF KENYA

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TWELFTH PARLIAMENT (FOURTH SESSION)

THE SENATE

**STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS**

.....

**REPORT ON THE ELECTIONS (AMENDMENT) BILL (SENATE
BILLS NO. 18 OF 2019)**

.....

*Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.*

JULY, 2020

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PREFACE

Mr. Speaker,

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to Senate Standing Order 218 and mandated to: -

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'

The Committee is comprised of the following members: -

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jilo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, SC, FCI Arb, MP - Member
- 4) Sen. James Orengo, EGH, SC, MP - Member
- 5) Sen. Mohamed Yusuf Haji, EGH, MP - Member
- 6) Sen. Fatuma Dulio, CBS, MP - Member
- 7) Sen. Mutula Kilonzo Junior, MP - Member
- 8) Sen. Irungu Kang'ata, MP - Member
- 9) Sen. Johnson Sakaja, CBS, MP - Member

Mr. Speaker,

The Elections (Amendment) Bill (Senate Bills No. 18 of 2019) seeks to amend the Elections Act (No. 24 of 2011) to allow a candidate to be presented to the electorate on a party primary or in an election ballot paper in the way in which the candidate has chosen to familiarize himself or herself to the electorate. This will enable candidates to use their popular names that may not necessarily be official names of the candidates when vying for elective office.

The Committee considered the Bill at length, conducted public participation, and deliberated on the submissions received. A call for submission of memoranda was placed in the local dailies on 8th October, 2019. The call also invited members of the public to a public participation forum to discuss the Bill on Thursday, 24th October, 2019 between 9:00 am and 1:00 pm at Shimba Hills Hall, First Floor, KICC. The Committee received submissions from the Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights.

Based on the deliberations and public participation, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report. Additionally, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.

Mr. Speaker,

As I conclude, the Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment.

Further, the Committee wishes to thank the stakeholders who sent their submissions to the Committee.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Elections (Amendment) Bill, 2019.

I thank you, Mr. Speaker.



16th July, 2020


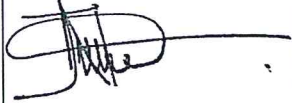

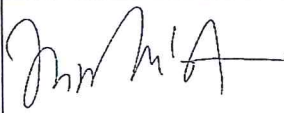
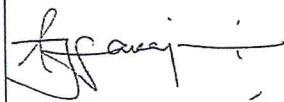
Signed.....

Date.....

**SEN. ERICK OKONG'O MOGENI, SC, MP,
CHAIRPERSON,
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

**ADOPTION OF THE REPORT ON THE ELECTIONS (AMENDMENT)
BILL (SENATE BILLS NO. 18 OF 2019)**

We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt the Report on the Elections (Amendment) Bill, (Senate Bills No. 18 of 2019).

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jilo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Mohamed Yusuf Haji, EGH, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, MP	-Member	
Sen. Irungu Kang'ata, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	

CHAPTER ONE

INTRODUCTION

1.0 Background on the Elections (Amendment) Bill, 2019

The Elections (Amendment) Bill, (Senate Bills No. 18 of 2019) is sponsored by Sen. (Eng.) Ephraim Mwangi Maina, EBS, MP.

The Bill was published on 14th August, 2019 and was read a First Time on 19th September, 2019. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140 (1), to the Standing Committee on Justice, Legal affairs and Human Rights for facilitation of public participation.

The Committee considered the Bill at length, conducted public participation, and deliberated on the submissions received. A call for submission of memoranda was placed in the local dailies on 8th October, 2019. The call also invited members of the public to a public participation forum to discuss the Bill on Thursday, 24th October, 2019 between 9:00 am and 1:00 pm at Shimba Hills Hall, First Floor, KICC. The Committee received submissions from the Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights.

Based on the deliberations and public participation, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report. Additionally, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.

1.1. Justification for the Bill

The Elections Act only permits the use of a candidate's official name as it appears in the register of voters and in the candidate's identification documents. A candidate who wishes to have his or her popular name included on a ballot paper has to go through the lengthy process of officially changing his or her name through the procedures set out under the Registration of Persons Act (Cap 107), the Registration of Documents Act (Cap. 285) and the Rules and Regulations made under the two statutes.

The ultimate goal of an election is to ensure that the electorate choose their preferred leaders in a free and fair environment. Name recognition is therefore an important aspect of a free and fair election and should be enabled to the fullest extent. It ensures that a voter easily identifies his or her preferred candidate on a ballot and therefore votes in the way he or she intended.

Candidates should therefore not be unduly restricted in the way they present themselves to the electorate on the ballot and other election related material as this hinders the realization the candidates' right to, without unreasonable restrictions, contest in an election and the electorate's right to free expression of their will as contemplated under Article 38 of the Constitution.

The Bill therefore seeks to provide for the inclusion of a candidate's popular name on a ballot paper which will safeguard the sanctity of the electoral process.

1.2. Objective of the Bill

The principal object of the Elections (Amendment) Bill, 2019 is to amend the Elections Act, 2011 to allow a candidate to be presented to the electorate on a party primary or an election ballot paper in the way in which the candidate has chosen to familiarize himself or herself to the electorate, i.e. by the use of a popular name that is not the official name of the candidate.

1.3. Overview of the Bill

The Bill proposes the following—

Clause 1 of the Bill provides the short titled as the Elections (Amendment) Act, 2019.

Clause 2 of the Bill amends the Elections Act, 2011 to define the term “popular name” to mean *‘a name by which a candidate is known to the public but which does not appear in the candidate’s national identity card or passport’*.

Clause 3 of the Bill amends the Elections Act, 2011 to allow the inclusion of a candidate's popular name on a ballot paper for purposes of a party primary or an election. It further provides for an application process for inclusion of such a name and requires the approval of the Independent Electoral and Boundaries Commission before the name is included in a ballot.

Upon approval of a popular name, the Independent Electoral and Boundaries Commission will be required to issue a certificate to the candidate. Thereafter the candidate's popular name will appear in the format approved by the Independent Electoral and Boundaries Commission in all relevant election materials.

Clause 4 of the Bill on the other hand proposes to amend section 109 of the Elections Act to include the approval of the Senate for Regulations made pursuant to the Elections Act. The Act currently only provides for approval by the National Assembly.

1.4. Consequences of the Bill

The Bill, once passed, will allow the inclusion of a candidate's popular name on a ballot paper. This will allow candidates in party primaries and elections to use preferred names without resorting to officially changing their official names, in the process safeguarding the sanctity of the electoral process by making it fairer both for candidates and for the electorate.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Stakeholder Invitation and Submission

The Committee, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement for submission of memoranda placed in the local dailies on 8th October, 2019. The call also invited members of the public to a public participation forum to discuss the Bill on Thursday, 24th October, 2019 between 9:00 am and 1:00 pm at Shimba Hills Hall, First Floor, KICC. The Committee received submissions from the Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights.

A matrix of with a summary of submissions from various stakeholders and Committee observations is attached at ***Annex 1***.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 The Committee made the following observations—

- (a) That the law has hitherto restricted election materials to only contain official names of candidates and any candidate with a popular name which is not an official name had to resort to the lengthy process of officially changing his or her name through the procedures set out under the Registration of Persons Act (Cap 107) and the Registration of Documents Act (Cap. 285) to enable them use the name in an election.

This Bill changes that as it allows the use of popular names approved by the Independent Electoral and Boundaries Commission by candidates in a party primary or an election. This will safeguard the sanctity of the electoral process by making it fairer and more transparent for both the candidates and the electorate.

- (b) That a few other jurisdictions allow the use of popular names in their elections. These include—
- I. Canada; and
 - II. United States of America in the states of—
 - (i) Florida;
 - (ii) North Carolina;
 - (iii) Nevada; and
 - (iv) Texas.

- (c) That the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This approval process will safeguard against the arbitrary use of popular names in elections. Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill.

- (d) That the Bill does not allow any sort of change of names of election candidates. It just allows a candidate to use their popular name in a party primary or an election. This will ensure that candidates do not utilise resources to popularise their official names when they are already popular by unofficial names and also safeguards the electoral process by ensuring that the electorate vote for the right candidate.
- (e) That the approval of regulations under section 109 of the Elections Act falls within the mandate of the Senate and is not a preserve of the National Assembly.

3.1 The Committee makes the following recommendations—

- (a) That clause 2 of the Bill be amended to include the definition of the term “party primary” as the term is not defined in the Elections Act, 2011.
- (b) That clause 3 of the Bill be amended to make proper reference to section 32(1) and (1A) of the Elections Act. This will allow independent candidates to use popular names in elections.
- (c) That clause 3 of the Bill be further amended to specify that the documents required to include an approved popular name shall be those in relation to a specific nomination or election exercise.
- (d) That clause 4 of the Bill be amended to allow the Independent Electoral and Boundaries Commission to prescribe the criteria for the use of a popular name during a party primary or an election.

ANNEXES

Annex 1: Matrix on Stakeholder Submissions on the Elections (Amendment) Bill (Senate Bills No. 18 of 2019)

Annex 2: Committee amendments to the Elections (Amendment) Bill (Senate Bills No. 18 of 2019)

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

STAKEHOLDER VIEWS ON THE ELECTIONS (AMENDMENT) BILL (SENATE BILLS NO. 18 OF 2019)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
1.	The Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights	<p>Proposal 1 Review the definition of the term 'popular name'.</p> <p>Rationale 1 1) The introduction of the name is not practically achievable. 2) There is no limit to the number of names a candidate can use. 3) There is need to delete reference to it being a name 'known to the public' and refer to it as being a name known to the <u>electorate</u>'</p>	<p>Proposal 1 1) The introduction of a popular name is actually practical as the Committee had observed from other jurisdictions e.g. Canada. 2) The Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the arbitrary use of popular names in elections. Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including the limitation of the number of popular names. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names. 3) A popular name is not restricted to an electorate. It is general in nature and ought to be known to the general public and not be restricted to a specific electorate.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>Proposal 2 Amend the definition of the term 'popular name' to include a condition of popularity.</p> <p>Rationale 2 The definition should be expounded in meaning to provide for a condition of popularity so as to give effect to the approval process and determination by the IEBC. This may be achieved as placing a condition or test to what constitutes a popular name. A candidate may wish to claim a name branded to him or her that has a derogatory aspect to it. In the alternative, a candidate may wish to popularise a slogan and convert it to his name.</p>	<p>Proposal 2 As observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the arbitrary use of popular names in elections.</p> <p>Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including provisions on conditions of tests for approval of popular names, disqualification of derogatory terms and use of slogans as popular names. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p>
2.	The Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights	<p>Proposal 1 1) Provide a mechanism for the approval of popular names to avoid multiplicity of popular names. 2) Amend Clause 32A (2) (b) to state “...no later than twenty one days before the submission of names under section 31(2B)”.</p> <p>Rationale 1</p>	<p>Proposal 1 1) As observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the multiplicity of popular names in elections. Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>1) There is need to review the timelines for submission of 'popular names'.</p> <p>2) The proposed timelines under the proposed section 32A (2) (b) will be in conflict with the timelines set for submission of symbols for independent candidates.</p> <p>Proposal 2 Introduce a sub clause 5 on procedures and timelines for rejection and/or replacement of a popular name.</p> <p>Rationale 2 1) There is need to provide procedures and timelines for rejection and or replacement of a popular name.</p>	<p>Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including mechanism for the approval of popular names to avoid multiplicity the names in elections. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p> <p>2) Under clause 3 of the Bill, the proposed section 32A(2)(b) of the Elections Act relates to the nomination of independent candidates under section 32(1) of the Elections Act and not nomination of party candidates under section 31(2B).</p> <p>Further, the timelines for nomination of party candidates and that for nomination of independent candidates do not run parallel to each other and therefore cannot conflict. The submission of popular names by independent candidates at the time of submission of their symbols is therefore timely and proper.</p> <p>Proposal 2 As observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the arbitrary use of popular names in elections.</p> <p>Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>2) There is a possibility of submission of obscene, offensive or duplicate names for the same electoral seats.</p> <p>Proposal 3 Provide for management of disputes relating to the submission of names.</p> <p>Rationale 3 A situation may arise where two candidates claim a similar name. Names are personal and distinct and as such a candidate would be unwilling to replace a preferred popular names.</p>	<p>liberty to make specific rules to ring-fence the general provisions under the Bill, including provisions on procedures and timelines for rejection or replacement of popular names, duplication of popular names and the prohibition of the use of obscene or offensive names. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p> <p>Proposal 3 As observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the use of similar popular names in elections.</p> <p>Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including the management of disputes relating to approval of popular names. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>Proposal 4 Reconsider the clause.</p> <p>Rationale 4 1) The clause raises the question as to whether an individual is allowed to change his or her name temporarily for the purpose of a nomination or election and as to whether the candidate may revert to his or her name at the end of the election process. Further, a candidate could obtain a popular name that is associated to a political party and change it when they shift parties? This would cause further confusion to the voters.</p> <p>2) The clause creates a presumption that it is meant to cure the issue that a candidate, who has a popular name, would suffer loss of identity and subsequently lose out on votes when one uses only his or her official name. However, nothing stops a candidate from exercising his or her right to campaign and popularise his name and in addition, at the Party nominations and elections, the picture of the candidate and the party symbol are provided for in addition to the</p>	<p>Proposal 4 1) The clause does not allow temporary change of names of election candidates. It just allows a candidate to use their popular name in an election exercise. Further and as observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the arbitrary use of popular names in elections. In any event, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including use popular names associated with political parties. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p> <p>2) The clause allows party primary and election candidates to use popular names in the electoral process. This will ensure that candidates do not utilise resources to popularise their official names when they are already popular by other unofficial names. This also safeguards the electoral process by ensuring that the electorate vote for the right candidate.</p> <p>3) The clause does not allow a candidate to be sworn in by a popular name when elected. It only allows a candidate to</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>name of the candidate to assist the voter make a decision as to who they wish to vote for.</p> <p>3) The clause creates the presumption that a candidate would be sworn in by the official and popular name when elected. Are the provisions an alternative to provisions for change of names under the Registration of Persons Act?</p> <p>4) The change in name by the inclusion of a popular name should be construed as a mere branding of the candidate and has no effect on the status of any individual raising a claim against the candidate or the candidate's obligations towards them.</p> <p>5) The change does not affect any rights or obligations of candidate or invalidate any legal proceedings by or against him or her such that any legal proceedings that might have been continued or commenced against the individual by their former name.</p>	<p>use their popular name during a party primary or an election.</p> <p>Further, the clause does not amend or in any way conflict with the provisions of the Registration of Persons Act (Cap. 107) with regard to the change of names. It does not allow a person to change their official name. It only allows a candidate to use their popular name during a party primary or an election.</p> <p>4) As earlier stated, the clause does not allow a person to change their official name. It only allows a candidate to use their popular name during a party primary or an election.</p> <p>5) As earlier stated, the clause does not allow a person to change their official name. It only allows a candidate to use their popular name during a party primary or an election.</p>
3.	The Independent Electoral and Boundaries Commission and the Kenya	<p>Proposal 1 Delete Clause 4.</p> <p>Rationale 1</p>	<p>Proposal 1 1) Section 109 (3) and (4) of the Elections Act is still valid and was not spent after the 4th March, 2013 elections. The only provision that was spent after the elections is the proviso to section 109(3). The substantive provision</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
	National Commission on Human Rights	<p>1) The Independent Electoral and Boundaries Commission intends to pursue a repeal of section 109(3) and (4) of the Independent Electoral and Boundaries Commission Act as subsection (3) was spent after the 4th March, 2013 elections and subsection (4) makes reference to subsection (3).</p> <p>2) Regulations are meant to operationalize existing substantive laws and therefore do not need to be tabled in Parliament as contemplated in the <i>repealed</i> National Assembly and Presidential Elections Act (CAP 7).</p>	<p>under section 109(3) and the entirety of section 109(4) are still valid and applicable law.</p> <p>2) All regulations are required to be tabled before Parliament in accordance with the Statutory Instruments Act, 2013. The repeal of section 109 (3) and (4) will therefore not repeal this statutory requirement.</p> <p>The exercise of powers to make regulations is an exercise of delegated authority donated by Parliament in statute and Parliament is therefore at liberty to determine how that power is exercised, including by requiring Parliamentary approval before publication of regulations. Further, section 23 of the Statutory Instruments Act provides that regulations come into effect on the date specified in the regulation or on the date of its publication. This means that regulations can come into effect before their approval by Parliament. Parliament is therefore within its rights and legislative responsibilities to require approval of specific regulations before they are published and become effective.</p> <p>The repeal of the National Assembly and Presidential Elections Act (CAP 7) had nothing to do with the requirement under section 34(2) of the repealed Act that no regulations be made unless approved by the National Assembly. The National Assembly and Presidential Elections Act was repealed to give way to the Elections Act, 2011 which made electoral laws compliant with the then new Constitution. Indeed, the retention of the provision to require Parliamentary approval of regulations under the Elections Act indicates the intention of Parliament to ensure that all regulations made under the</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>Proposal 2 Retain clause 4.</p> <p>Rationale 2 Approval of regulations espoused under section 109 of the Elections Act falls within the mandate of the Senate.</p>	<p>Act are approved by Parliament before they become operational.</p> <p>Proposal 2 Approval of regulations under section 109 of the Elections Act falls within the mandate of the Senate.</p>
4.	The Independent Electoral and Boundaries Commission	<p>Proposal 1 Reconsider the Bill.</p> <p>Rationale 1</p> <ol style="list-style-type: none"> 1) Ballot paper specifications require to be uniform and that may not be achieved where some candidates choose to include 'popular names'. 2) Inclusion of 'popular names' may affect the size and cost of ballot papers. 3) There is no provision limiting the number or length of the 'popular names'. 4) There is provision providing for the appearance and arrangement of the 	<p>Proposal 1 As observed earlier, the Bill empowers the Independent Electoral and Boundaries Commission to approve popular names for use in an election. This will safeguard against the arbitrary use of popular names in elections.</p> <p>Further, once the Bill is enacted it will be part of the Elections Act, 2011. This means that the power of the Independent Electoral and Boundaries Commission to make regulations for the better carrying out of the Elections Act will apply to the provisions of Bill. The Commission will therefore be at liberty to make specific rules to ring-fence the general provisions under the Bill, including provisions to ensure uniformity of ballot papers, to ensure the size and cost of ballot papers is not inordinately increased, to limit the number or length of popular names and to determine the appearance and arrangement of the popular names on</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	OBSERVATIONS/COMMENTS
		<p>names. This may be challenging when arranging the names on the ballot paper, as the requirement is for the names to appear in an alphabetical order.</p>	<p>relevant election materials. The Committee will reinforce this by specifically providing that the Commission makes regulations prescribing the criteria for approval for use of popular names.</p>

Stakeholders

1. The Independent Electoral and Boundaries Commission
2. The Kenya National Commission on Human Rights

16th July, 2020

The Clerk of the Senate
Parliament Buildings

NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE ELECTIONS
(AMENDMENT) BILL (SENATE BILLS NO. 18 OF 2019)**

NOTICE is given that Sen. Erick Okong'o Mogeni, the Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Elections (Amendment) Bill, Senate Bills No. 18 of 2019, at the Committee Stage—

CLAUSE 2

THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Amendment of
section 2 of No.
24 of 2011.

2. Section 2 of the Elections Act, in this Act referred to as “the principal Act”, is amended by inserting the following new definitions in their proper alphabetical sequence—

“popular name” a name by which a candidate is known to the public, but which does not appear in the candidate’s national identity card or passport; and

“party primary” means the process by which a political party elects or selects a candidate for a forthcoming general election or by-election.

CLAUSE 3

THAT clause 3 of the Bill be amended in the proposed new section 32A by—

- (a) deleting the expression “32(1)(a)” appearing immediately after the words “symbol under section” in subclause (2)(b) and substituting therefor the expression “32(1) and (1A)”;
- (b) inserting the words “in relation to that nomination or election” immediately after the words “or the Commission” in subclause (4)(b)(iii).

CLAUSE 4

THAT clause 4 of the Bill be amended by inserting the following new paragraph immediately before paragraph (a)—

(aa) in subsection 1 by inserting the following new paragraph immediately after paragraph (c)—

(ca) prescribe the criteria for the use of a popular name during a party primary or an election.



.....
Sen. Erick Okong'o Mogeni, SC, MP,
Chairperson,
Standing Committee on Justice, Legal Affairs and Human Rights.

