

“Act” means the Independent Electoral and Boundaries Commission Act,

“city” has the meaning assigned to it under the Urban Areas and Cities Act, 2011 and includes capital city, city county and urban areas;

“sparsely populated area” means an area whose population density is below the national average;

“densely populated area” means an area whose population density is above the national average;

Scope of procedures

3. These procedures provide for—
 - (a) publication of a notice and initiation of the delimitation of process;
 - (b) preparation of the preliminary report;
 - (c) ascertainment of the number of inhabitants of Kenya
 - (d) timeframes;
 - (e) particulars of the report;
 - (f) public sensitization and participation process;
 - (g) preparation of the revised report;
 - (h) adoption of the report;
 - (i) consideration by Parliament;
 - (j) preparation and publication of the final report;
 - (k) judicial review of a decision of the Commission; and
 - (l) preparation and dissemination of maps;

PART II—PROCEDURE FOR INITIATION OF THE DELIMITATION PROCESS

Matters to be addressed in delimitation of electoral boundaries

4. Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—
 - (a) review of the names and boundaries of constituencies;
 - (b) review of the number, names and boundaries of wards;
 - (c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
 - (d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—
 - (i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in

relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

Notice of delimitation of electoral units

5. (1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89 (2) and (3) of the Constitution, the Commission shall notify the public of—
- (a) the intended review;
 - (b) invite representations from interested parties; and
 - (c) specify the period within which the Commission shall publish the preliminary report.
- (2) A notice under sub paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 6.

Preliminary report

6. (1) The preliminary report shall contain the following particulars—
- (a) the proposed delimitation of boundaries for constituencies and wards including—
 - (i) the actual proposed names of every constituency and ward; and
 - (ii) description of the proposed boundaries.
 - (b) the specific geographical and demographical details relating to such delimitation including—
 - (i) the population quota for constituencies and wards;
 - (ii) the number of inhabitants in every constituency and ward;
 - (iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
 - (iv) an indication of the proposed margin of change from the population quota.

Reference materials

7. (1) The Commission shall, use as its primary reference material—

- (a) the final report of the last Electoral Boundaries Commission on the review of electoral units; and
- (b) the latest official population census report.

- (2) The Commission may use as its secondary reference material
- (a) the reports of County Boundary Review Panels; or
 - (b) other relevant data.

- (3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

Ascertainment of the inhabitants of Kenya

8. (1) For purposes of determining the population quota, the Commission shall ascertain the number of inhabitants of Kenya, from—
- (a) figures contained in the latest official national population census report, if such report was prepared not more than three years before the delimitation exercise; or
 - (b) official population estimates certified by the National Bureau of Statistics, if the census report was prepared more than three years before the delimitation exercise.
- (2) Despite sub paragraph (1), the Commission shall, subject to the timelines set out under Article 89 (2) of the Constitution, conduct the delimitation exercise after the conduct of the national population census.
- (3) The National Bureau of Statistics shall, as soon as possible after the completion of every national census, submit a copy of the report to the Commission.

Publicization of the preliminary report

9. (1) The Commission shall—
- (a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
 - (b) invite the public to make representations on the proposals contained in the report; and
 - (c) put in place administrative mechanism for receiving representations from the public.
- (2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall not be less than thirty days.

Public sensitization

10. (1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 5, provide the framework for sensitization and participation of the public.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

Public hearings

11. (1) The Commission shall conduct boundaries review hearings in every county and may constitute County Boundary Review Panels for purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings;

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

Preparation of the revised report

12. (1) Upon completion of the public hearings the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

Consideration by Parliament and preparation of final report

13. (1) The revised report shall be submitted to Parliamentary which shall, within thirty days, consider the report and forward its recommendations to the Commission.

(2) Within fourteen days of the expiry of the period provided for in paragraph (1), the Commission shall upon receipt and considerations of Parliament and representations from the public, prepare the final report for publication in the *Gazette*.

(3) If Parliament fails to make recommendations within the period

specified in paragraph (1), the Commission shall publish its report in accordance with paragraph (2).

(4) Notwithstanding any other law, where the final report is not published in accordance with the provisions of paragraph (3) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

Preparation and dissemination of maps

14. (1) The Commission shall prepare and publish maps—
- (a) for all the new electoral units in accordance with the final report;
 - (b) for the respective constituencies in every county; and
 - (c) for wards in every constituency.
- (2) The Commission shall provide copies the maps to Parliament and publish all the maps in its website.

Review of decisions of the Commission

15. (1) A person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.
- (2) A decision of the High Court in an application brought pursuant to sub paragraph (1) shall be final.
- (3) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

PART III—MISCELLANEOUS

Maintenance of records

16. The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

Duty of certain offices to cooperate with the Commission

17. It shall be the duty of the Director of Survey and Director-General of the Kenya National Bureau of Statistics and every public officer whose services are required by the Commission for purposes of the delimitation of electoral boundaries to provide the necessary technical support.

Section 36 of Act No. 9 of 2011 which it is proposed to amend

36. Procedure for delimitation of electoral boundaries

(1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

- (a) review of the names and boundaries of constituencies;
- (b) review of the number, names and boundaries of wards;
- (c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
- (d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—
 - (i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;
 - (ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;
 - (iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

- (a) the proposed delimitation of boundaries for constituencies and wards; and
- (b) the specific geographical; and
- (c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

- (6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.
- (7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.
- (8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.
- (9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).
- (10) A person who, being responsible for the publication in the Gazette of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.
- (11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

This Bill seeks to amend section 36 of the Independent Electoral and Boundaries Commission Act to re-introduce the Fifth Schedule to guide the delimitation of electoral boundaries. By virtue of section 36 of Act No. 9 of 2011, the Fifth Schedule lapsed upon the publication of the final report of the delimitation of electoral boundaries.

The Election Laws Amendment Act, 2017 introduced a new section 36 which contained some procedures for delimitation of electoral units.

The purpose of the proposed amendment is to provide for a complete procedure for the delimitation of electoral boundaries and to address identified gaps.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does delegate legislative powers to the Commission but does not limit fundamental rights and freedoms.

Statement as to whether the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will occasion additional expenditure of public funds.

Dated 2020.

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William Kipkiror Cheptumo
Chairperson
Justice and Legal Affairs Committee
National Assembly