

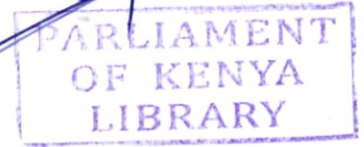
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

Approved for Tabling
12/11/2024



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 12 NOV 2024

DAY:
TUESDAY

TABLED
BY:

Hon. GITONGA MURUGARA, MP
(CHAIRPERSON)

CLERK-AT
THE-TABLE:

INZO FU MWALE

REPORT ON:

**THE CONSIDERATION OF THE INDEPENDENT ELECTORAL
AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023**
(NATIONAL ASSEMBLY BILL NO. 50 OF 2023)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2024

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List of Abbreviations and Acronyms

ELGIA	-	Electoral Law and Governance Institute for Africa
IEBC	-	Independent Electoral and Boundaries Commission
IRCK	-	Inter-Religious Council of Kenya
FORD	-	Forum for the Restoration of Democracy
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
OAG	-	Office of the Attorney-General
ODPP	-	Office of the Director of Public Prosecutions
ODM	-	Orange Democratic Movement
ORPP	-	Office of the Registrar of Political Parties
PSC	-	Public Service Commission
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

Annexures

Annexure 1: Adoption Schedule

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Chairperson's Foreword

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly Bill No. 50 of 2023*) which was published on 22nd August 2023.

The Bill seeks to amend the Independent Electoral Commission and Boundaries Act (Cap. 7C) ("the Act") to ensure equal franchise amongst constituencies and wards and ensure the use of other non-population criteria considerations in the delimitation of boundaries is in line with the principles of fair representation and equality of vote.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 20th October 2023 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/070 dated 23rd September 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday, 1st October 2024. The memoranda were to be received on or before Friday 3rd November 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received five (5) memoranda. The IEBC, OAG, ORPP, ELGIA and IRCK gave their views on the Bill which the Committee considered in the preparation of this report.

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

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly Bill No. 50 of 2023*).

It is my pleasure to report that the Committee has considered the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly Bill No. 50 of 2023*) and have the honour to report back to the National Assembly with the recommendation that **the House rejects the Bill since the provisions are spent.**


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

CHAPTER ONE

1 Preface

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and

m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:

- a) State Department of Correctional Services;
- b) State Law Office and Department of Justice;
- c) The Judiciary;
- d) Judicial Service Commission;
- e) Office of the Director of Public Prosecutions;
- f) Ethics and Anti-Corruption Commission;
- g) Independent Electoral and Boundaries Commission;
- h) Commission on Administrative Justice;
- i) Office of the Registrar of Political Parties;
- j) Witness Protection Agency;
- k) Kenya National Commission on Human Rights;
- l) Kenya Law Reform Commission; and
- m) Council of Legal Education.

1.3 Committee Membership

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

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

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

MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency

WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency

ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency

ODM Party

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

ODM Party

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

UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency

UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency

FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency

UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)

UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency

UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency

Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency

Jubilee Party

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

Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff, who work under the general guidance of Mr. George Gazemba, the Head of Department:

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

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Peter Mutethia
Audio Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 50 OF 2023*)

2.1 Background

6. The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023 (“the Bill”) is sponsored by Hon. Mwangi Kiunjuri.
7. The Bill was published on 22nd August 2023 and read a First Time in the House on 18th October 2023. It was thereafter committed to the Departmental Committee on Justice and Legal Affairs in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Independent Electoral and Boundaries Commission Act (Cap. 7C) (“the Act”) to ensure equal franchise amongst constituencies and wards and ensure the use of other non-population criteria considerations in the delimitation of boundaries is in line with the principles of fair representation and equality of vote.
9. Article 88(4)(c) makes the IEBC responsible for the delimitation of constituencies and wards. Article 89 makes provisions of the delimitation of electoral units.
10. In particular, —
 - a) **Clause 1 of the Bill** provides for the Short Title.
 - b) **Clause 2 of the Bill** seeks to amend section 2 of the Act to insert the definition of the words “population quota” as defined in Article 89(12) of the Constitution. Article 89(12) provides that—
 - a. *For purposes of this Article, “population quota” means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.*
 - c) **Clause 3 of the Bill** amends section 3 of the Act to insert a new object and purpose of the Act to include providing a framework for the delimitation of constituencies and wards.
 - d) **Clause 4 of the Bill** amends section 36 of the Act on the procedure for delimitation of electoral boundaries by—
 - i. adding the principle of universal suffrage based on aspiration of fair representation and equality of vote as one of the requirements of the process to ensure that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota;

- ii. inserting new subclauses that provide that the population quota shall be the primary consideration in the delimitation of boundaries; where IEBC makes a determination to vary the population quota, it shall provide reasons and ensure such determination is in line with the principles of fair representation and equality of vote; and
- iii. varying the contents of the preliminary report to include the variation in population quota margins and reasons for such variation how the IEBC has taken into consideration the requirement placed on IEBC to progressively work towards ensuring the number of inhabitants in every constituency and ward is, as nearly as possible, equal to the population quota.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

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

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

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

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

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

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

3.2 Memoranda Received on the Bill

13. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Friday, 20th October 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/070 dated 23rd September 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday, 1st October 2024.

14. To this end, the Committee received five (5) memoranda from the IEBC, OAG, ELGIA, ORPP and IRCK. The memoranda are annexed to this report as *Annexure 6*.

15. **IEBC** submitted as that the procedure for delimitation of electoral boundaries is already prescribed in the Constitution. Further, the Commission is bound by the stipulations of Article 89 of the Constitution regarding the population quota. Therefore, a proposal that is against the said principles as provided under Article 89 of the Constitution regarding the population quota will be self-defeating and shall not be considered by the Commission.

16. The IEBC further submitted that the proposals contained in the Bill were also contained in the already-passed Independent Electoral and Boundaries Commission (Amendment) Bill 2024 and therefore requested the National Assembly to consider withdrawing or rejecting the current Bill.

17. **OAG** submitted memoranda in support of the Bill with the following amendments:

a) Clause 3 be amended by deleting the "is" appearing after "the principal Act is amended" and replace with "by".

b) Clause 4 (d) (iii) be amended by adding the words "that is" immediately after "figures".

18. **OAG** further submitted that the proposed section 36 for repeal was repealed by the IEBC (Amendment) Bill, 2024 in its entirety and should be omitted from the Bill. They were of the opinion that the Bill should be withdrawn.
19. **ELGIA** submitted that the definition of the “population quota” already exists in the Constitution. However, importing the same to the statute providing the legal framework for the electoral boundaries’ delimitation is agreeable. Further, the proposal to insert a new object and purpose of the Act to include providing a framework for the delimitation of constituencies and wards fit well because it expands the main purpose and object of the Act by expanding its scope, the framework of which is now provided for under Part IIIA of the Amendment Act. That the proposed amendment of section 36 is already repealed hence spent since the Act has been enacted into law.
20. **ORPP** submitted memoranda in support of the Bill stating that the definition of population quota stating that it mirrors that of the Constitution under Article 89. They agreed with the proposal to insert a new object and purpose of the Act to include providing a framework for the delimitation of constituencies and wards as it reinforces the function of IEBC stipulated under section 24B of the Act as introduced through the IEBC (Amendment) Act, 2024 being the procedure for delimitation of electoral boundaries. They also noted that the proposed section 36 for repeal does not exist since the IEBC (Amendment) Bill, 2024 repealed section 36 of the IEBC Act, Cap 7C in its entirety.
21. **IRCK** submitted memoranda supporting the inclusion of the definition of population quota as it aligns with Article 89(12) of the Constitution and provides a clear basis for determining constituency and wards boundaries. The council also agrees with the proposal to include a framework for delimitation in the objects of the Act as it will provide a clearer guidance for the IEBC’s crucial role in the process.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

22. Upon reviewing the Bill and the submissions received, the Committee made the following observations:
- a) In a consultative meeting of the Committee with IEBC and the sponsor of the Bill, it was agreed that the provisions of the Bill be harmonized and consolidated with the proposed Bill by IEBC.
 - b) Upon harmonization, IEBC submitted a draft Bill to the Committee whose proposals were taken up by the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 which was assented to by the President on 9th July, 2024.
 - c) The Bill is now spent since the amendments as agreed between the sponsor of the Bill and IEBC have been enacted into law.
23. In light of the foregoing, the Committee resolved to recommend to the House to reject the Bill.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

22 The Committee, having considered the Independent Electoral and Boundaries Commission (Amendment) Bill (*National Assembly No. 50 of 2023*) recommends that **the House rejects the Bill since the provisions of the Bill are spent.**

SIGNED.......... DATE..... 12-11-2024

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

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 NOV 2024	DAY: TUESDAY
TABLED BY:	HON. GITONGA MURUGARA, MP (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZO FU MHALE

Annexure 1

Adoption Schedule



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 50 OF 2023)**

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023 (National Assembly Bill No. 50 of 2023) and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

Murugara

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

Mutuse

3. Hon. Maalim Farah, EGH, MP

Maalim

4. Hon. Francis Kajwang' Tom Joseph, MP

.....

5. Hon. Junet Mohamed, CBS, MP

.....

6. Hon. Onyiego Silvanus Osoro, CBS, MP

Onyiego

7. Hon. (Dr.) Otiende Amollo, SC, MP

.....

8. Hon. Muchira Michael Mwangi, MP

Muchira

9. Hon. Makali John Okwisia, MP

.....

10. Hon. Muriu Wakili Edward, MP

.....

11. Hon. Maina Jane Njeri, MP

.....

12. Hon. Gichohi Kaguchia John Philip, MP

Gichohi

13. Hon. Mogaka Stephen M., MP

Mogaka

14. Hon. Aden Daud, EBS, MP

Aden Daud

15. Hon. Siyad Amina Udgoon, MP

Siyad

Annexure 2

Minutes

MINUTES OF THE 54TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 7TH NOVEMBER 2024 AT 11:30 AM IN ROOM 26, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson*
3. Hon. Maalim Farah, EGH, MP - *Virtually*
4. Hon. Onyiego Silvanus Osoro, CBS, MP - *Virtually*
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Makali John Okwisia, MP - *Virtually*
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Mogaka Stephen M, MP - *Virtually*
9. Hon. Aden Daud, EBS, MP
10. Hon. Siyad Amina Udgoon, MP

ABSENT WITH APOLOGIES

1. Hon. Francis Kajwang' Tom Joseph, MP
2. Hon. Junet Mohamed, CBS, MP
3. Hon. (Dr.) Otiende Amollo, SC, MP
4. Hon. Muriu Wakili Edward, MP
5. Hon. Maina Jane Njeri, MP

SECRETARIAT

- | | | |
|---------------------------|---|--------------------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant I / Lead Clerk |
| 2. Mr. Walala Ronald | - | Ag. D/Director, Legal Services |
| 3. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 4. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 5. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 6. Ms. Vivienne Ogega | - | Research Officer III |
| 7. Mr. Calvin Karungo | - | Media Relations Officer |
| 8. Mr. Meldrick K. Sakani | - | Audio Officer |
| 9. Ms. Mary Kamande | - | Public Communications Officer |
| 10. Mr. Gideon Kireu | - | Attaché |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Legal briefing on the Draft Penal Code and Criminal Procedure Code (Amendment) Bill as proposed by the National Council on the Administration of Justice (NCAJ)
5. Consideration and Adoption of the Report on the Independent Electoral and Boundaries Commission (National Assembly Bill No. 50 of 2023) sponsored by Hon. Mwangi Kiunjuri, MP
6. Consideration and Adoption of the Report on the Proposed Penal Code (Amendment) Bill, 2024 by Hon. Anthony Olouch, MP
7. Consideration and Adoption of the Report on the Proposed Penal Code (Amendment) Bill, 2024 by Hon. Opiyo Wandayi, MP
8. Consideration and Adoption of the Report on the Proposed Penal Code (Amendment) Bill, 2024 by Hon. Esther Passaris, MP
9. Budget Implementation Monitoring Review for the Financial Year 2023-2024

10. The Message of H.E the President with respect to the implementation of the two-thirds gender rule and the establishment of the Office of the Leader of Official Opposition in Parliament
11. Any Other Business
12. Adjournment / Date of the Next Meeting

MIN. NO/DDC/JLAC/276/2024: PRELIMINARIES

The meeting was called to order at ten minutes to noon by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves. The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, MP and seconded by Hon. Muchira Michael Mwangi, MP.

MIN.NO/DDC/JLAC/277/2024: CONFIRMATION OF MINUTES

1. Minutes of the 50th Sitting held on Wednesday, 18th September 2024 were adopted as a true reflection of the proceedings having been proposed by Hon. Mutuse Eckomas Mwengi, MP and seconded by Hon. Muchira Michael Mwangi, MP.
2. Minutes of the 51st Sitting held on Thursday, 19th September 2024 were adopted as a true reflection of the proceedings having been proposed by Hon. Muchira Michael Mwangi, MP and seconded by Hon. Mutuse Eckomas Mwengi, MP.
3. Minutes of the 52nd Sitting held on Tuesday, 24th September 2024 were adopted as a true reflection of the proceedings having been proposed by Hon. Gichohi Kaguchia John Philip, MP and seconded by Hon. Muchira Michael Mwangi, MP.
4. Minutes of the 53rd Sitting held on Tuesday, 1st October 2024 were adopted as a true reflection of the proceedings having been proposed by Hon. Mutuse Eckomas Mwengi, MP and seconded by Hon. Aden Daud, MP.

MIN.NO/DDC/JLAC/278/2024: LEGAL BRIEFING ON THE DRAFT PENAL CODE AND CRIMINAL PROCEDURE CODE (AMENDMENT) BILL AS PROPOSED BY THE NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ)

The agenda was deferred. The Committee further proposed a retreat with the National Council on the Administration of Justice at a date convenient to the NCAJ.

MIN.NO/DDC/JLAC/279/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (NATIONAL ASSEMBLY BILL NO. 50 OF 2023) SPONSORED BY HON. MWANGI KIUNJURI, MP

Committee Observations

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

- a) In a consultative meeting of the Committee with IEBC and the sponsor of the Bill, it was agreed that the provisions of the Bill be harmonized and consolidated with the proposed Bill by IEBC.
- b) Upon harmonization, IEBC submitted a draft Bill to the Committee whose proposals were included in the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 and which was assented to by the President on 9th July 2024.
- c) The Bill is now spent since the amendments as agreed between the sponsor of the Bill and IEBC have been enacted into law.

Committee Recommendations

The Committee, having considered the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly No. 50 of 2023) recommends that the House rejects the Bill since the provisions of the Bill are spent.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Muchira Michael Mwangi, MP.

MIN.NO/DDC/JLAC/280/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROPOSED PENAL CODE (AMENDMENT) BILL, 2024 BY HON. ANTHONY OLOUCH, MP

There was a divided opinion on whether to approve the Bill or not. Eventually, the Committee observed that the proposal was timely and will be effective in addressing the current upsurge of mental health issues causing suicide. The Committee noted that in accordance with the definition of a person with mental illness as provided for in the Mental Health Act (Cap. 248), a person who has attempted suicide should be considered as a person needing help as opposed to a criminal who should be punished. The Committee also noted that the proposal enables Kenya, as a member of the UN, to conform to the UN Sustainable Development Goals and the WHO Global Mental Health Action Plan aim to reduce the global suicide rate by one-third by 2030.

In light of the foregoing, the Committee determines that the Legislative Proposal should be published.

Committee Recommendations

In light of the foregoing, the Committee resolved that the Legislative Proposal should be published.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. Siyad Amina Udgoon, MP and seconded by Hon. Mutuse Eckomas Mwengi, OGW, MP.

MIN.NO/DDC/JLAC/281/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROPOSED PENAL CODE (AMENDMENT) BILL, 2024 BY HON. OPIYO WANDAYI, MP

The Committee noted that since the sponsor of the proposal Hon. Opiyo Wandayi, MP was no longer a Member of Parliament, the proposal should not be recommended for publication.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. Siyad Amina Udgoon, MP and seconded by Hon. Muchira Michael Mwangi, MP.

MIN.NO/DDC/JLAC/282/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROPOSED PENAL CODE (AMENDMENT) BILL, 2024 BY HON. ESTHER PASSARIS, MP

The Committee considered the proposal and observed as follows:

- a) That sexual offences relating to the abuse of a position of power or authority are provided for under section 23 and 24 of the Sexual Offences Act; and

- b) That the existing legal framework provides for penalties against any form of abuse of power, including cases where sexual exploitation is used as a means to gain influence or favours.

Committee Recommendation

After deliberating on the proposal, the Committee resolved to recommend that the legislative proposal should not be published.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Mogaka Stephen M., MP.

MIN.NO/DDC/JLAC/283/2024: BUDGET IMPLEMENTATION MONITORING REVIEW FOR THE FINANCIAL YEAR 2023-2024

The Committee noted that in accordance with the Standing Order 245A, the Committee is required to consider the budget implementation monitoring for the Ministries, Departments and Agencies (MDAs) under its purview. In so doing, the Committee shall examine the conformity of the implementation process with the principles and values of public finance as set out in Article 201 of the Constitution.

Committee Resolution

The Committee resolved to retreat and hold meetings to consider the budget implementation monitoring for the MDAs under its purview from Sunday 8th to Sunday 15th December 2024, in Mombasa County. All the agencies under the purview of the Committee to be invited.

The Committee further proposed to visit all institutions under the agencies in Mombasa County and its environs. These include the Courts, the prisons and probation centers, regional offices such as those hosting the Commission on Administrative Justice, Director of Public Prosecutions and the Independent Electoral and Boundaries Commission.

MIN.NO/DDC/JLAC/284/2024: THE MESSAGE OF H.E. THE PRESIDENT WITH RESPECT TO THE IMPLEMENTATION OF THE TWO-THIRDS GENDER RULE AND THE ESTABLISHMENT OF THE OFFICE OF THE LEADER OF OFFICIAL OPPOSITION IN PARLIAMENT

Pursuant to Standing Order 42(2) and resolution of the House on 12th October 2022, the Message of H.E. the President with respect to the implementation of the two-thirds gender rule and the establishment of the Office of the Leader of Official Opposition was referred to the Committee for consideration and Reporting to the House.

The Committee observed that the proposed amendments to the Constitution, as proposed by H.E. the President, were contained in the National Dialogue Committee Report and Multi-Sectoral Working Group recommendations that the Committee already considered. The Committee noted that it made its observations and recommendations through its *Report on The Consideration of The Report of The National Dialogue Committee (NADCO) and Report of The Multi-Sectoral Working Group (MSWG) on the Realization of The Two-Thirds Gender Principle*, which was tabled in the National Assembly on 9th October 2024. The Committee observed that the matter is therefore concluded.

MIN.NO/DDC/JLAC/285/2024: ANY OTHER BUSINESS

1. The Committee took note of the request from the Nuclear Power and Energy Agency for a joint meeting with the Energy Committee to discuss the International Atomic Energy Agency (IAEA) Legislative Assistance Mission on Monday, 11th November 2024 at 2.30pm, Main Parliament Buildings. Members urged to attend.
2. The Committee took note of an invite to the Launch of the Annual State of the Judiciary and the Administration of Justice Report (SOJAR) 2023/24 Friday, 15th November 2024 at 9am at Milimani Ceremonial Hall. Members urged to attend.
3. The Committee took note of the request from Kenyans in the Diaspora Technical Working Group to hold a meeting on their proposals to amend the Elections Laws on Monday, 18th November 2024 at 8.30am at Ole Sereni Hotel, Nairobi. Hon. John Kaguchia informed the Committee that Ambassador Dr. Joseph Warui, the Deputy High Commissioner London, and the Special Diaspora Envoy has requested the Committee, through the Honourable Member, to extend an invitation to him. The Committee acceded to his request.
4. The Committee was appraised of a Working Committee on Legal Education Sector Reforms established by the Attorney General on August 28, 2024. The Committee proposed to hold a consultative engagement with the Office of the Attorney General together with Members of Parliament proposing to amend laws with the legal education sector, to consider and harmonize the Bills and Legislative Proposals.

MIN.NO/DDC/JLAC/286/2024: ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes to one o'clock. The next meeting shall be held on notice.

SIGNED:  DATE: 12-11-2024

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **3**

**Independent Electoral
and Boundaries Commission
(Amendment) Bill, 2024**

SPECIAL ISSUE

Kenya Gazette Supplement No. 141 (National Assembly Bills No. 50)



REPUBLIC OF KENYA

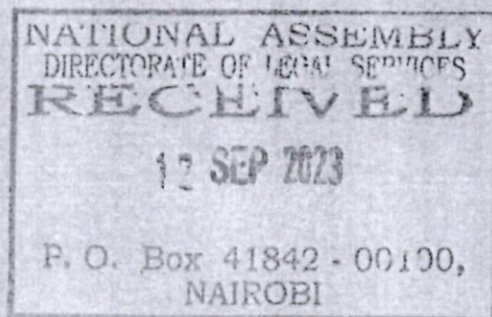
KENYA GAZETTE SUPPLEMENT

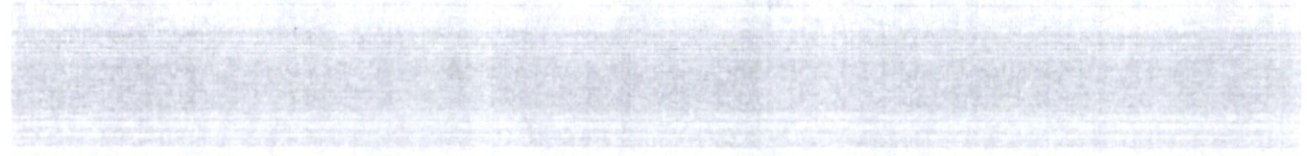
NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 22nd August, 2023

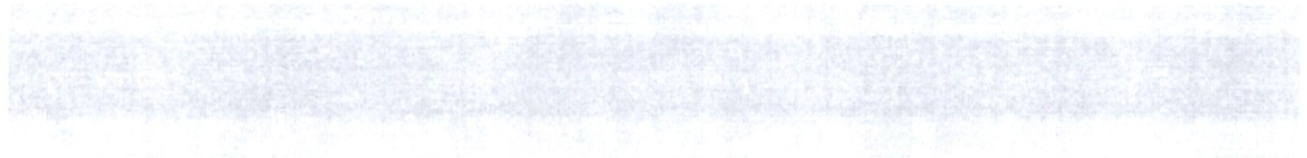
CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023	1459



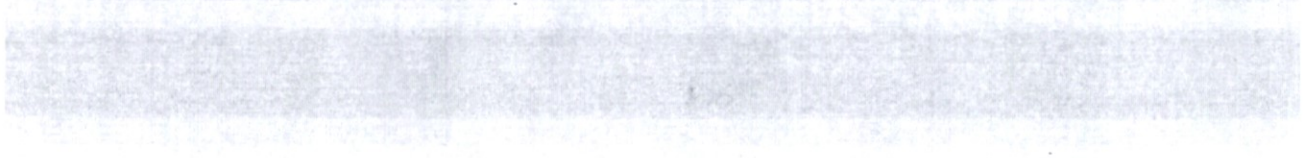


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**THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (AMENDMENT)
BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2023.

Short title.

2. The Independent Electoral and Boundaries Commission Act, (in this Act referred to as the “principal Act”), is amended in section 2 by inserting the following new definition in the proper alphabetical sequence—

Amendment of section 2 of No. 9 of 2011.

“population quota” has the meaning assigned to it in Article 89(12) of the Constitution;

3. Section 3 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (d)—

Amendment of section 3 of No. 9 of 2011.

(e) provide a framework for the delimitation of constituencies and wards;

4. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 9 of 2011.

(a) in subsection (2) by deleting paragraph (d) and substituting therefor the following new paragraph—

(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 forty per cent for cities and sparsely populated areas and thirty per cent for others areas as provided under Article 89 (6) of the Constitution;

(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 most recent to the review; and

(iv) is in line with the principle of universal suffrage based on the aspiration of fair representation and equality of vote.

(b) by inserting the following new subsections immediately after subsection (2)—

(2A) Despite subsection (2), population quota shall be the primary consideration in the delimitation of electoral boundaries.

(2B) Where the Commission makes a determination to vary the population quota as provided under Article 89 (6) of the Constitution, the Commission shall, provide reasons for each variation and ensure such determination is in line with the principles of fair representation and equality of vote.

(2C) The Commission shall provide a criteria for—

(a) the recommended variations of the population quota as provided under Article 89 (6) of the Constitution; and

(b) the justification and manner of use of non-population criteria to determine boundaries as provide under Article 89 (5) (a), (b) and (c) of the Constitution.

(c) by deleting subsection (3) and substituting therefor the following new subsection—

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

(a) the proposed delimitation of boundaries for constituencies and wards;

- (b) the specific geographical and demographical details relating to such delimitation;
- (c) any variation in population quota margin as provided under Article 89 (6) of the Constitution and reasons for such variation; and
- (d) how the Commission has taken into consideration the provisions of Article 89 (7) (b).

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Independent Electoral and Boundaries Commission Act, 2011 to ensure equal franchise amongst constituencies and ensure the use of other non-population criteria considerations in review of is in line with the principles of fair representation and equality of vote.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to amend section 2 of the principal Act to provide for the definition of “population quota”.

Clause 3 of the Bill seeks to amend section 3 of the principal Act to provide for delimitation of constituencies and wards as another object of the principal Act.

Clause 4 of the Bill seeks to amend section 36 of the Independent Electoral and Boundaries Commission Act, 2011 to ensure any variation of population quota is in line with the limits set out in Article 89(6) of the Constitution and that reasons are given and published for such variation. The Bill also seeks to ensure the variation in population quota limits as set in the Constitution do no result in demographic in equality or discrimination of any constituency or county.

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

The Bill does not delegate legislative powers and does not limit any fundamental rights and freedoms.

Indication of whether the Bill concerns county governments

The Bill may affect the functions and powers of County Governments as set out in the Fourth Schedule to the Constitution as it relates to the delimitation of boundaries and is therefore a Bill concerning counties.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 10th August, 2023.

HON. MWANGI KIUNJURI,
Member of Parliament.

Section 3 of No. 8 of 2011 which it is proposed to amend—

Object and purpose of the Act

3. The object and purpose of this Act is to—

- (a) provide for the operations, powers, responsibilities and functions of the Commission to supervise elections and referenda at County and National government levels;
- (b) provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 250 (2) and 88 (1), (2) and (3) of the Constitution
- (c) provide for the exercise or the powers, responsibilities and functions of the Commission pursuant to Article 88 (5) of the Constitution; and
- (d) establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89 (7) of the Constitution

Section 36 of No. 8 of 2011 which it is proposed to amend—

Procedure for delimitation of electoral boundaries

36. (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.

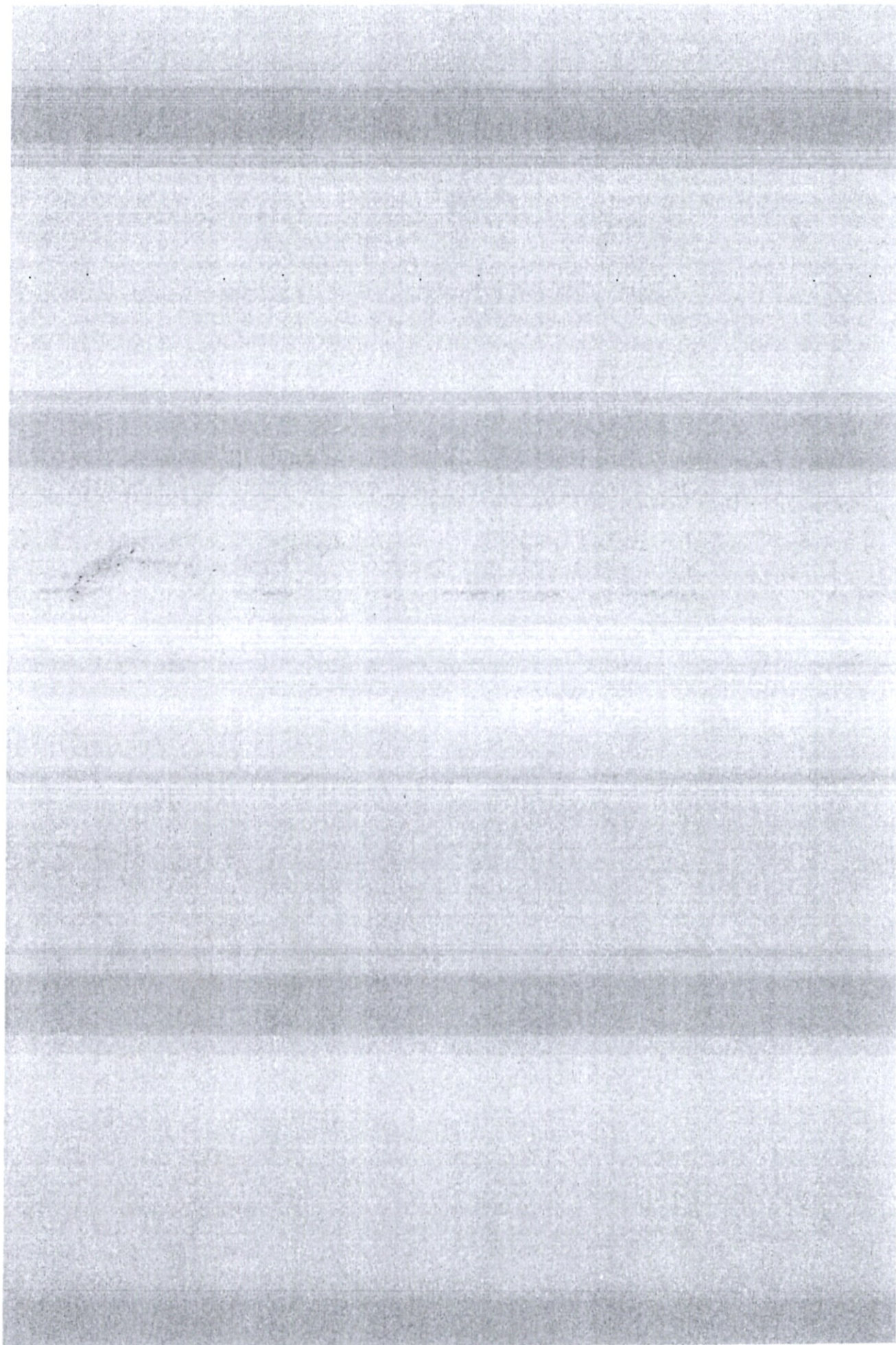
(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the *Gazette*.

(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*.



Annexure 4

Advertisement inviting the public to submit memoranda on the Bill

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ELC SUIT NO. E025 OF 2022

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF
VERSUS
ALEX NJOROGE MWANGI..... DEFENDANT

SUBSTITUTED SERVICE BY ADVERTISEMENT
[Order 5, rule 17.]
[Pursuant to the court order issued by Hon. Justice Daimas Ohungo on 30th June 2023.]

To: **ALEX NJOROGE MWANGI**

TAKE NOTICE that a plaintiff has been filed in the Environment and Land Court at Kakamega in Environment and Land Court Suit No. E025 of 2022, in which you are named as defendant. Service of the summons has been ordered by means of this advertisement. A copy of the summons and the plaintiff may be obtained from the court at the Environment and Land Court at the Kakamega Law Courts or from the Office of the County Attorney, County Government of Kakamega, Kakamega County Headquarters Annex, Room 112. Email: kakamegalegal@gmail.com

And further take notice that, unless you enter an appearance within twenty-one (21) days, the case will be heard in your absence.

DATED at KAKAMEGA this ... 13th ... day of ... October ... 2023

VIVIANNE MMBAKA KOMWONYO
COUNTY ATTORNEY
ADVOCATE FOR THE PLAINTIFF

DRAWN AND FILED BY:
Vivianne Mmbaka Komwonyo, Advocate,
County Government of Kakamega,
Office of The County Attorney,
County Headquarters Annex, First Floor, Door 112,
P.O. Box 36-50100, KAKAMEGA,
Email: kakamegalegal@gmail.com

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ELC SUIT NO. E029 OF 2022

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF
VERSUS
CHARLES MWAURA NGUGI..... DEFENDANT

SUBSTITUTED SERVICE BY ADVERTISEMENT
[Order 5, rule 17.]
[Pursuant to the court order issued by Hon. Justice Daimas Ohungo on 9th October 2023.]

To: **CHARLES MWAURA NGUGI**

TAKE NOTICE that a plaintiff has been filed in the Environment and Land Court at Kakamega in Environment and Land Court Suit No. E029 of 2022, in which you are named as defendant. Service of the summons has been ordered by means of this advertisement. A copy of the summons and the plaintiff may be obtained from the court at the Environment and Land Court at the Kakamega Law Courts or from the Office of the County Attorney, County Government of Kakamega, Kakamega County Headquarters Annex, Room 112. Email: kakamegalegal@gmail.com

And further take notice that, unless you enter an appearance within twenty-one (21) days, the case will be heard in your absence.

DATED at KAKAMEGA this ... 13th ... day of ... October ... 2023

VIVIANNE MMBAKA KOMWONYO
COUNTY ATTORNEY
ADVOCATE FOR THE PLAINTIFF

DRAWN AND FILED BY:
Vivianne Mmbaka Komwonyo, Advocate,
County Government of Kakamega,
Office of The County Attorney,
County Headquarters Annex, First Floor, Door 112,
P.O. Box 36-50100, KAKAMEGA,
Email: kakamegalegal@gmail.com

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ELC SUIT NO. E023 OF 2022

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF
VERSUS
HELLEN MORAA CHWEYA..... DEFENDANT

SUBSTITUTED SERVICE BY ADVERTISEMENT
[Order 5, rule 17.]
[Pursuant to the court order issued by Hon. Justice Daimas Ohungo on 9th October 2023.]

To: **HELLEN MORAA CHWEYA**

TAKE NOTICE that a plaintiff has been filed in the Environment and Land Court at Kakamega in Environment and Land Court Suit No. E023 of 2022, in which you are named as defendant. Service of the summons has been ordered by means of this advertisement. A copy of the summons and the plaintiff may be obtained from the court at the Environment and Land Court at the Kakamega Law Courts or from the Office of the County Attorney, County Government of Kakamega, Kakamega County Headquarters Annex, Room 112. Email: kakamegalegal@gmail.com

And further take notice that, unless you enter an appearance within twenty-one (21) days, the case will be heard in your absence.

DATED at KAKAMEGA this ... 13th ... day of ... October ... 2023

VIVIANNE MMBAKA KOMWONYO
COUNTY ATTORNEY
ADVOCATE FOR THE PLAINTIFF

DRAWN AND FILED BY:
Vivianne Mmbaka Komwonyo, Advocate,
County Government of Kakamega,
Office of The County Attorney,
County Headquarters Annex, First Floor, Door 112,
P.O. Box 36-50100, KAKAMEGA,
Email: kakamegalegal@gmail.com

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ELC SUIT NO. E018 OF 2022

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF
VERSUS
JONATHAN MAGOVE MACHINI..... DEFENDANT

SUBSTITUTED SERVICE BY ADVERTISEMENT
[Order 5, rule 17.]
[Pursuant to the court order issued by Hon. Justice Daimas Ohungo on 30th June 2023.]

To: **JONATHAN MAGOVE MACHINI**


TAKE NOTICE that a plaintiff has been filed in the Environment and Land Court at Kakamega in Environment and Land Court Suit No. E018 of 2022, in which you are named as defendant. Service of the summons has been ordered by means of this advertisement. A copy of the summons and the plaintiff may be obtained from the court at the Environment and Land Court at the Kakamega Law Courts or from the Office of the County Attorney, County Government of Kakamega, Kakamega County Headquarters Annex, Room 112. Email: kakamegalegal@gmail.com

And further take notice that, unless you enter an appearance within twenty-one (21) days, the case will be heard in your absence.

DATED at KAKAMEGA this ... 13th ... day of ... October ... 2023

VIVIANNE MMBAKA KOMWONYO
COUNTY ATTORNEY
ADVOCATE FOR THE PLAINTIFF

DRAWN AND FILED BY:
Vivianne Mmbaka Komwonyo, Advocate,
County Government of Kakamega,
Office of The County Attorney,
County Headquarters Annex, First Floor, Door 112,
P.O. Box 36-50100, KAKAMEGA,
Email: kakamegalegal@gmail.com



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT-SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. **THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2023);**
2. **THE MINING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2023);**
3. **THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2023); AND**
4. **THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2023)**

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023) was read a First Time on **Thursday, 12th October 2023** while the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023), the Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023) and the Gold Processing Bill (National Assembly Bill No. 46 of 2023) were read a First Time on **Wednesday, 18th October 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023)** is a Bill sponsored by **Hon. Mwangi Kiunjuri, MP** with the principal object being to amend the Independent Electoral and Boundaries Commission Act, 2011 to ensure equal franchise amongst constituencies and ensure the use of other non-population criteria considerations in review of Electoral Boundaries is in line with the principles of fair representation and equality of vote;
2. **The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023)** is a Bill sponsored by **Hon. David Gikaria, MP** seeking to amend the Mining Act No. 12 of 2016 in order to provide for separate implementation of the three key functions in the Act: policy formulation, administrative and dispute resolution functions; and
3. **The Gold Processing Bill (National Assembly Bill No. 46 of 2023)** is a Bill sponsored by **Hon. Benard Shinali, MP** with the principal object being to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for application, cancellation and renewal of a gold processing license; and for connected purposes.
4. **The Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023)** is a Bill sponsored by **Hon. Wanami Wamboka, MP** which seeks to provide a framework on the exclusive placement of government sponsored students in public universities. Further, it seeks to remove private universities board representation in the Board of Management of Kenya Universities and Colleges Central Placement Service (KUCCPS) to safeguard the Universities Fund in line with the constitutional principles of public finance.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the following Departmental Committees invite the public and stakeholders to submit Memoranda on the Bills as follows:

S/NO.	BILL	COMMITTEE
1.	The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023)	Justice and Legal Affairs
2.	The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023)	Environment, Forestry and Mining
3.	The Gold Processing Bill (National Assembly Bill No. 46 of 2023)	Environment, Forestry and Mining
4.	The Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023)	Education

The Memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to ena@parliament.go.ke to be received on or before **Monday 7th November, 2023 at 5.00 p.m.**

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
20th October 2023

"For the Welfare of Society and the Just Government of the People"

Annexure **5**

Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forum





**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box #1842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:

Ref: NA/DDC/JLAC/2024/070

23rd September, 2024

Hon. Winfridah Boyani Mokaya
Chief Registrar of the Judiciary / Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Mr. Marjan Hussein Marjan
Secretary / Chief Executive Officer
Independent Electoral and Boundaries Commission
University Way, Anniversary Towers, 6th floor
NAIROBI

Ms. Anne Njeri Nderitu, CBS
Registrar of Political Parties
Office of the Registrar of Political Parties
Lions Place, 1st Floor
Karuna Close, Waiyaki Way Westlands
NAIROBI

Mr. Joash Dache, MBS
Chief Executive Officer/Commission Secretary
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road
NAIROBI

Hon. Shadrack Mose
Solicitor General
The State Law Office and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Mr. Felix Owuor
Executive Director
Electoral Law and Governance Institute for Africa (ELGIA)
Landmark Plaza, 13th floor, Argwings Kodhek Rd
NAIROBI

Mr. Nyang'ori Ohenjo
Chief Executive Officer
Centre for Minority Rights Development
Kisamis Town, Magadi Road, Ongata Rongai
NAIROBI

Mr. Frankline Mukwanja
Executive Director
Centre for Multiparty Democracy
6th Floor, International House
NAIROBI

Mr. Joshua Changwony
Executive Director
Constitution and Reform Education Consortium
Matumbato 45, Off Upper Hill Road
NAIROBI

Mr. Mulle Musau
National Coordinator
Elections Observation Group
Jumuia Place, Lenana Road
NAIROBI

Mr. Isaack Otieno
Country Director
International Foundation of Electoral System
Embankment Plaza, Longonot Road
NAIROBI

Ms. Christine Gakii Nkonge
Executive Director
Katiba Institute,
House No. 5 - The Crescent, Off Parklands Road
NAIROBI

Dr. Mshai Mwangola
Chairperson
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Ms. Caroline Gaita
Executive Director
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A
1st Ngong Avenue
NAIROBI

Dr. Annette Mbogoh
Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Road
NAIROBI

Mr. Evans Misati James
Chairman
Political Parties Liaison Committee
Lions Place, 1st Floor, Karuna Close
Waiyaki Way, Westlands
NAIROBI

Mr. Abdirahim Ismail, OGW
Executive Director
Inter-Religious Council of Kenya
NAIROBI

Dear

RE: INVITATION TO SUBMIT VIEWS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 50 OF 2023) SPONSORED BY HON. MWANGI KIUNJURI, MP

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, *inter alia*, 'study and review all legislation referred to it.'

The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023 (National Assembly Bill No. 50 of 2023) sponsored by Hon. Mwangi Kiunjuri, MP is before the Committee for consideration and reporting back to the House. The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, 2011, to ensure equal franchise amongst constituencies, ensure the use of other non-population criteria considerations in the review of boundaries, and ensure that any such determination is in line with the principles of fair representation and equality of vote.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee has resolved to meet stakeholders to make submissions on the Bill.

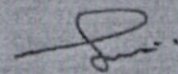
The purpose of this letter is to invite you to a meeting with the Committee on **Tuesday, 1st October, 2024 at 10.30 am** to discuss the Bill. The venue of the meeting will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions should be sent to the Office of the Clerk, Main Parliament Building by **Friday 27th September, 2024** or email a soft copy of the same to ena@parliament.go.ke.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliament website: <http://www.parliament.go.ke/the-national-assembly/house-business/bills> for reference.

Our Liaison Officers on this matter are **Mr. Ahmed Salim Abdalla** who may be contacted on tel. no. 0710204056 or email: ahmed.salim@parliament.go.ke, **Ms. Jael Ayiego Kilaka** on tel. no. 0725385945 or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** on tel. no. 0715456503 or email: abdikafar.sheikh@parliament.go.ke.

Yours



JEREMIAH M. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Ms. Dorcas Agik Oduor, OGW, EBS, SC**
The Attorney-General of the Republic of Kenya
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Annexure 5

Memoranda by Stakeholders



DDC
8
3/10/24

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: DOJ/PM/9/7/VOL.I (42)
Your Ref: NA/DDC/JLAC/2024/070

30th September, 2024

Mr. Jeremiah M. Ndombi, MB
Clerk of the National Assembly
Clerk's Chambers
P.O. Box 41842-00100
NAIROBI.

Salim Ahmed
to facilitate
lawyer
7/10/24

RE: INVITATION TO SUBMIT VIEWS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION'S TENTATIVE BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 50 OF 2023) SPONSORED BY HON. MWANGI KIUNJURI, MP

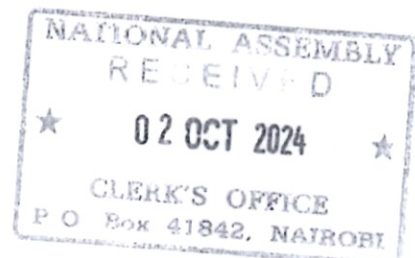
Reference is made to your letter dated 23rd September 2024 inviting this office to respond through written comments.

Having analyzed the Bill, we propose that the Departmental Committee on Justice and Legal Affairs consider the following observations;

1. Clause 3(Amendment to Section 3 of No. 9 of 2011) – delete 'is' appearing after '...the principal Act is amended...' and replace with 'by'.
2. Clause 4 (d) (iii) (Amendment of section 36 of No. 9 of 2011- add 'that is' immediately after '...figures...'

The Bill does not raise significant constitutional issues. However, we recommend that the Bill be reviewed to address the above-mentioned matters.

We respectfully submit.





Mary N. Wairagu
CHIEF STATE COUNSEL
FOR: SOLICITOR GENERAL

Cc. Solicitor General

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Salim Ahmed
to facilitate
working
30/9/24

Ref: IEBC/DLS/PLMT/09/2024

27th September, 2024

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

DDC
S
30/9/24

Dear *Mr. Njoroge,*

RE: SUBMISSIONS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023 NATIONAL ASSEMBLY NO. 50 OF 2023 (SPONSORED BY HON. MWANGI KIUNJIRI, MP)

Reference is made to the above matter and your request to the Commission to make submissions on the Bill aforementioned.

From the outset, the Independent Electoral and Boundaries Commission (IEBC) submitted its written memorandum towards the Bill on 19th June, 2023. It highlighted its reservations on the proposals made in the Bill as some of the proposals were contrary to the provisions espoused under Article 89 of the Constitution.

Following the submission of its Memorandum, the Commission was invited to a consultative workshop hosted by the Justice and Legal Affairs Committee (JLAC) of the National Assembly in Mombasa. In attendance were other relevant stakeholders including Hon. Mwangi Kiunjiri M.P, the sponsor of one of the two Amendment Bills. The purpose of the meeting was to deliberate the two Bills, designed to amend the Independent Electoral and Boundaries Commission Act on areas dealing with the Delimitation of Electoral Boundaries (Constituencies and Wards).

After the deliberations, it was agreed that the two Bills be harmonized and consolidated with the Bill sponsored by the Commission as the Primary Bill and upon harmonization, JLAC will then take over the Bill for legislative processes once submitted to the National Assembly by the Commission.

RECEIVED
30 SEP 2024
Directorate of Departmental Committees


NATIONAL ASSEMBLY
RECEIVED
★ 27 SEP 2024 ★
CLERK'S OFFICE
P O Box 41842, NAIROBI

Consequently, on 4th November, 2023 the Independent Electoral and Boundaries Commission, together with Hon. Mwangi Kiunjuri's team held a joint technical workshop in Nairobi with a view to consider and harmonize the two Bills into one Bill while addressing all issues raised by Parliament.

Upon consolidation of the proposals, the Commission submitted the harmonized draft of the two Bills on 23rd November, 2023 to Parliament as directed by JLAC during the meeting held in Mombasa. Notably, the proposals as agreed were carried in the IEBC(Amendment) Bill, 2024 which was enacted on 15th July, 2024.

It is our humble submission that the said Bill is now spent owing to the fact that the agreed issues have now been enacted into law.

Yours *Sincerely,*



Marjan Hussein Marjan, MBS
Commission Secretary/CEO

Encl. (2)

- 1. Memorandum on the IEBC (Amendment) legislative proposal 2023 dated 19th June, 2023*
- 2. Submission of the Draft IEBC(Amendment) Bill, 2023 dated 23/11/2023*



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM ON THE

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT
(AMENDMENT) LEGISLATIVE PROPOSAL, 2023**

Dated 19th June, 2023

Independent Electoral & Boundaries Commission (IEBC)

Anniversary Towers, 6th Floor, Off University Way

P.O. Box 45371 – 00100, Nairobi – Kenya

Telephone: + 254 (0) 20 29925

A. INTRODUCTION

1. The Independent Electoral and Boundaries Commission (IEBC) is a Constitutional Commission established under Chapter 15 of the Constitution with particular reference to Article 249 which sets out the objects of Constitutional Commissions.
2. The general functions of the IEBC and other Commissions are set out under Article 252(1). However, the specific mandate of the Commission is primarily governed by Article 88(4) of the Constitution and Section 4 of the IEBC Act.
3. The IEBC specifically established under Article 88 of the Constitution is responsible for the conduct or supervision of referenda and elections to any elective body or office established by the Constitution and any other elections prescribed by an Act of Parliament.
4. Article 89 confers upon IEBC the constitutional responsibility to review the names and boundaries of constituencies at intervals of not less than eight (8) years and not more than twelve (12) years in order to ensure fair and equitable representation. The frequency of boundaries review ensures that representation is aligned to changes in demographic patterns and population dynamics.
5. The IEBC notes the Bill under reference and makes the following submissions:
6. The process of review of boundaries was last undertaken in the year 2012 and the report published in the National Assembly Constituencies and County Assembly Wards Order, 2012 – Legal Notice No. 14/2012.
7. In line with the provisions of the Constitution, the Commission has a deadline of 5th March, 2024 to ensure that the process of delimitation of boundaries is concluded and published in the Gazette. Upon publication of the report, pursuant to Article 89(10), aggrieved parties have 30 days to file disputes which shall be determined within three (3) months.

NOTABLE GAPS IN THE BOUNDARY DELIMITATION LEGAL FRAMEWORK

8. Section 36 of the Independent Electoral and Boundaries Commission sets out the procedure for the delimitation of electoral units. The issues arising from review are

further enunciated in the Fifth Schedule to the IEBC Act. However, there are certain ambiguities in Section 36 and the Fifth Schedule owing to the fact that the provisions were largely in relation to the first review.

9. It is noteworthy that while the Commission has in place a Boundaries Review Operations Plan (2019 – 2024) with timelines for the intended review outlined, the said plan can only be effectively implemented upon consideration of the Commission's proposals for amendment to the IEBC Act that were submitted to the 12th Parliament for consideration and enactment but were never enacted.

Purpose of the Bill

10. The Bill seeks to amend the provisions of Section 36 of the IEBC Act, 2011.
11. We welcome this Bill and wish to make some general comments on the laws that directly affect the mandate of the Commission as follows:

General Comments

12. The Commission appreciates the concerns raised in the Bill for amendment. However, we propose that the said Bill be considered together with the Commission's submitted Draft Bill and the Delimitation of Electoral Units Procedures. The Rules comprehensively and expansively cover some of the salient proposals to be reviewed by the proposed Bill.

Specific Comments

13. This Bill intends to review some of the provisions of Section 36 of the IEBC Act, 2011, taking into account emerging reforms and to this we make the following specific comments on proposals that have an impact on the said Act.
14. The Commission notes that some proposals, for example, on administrative units are not in tandem with the provisions of Article 89 of the Constitution and Section 36 of the IEBC Act and may as a consequence affect delimitation. The Commission may, however, use administrative units for purposes of informing the review and delimitation of County Assembly Wards.
15. The Commission also notes ambiguities, irregularities and illegalities under Section 26 of the County Governments Act which affronts the provisions of Article 89 of the Constitution on conduct of boundary delimitation by predetermining and setting a

cap for the number of county assembly wards in a county. This is illegal and ought to be reviewed and/or deleted in its entirety. Moreover, this provision does not sit well with the decision of the supreme court in the BBI case that affirmed that it is only the Commission which has the mandate to review and delimit constituencies and wards' boundaries.

16. The IEBC has endeavored to highlight in matrix form the relevant clause, the provision of the IEBC Act affected, observation on the proposed amendments to the Act AND the consequential impact of the proposed amendment to the Act aforesaid.

Table 1: Matrix of Comments from IEBC

S No	Statute	Proposed amendment	Observation	IEBC Comments
1.	Independent Electoral and Boundaries Commission Act, 2011	Clause 3	Proposes to Establish a framework for the delimitation of constituencies and wards.	The Commission has an established framework which is established in the Rules, and we request that the same be considered and enacted.
2.		Definition of 'Population quota' Clauses 4 (a)-(b)	Population quota is defined in the Constitution and its parameters established.	The process is already prescribed in the Constitution and outlined in the proposed Rules. The Commission notes that the working principle is established in the Constitution and expanded in the proposed Rules which we urge Parliament to consider and adopt.
3.		Clause 4 (c)	Preliminary Report	There is an established procedure and reporting structure which has been expanded in the proposed Rules. The Commission proposes that this procedure be left to the Commission to determine as may be necessary.
4.		Clause 4 (d)	Consideration of the Revised Preliminary Report by Parliament	The Commission is bound by the stipulations of Article 89 of the Constitution regarding the population quota. Therefore, a proposal that is against the said principles as provided under Article 89 of the Constitution regarding the population quota will be self-defeating and shall not be considered by the Commission.

B. PROPOSALS MADE BY THE COMMISSION

17. In line with its legal reform agenda, the Commission has proposed amendments to its operating statutes and statutory instruments including the IEBC Act to aid the process of boundary delimitation. The proposals have been previously presented to Parliament through the Justice and Legal Affairs Committee but not enacted.
18. The Commission re-submits the said proposals as submitted earlier. (Attached is a draft of the proposals.)

C. CONCLUSION

19. The Commission submits that it has reservations on the proposed amendments to the Independent Electoral and Boundaries Act, 2011 and urges this Honourable House to consider the proposals it has provided herein as this will inform and improve the IEBC Act wholesale instead of piecemeal amendments.



.....

Marjan Hussein Marjan, MBS
Commission Secretary/CEO

Encls: Independent Electoral and Boundaries Commission (Amendment) Bill, 2023
Delimitation of Electoral Units Procedures, 2023

file

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



REF: IEBC/CEO/2/13

23rd November, 2023

Rt. Hon. (Dr.) Moses M Wetangula, EGH, MP
Speaker of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842 – 00100
NAIROBI

NATIONAL ASSEMBLY
MAIN RECORDS UNIT
23 NOV 2023
RECEIVED (3)
NAIROBI - KENYA

Dear *Rt. Hon. Wetangula,*

RE: SUBMISSION OF THE DRAFT INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023


Reference is made to the above subject matter.

The Justice and Legal Affairs Committee of the National Assembly, the Commission and Hon. Mwangi Kiunjuri had a consultative meeting to deliberate on their proposed amendments to the Statutory provisions on Boundaries delimitation and in particular Section 36 and the Fifth Schedule of the IEBC Act, 2011. Consequently, the Committee directed the Commission and Hon. Mwangi Kiunjuri to meet and harmonize their Bills in a bid to come up with one Independent Electoral and Boundaries Commission (Amendment) Bill, 2023.

As a result, the Commission met with a team deputed by Hon. Mwangi Kiunjuri and harmonized the two Bills as directed by the Justice and Legal Affairs Committee.

To this end, the Commission forwards the harmonized Independent Electoral and Boundaries Commission Bill, 2023 for consideration by the National Assembly.

Yours *Sincerely,*


Marjan Hussein Marjan, MBS
Commission Secretary/ CEO

Encl. - The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya
phone: +254 (0) 2769000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2023.
2. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011, (hereinafter referred to as "the principal Act") is amended by—

(a) inserting the following definitions in their proper alphabetical order—

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

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

“population quota” has the meaning assigned to it Article Article 89(12) of the Constitution;

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

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

(b) deleting the definition of the term “issues arising”.

Amendment of No. 9 of 2011.

3. The principal Act is amended by inserting the following new Part immediately after Section 16—

**PART III—DELIMITATION OF BOUNDARIES OF
ELECTORAL UNITS**

Procedure for delimitation of

16A. (1) The Commission shall discharge its

electoral boundaries

mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) The procedure for delimitation of electoral units shall be as set out under this Part

Scope of procedures

16B. The procedure for delimitation of boundaries of electoral units include—

- (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) Determination of 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.

Matters to be addressed in delimitation of electoral boundaries

16C. Subject to the provisions of Article 89 of the Constitution, the matters to be addressed in 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;

(iii) takes into account the most recent enumerated figures of the national census .

Notice of delimitation
of electoral units

16D. (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 section (1) shall be accompanied by a preliminary report containing the particulars set out under section 16G.

Notice of delimitation of electoral units

16E. (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 section (1) shall be accompanied by a preliminary report containing the particulars set out under section 16G.

Preliminary report

16G. (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.

(2) Where the Commission makes a determination to vary the population quota as provided under Article 89 (6) of the Constitution, the Commission shall, provide reasons for each variation and ensure such determination is in line with the principles of fair representation and equality of vote.

Reference materials

16H. (1) The Commission shall, use as its primary reference material—

- (a) the final report of the latest review of electoral units;
- (b) the latest official population census report; and
- (c) Gazette Notices on cities and urban areas issued under the Cities and Urban Areas Act, 2011.

(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

16I. (1) For purposes of determining the population quota, the Commission shall ascertain the number of inhabitants of Kenya, from—

- (a) figures contained 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 section (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.

Preliminary report to be publicized

16J (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 section shall not be less than thirty days.

Public sensitization

16K. (1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under section 16D, 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

16L. (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

16M. (1) Upon completion of the public hearings the Commission shall review the proposed delimitation of boundaries and submit the report to the National Assembly.

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

(3) Where the Commission makes a determination to vary the population quota as provided under Article 89 (6) of the Constitution, the Commission shall, provide reasons for each variation and ensure such determination is in line with the principles of fair representation and equality of vote.

Consideration by Parliament and preparation of final report

16N. (1) The revised report shall be submitted to Parliamentary Committee 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 subsection (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 subsection (1), the Commission shall publish its report in

accordance with sub section (2).

(4) Notwithstanding any other law, where the final report is not published in accordance with the provisions of sub section (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
dissemination
maps

and
of

16O. (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

16P. (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 section (1) shall be final.

(3) An application for the review under this section 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.

Maintenance of records

16Q. 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

16R. 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.

4. The principal Act is amended by re-naming—
 - (a) Part III as Part IV immediately before Section 17; and
 - (b) Part IV as Part V immediately before Section 25; and
 - (c) Part V as Part VI immediately before Section 32.

Repeal of section 36 of No. 9 of 2011.

5. Section 36 of the principal Act is repealed.

Deletion of Fifth Schedule to No. 9 of 2011.

6. The principal Act is amended by deleting the Fifth Schedule.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

The principle object of this Bill is to amend the Independent Electoral and Boundaries Commission Act to remove provisions which became spent after the first review 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 procedures however are not detailed enough and contain many gaps.

This Bill seeks to repeal Section 36 and the Fifth Schedule and replace the same with substantive provisions on the delimitation of boundaries of electoral units under the proposed new Part III.

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 affects the functions of the county governments and is therefore 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 2023.

.....
Hon. George Murugara
Chairperson
Justice and Legal Affairs Committee
National Assembly

DDC
Please deal.
[Signature]
27/09/24



MEMORANDUM

From : Electoral Law and Governance Institute for Africa

To : The Clerk of the National Assembly

Date : 27th September, 2024

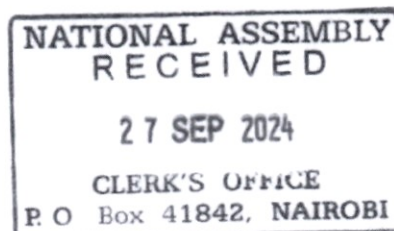
RE : The Independent Electoral and Boundaries Commission (Amendment) Bill,
2023(National Assembly Bill No. 50 of 2023) By Hon. Mwangi Kiunjuri

Salim Ahmed
to facilitate
lawyer
27/9/24

Background

The Departmental Committee on Justice and Legal Affairs (JLAC) in the National Assembly, is established pursuant to the National Assembly Standing Order 216. In line with its mandate under Article 118(1)(b) of the Constitution and the National Assemblies Standing Order number 127(3), which requires the Committee to study and review all legislations referred to it and further facilitate public participation and other critical stake holders' involvement in the legislative and other business of Parliament the committees, has invited Electoral Law and Governance Institute for Africa (ELGIA) to submit representations/Comments on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023.

Electoral Law and Governance Institute for Africa (ELGIA), a Continental organization, headquartered in Nairobi, Kenya, working to strengthen and consolidate constitutional democracy, good governance, and electoral processes in African dialogue, electoral reforms, and advocacy. ELGIA works with continental and sub-regional organizations among them the African Union, East African Community (EAC), Southern Africa Development Community (SADC) and ECOWAS. Through this, the institution seeks to strengthen governance and political institutions through technical assistance, capacity building, advocacy, and research.



Memoranda Context

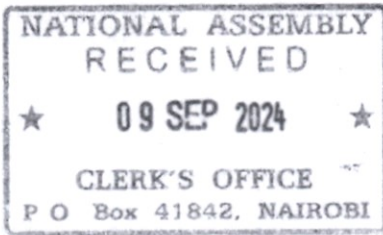
The Bill seeks to amend the Independent Electoral and Boundaries Commission Act No. 9 of 2011 to give effect to ensure equal franchise amongst constituencies and ensure the use of other non-population criteria considerations in view and in line with the principle of fair representation and equality of vote. Preliminary and without prejudice of the mandate of the Committee, ELGIA wish to urge the Honourable Committee to take Judicial Notice on the following;

- i. *That On the 28th to 29th October, 2023 the Commission with the support of ELGIA held a consultative workshop between Justice and Legal Affairs Committee (JLAC) in the National Assembly together with other relevant stakeholders including Hon. Mwangi Kiunjuri M.P, the sponsor of the Bill in Mombasa to deliberate on the two Bills, which were aiming to amend the Independent Electoral and Boundaries Commission Act on areas dealing with the Delimitation of Electoral Boundaries (Constituencies and Wards).*
- ii. *That after deliberations, a resolution was made that this Bill currently before the Committee was to be harmonised and consolidated with the Bill which was sponsored by the IEBC since the two Bills were based on the same subject matter and upon harmonization of the Bills JLAC was to take over the harmonized Bill for legislation processes once submitted to the National Assembly by the Commission.*
- iii. *That on 3rd of November 2023 with the support of ELGIA Independent Electoral and Boundaries Commission, together with the Service Party (TSP) technical team held a joint technical workshop in Nairobi and harmonize the two Bills.*
- iv. *The harmonized Bill attached was forwarded to the National Assembly through the JLAC by the Commission as was agreed and directed, to pave way for the withdrawal of the two Bills and allow legislation process of the harmonized Bill. It is important to note the IEBC Bill was recently enacted into law with some of the amendment proposals contain in this Bill.*

Never the less ELGIA has developed the Matrix below highlighting its considerations to the proposed amendments for consideration;

Sections for amendment in the primary Act	The Bill Provisions and proposals for amendment	Remarks/comments/justification
Section 2 of the Act Interpretation section	The Bill proposes the definition of the “population quota” The proposal imports the definition of the	The definition already exists in the Constitution However, importing the same to the statute providing the legal framework for the electoral

	term from Article. 89(2) of the Constitution.	boundaries' delimitation is agreeable.
<p>Section 3 of the Act</p> <p>The object and purpose of the Act.</p>	<ul style="list-style-type: none"> The Bill proposes to amend Section 3 of the Act to expand the purpose and object of the Act to include and provide a framework for delimitation of Constituencies and Wards as one of the objects and purpose of the Act. 	<ul style="list-style-type: none"> The proposal fit well because it expands the main purpose and object of the Act by expanding its scope to include the provision on the legal framework on the delimitation of Electoral Units The framework of which is now provided for under Part IIIA of the Amendment Act.
<p>Section 36 of the repealed Act</p> <p>The Section had provisions on the procedure for boundaries delimitation.</p>	<ul style="list-style-type: none"> The Bill proposes to repeal Section 36 of the Act which was within the transitional provisions of the Act. 	<ul style="list-style-type: none"> The proposed Section is already repealed hence spent since the Act has been enacted into law



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

D/DC
Please deal.
Sali
10/09/24

Our Ref: AG/LDD/237/1/96

6th September 2024

Mr. Samuel Njoroge
The Clerk of the National Assembly
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Sahin Ahmed
to facilitate consideration
and writing
11/9/24

RE: PRE-PUBLICATION SCRUTINY OF THE PROPOSED PENAL CODE (AMENDMENT) BILL, 2024 PROPOSED BY HON. ESTHER PASSARIS, MP

We refer to your letter dated the 22nd July 2024 and referenced NA/DDC/JLAC/2024/064, requesting this Office to give comments and recommendations on the proposed Penal Code (Amendment) Bill, 2024 proposed by Hon. Esther Passaris, MP.

We have reviewed the Bill and the relevant legislation and our comments are set out below.

The proposed Bill seeks to amend sections 4 and 146 of the Penal Code (Cap. 63) to provide for the offence of sextortion. The Bill defines sextortion as the act of intentionally demanding sexual intercourse or other sexual activities in exchange for goods, services or any other thing of value in the demanding person's power to give or withhold. The proposed clause 146A(1) creates the offence of sextortion.

The Sexual Offences Act (Cap. 63A) provides for sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts. It further provides for sexual offences that relate to abuse of position of power or authority. Section 23 of the Sexual Offences Act provides that any person, who being in a position of authority or holding a public office, persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment.

Further, section 24 of the Sexual Offences Act provides that any person who being in a position of authority or trust takes advantage of his or her position and induces or seduces a person in their care or under their authority to have sexual intercourse commits an offence. The provision applies to people in positions of authority or trust including the superintendent or manager of a jail, remand home or children's or any institution or any



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other place of custody, law enforcement officer, manager of any hospital or staff of a hospital, head-teacher, teacher or employee in a primary or secondary school or special institution of learning and other persons in position of trust.

Section 43(1)(a) of the Sexual Offences Act provides that an act is intentional and unlawful if it is committed in any coercive circumstance. Section 43(2)(c) provides that the coercive circumstances referred to in subsection (1)(a) include any circumstances where there is abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act. Since sextortion is the abuse of a person's power to give or withhold goods, services or any other thing of value in exchange for sexual intercourse or other sexual activities, it amounts to an intentional and unlawful Act under section 43 of the Sexual Offences Act.

In light of the foregoing, the proposed offence of sextortion has similar elements as the offence of sexual harassment and the offence of sexual offences relating to position of authority and persons in position of trust provided for under sections 23 and 24 of the Sexual Offences Act. Further, the offence can be construed as an intentional and unlawful Act under section 43 of the Sexual Offences Act.

The proposed clause 146A (2) provides that in addition to the penalty, and upon application by the victim, where a person is convicted of sextortion, the court may make an order for compensation to any person for any resultant loss caused by the commission of the offence for which the sentence is passed. The proposed amendment is not necessary because section 175 of the Penal Code provides for the modalities for compensation of a victim of an offence. Section 175(2) of the Criminal Procedure Code provides as follows—

A court which—

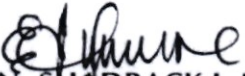
- (a) convicts a person of an offence or, on appeal, revision or otherwise, confirms the conviction; and*
- (b) finds, on the facts proven in the case, that the convicted person has, by virtue of the act constituting the offence, a civil liability to the complainant or another person (in either case referred to in this section as the "injured party"),*

may order the convicted person to pay to the injured party such sum as it considers could justly be recovered as damages in civil proceedings brought by the injured party against the convicted person in respect of the civil liability concerned.

The proposed clause 146A (3) provides that a compensation order shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation paid. The provision is not necessary because section 175(3) of the Criminal Procedure Code provides that a compensation order shall not be made if the court considers that such an order would unduly prejudice the rights of the convicted person in respect of the civil liability.

The proposed clause 146A (4) provides that an order for compensation under the section is recoverable as a civil debt. The proposal is not necessary because section 175(6) of the Criminal Procedure Code provides that an order for compensation that has taken effect is enforceable in the same manner as a judgment in civil proceedings for the amount awarded by the order.

We are therefore of the opinion that the proposed amendment is not necessary because sexual offences relating to the abuse of a position of power or authority are provided for under sections 23 and 24 of the Sexual Offences Act. Further, the compensation of victims of crime is comprehensively provided for in section 175 of the Criminal Procedure Code.


HON. SHADRACK J. MOSE
SOLICITOR-GENERAL



DDC
2
1/10/21



INTER-RELIGIOUS COUNCIL of KENYA

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MEMORANDUM PRESENTED TO THE CLERK OF THE NATIONAL ASSEMBLY ON ISSUES OF INTEREST REGARDING THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 50 OF 2023) CURRENTLY IN THE NATIONAL ASSEMBLY

Sahin Ahmed
to facilitate the committee to consider and report.
2/10/24

27TH SEPTEMBER 2024

RECEIVED
DIRECTOR
Directorate of Departmental Committee

SUBMITTED BY

INTER-RELIGIOUS COUNCIL OF KENYA

NATIONAL ASSEMBLY RECEIVED
★ **01 OCT 2024** ★
CLERK'S OFFICE
P O Box 41842, NAIROBI

27TH SEPTEMBER 2024

To
The Clerk of the National Assembly,
P. O. Box 41842-00100
Main Parliament Buildings
Nairobi, Kenya.

Dear Mr. Jeremiah M. Ndombi, MBS

RE: Memorandum on The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023 (National Assembly Bill No. 50 Of 2023) Sponsored By Hon. Mwangi Kiunjuri, MP

The Inter-Religious Council of Kenya (**IRCK**), driven by an abiding obligation to promote democracy and protect the voting rights of all citizens of Kenya as merited by law. Consequently, IRCK fully avails itself to participate in the process of legislation by way of public participation as a constitutional edict.

IRCK was established as a society in 2005. It is a national coalition of all major faith communities (Christian, Hindu, and Muslim) in Kenya that works together to deepen interfaith dialogue and collaboration among members for a common endeavour to mobilize the unique moral and social resources of religious people and address shared concerns.

Being a membership organization, the IRCK works through umbrella bodies known as Religious Coordinating Bodies (RCBs) which have a presence in all the 47 counties in Kenya. The Council has facilitated the formation of Interfaith Networks in all 47 counties that comprise members of the clergy as well as youth and women leaders for local-level advocacy and implementation of programmatic interventions.

The Council endeavours to fulfill the **Vision “Faith communities living in peace; united in social economic action in Kenya”**, being guided by the **Mission: “To promote a just society in Kenya through social economic transformation”**.

Honorable Chairperson and Members of the Committee,

The Inter-Religious Council of Kenya (IRCK) appreciates this opportunity to present our views on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023, proposed by Hon. Mwangi Kiunjuri. As an organization representing diverse faith communities across Kenya, we are deeply committed to fostering a fair, transparent, and inclusive democratic process.

I. INTRODUCTION

The proposed amendments to the IEBC Act touch on crucial aspects of our electoral system, particularly the delimitation of constituencies and wards. We commend the effort to align the Act more closely with constitutional provisions and to enhance the clarity and transparency of the delimitation process.

II. KENYA'S UNIQUE CONTEXT

The Committee must consider several imperatives unique to Kenya:

- a) **Historical development disparities:** Regions associated with some communities have historically benefited more from national development projects, including infrastructure, education facilities, and economic opportunities as compared to others that are perceived to be marginalized.
- b) **Political representation:** The concentration of political power among specific ethnic groups has led to uneven development across the country.
- c) **Objects and impact of devolution:** While the 2010 Constitution has begun to address these imbalances through devolution, significant disparities remain.
- d) **Literacy and education levels:** There are stark differences in education access and outcomes across different regions of the country.
- e) **Infrastructure development:** Road networks, electricity access, and other key infrastructure vary significantly between regions.

These factors suggest that a purely population-based approach to boundary delimitation may perpetuate existing inequalities rather than promote fair representation.

III. ANALYSIS OF KEY PROPOSALS

Issue	Recommendation
Definition of "population quota"	We support the inclusion of this definition as it aligns with Article 89(12) of the Constitution and provides a clear basis for determining constituency and ward

	boundaries.
Framework for delimitation	We welcome the proposal to include a framework for delimitation in the objects of the Act. This will provide clearer guidance for the IEBC's crucial role in this process.
Use of most recent census data	We strongly endorse this proposal as it ensures that boundary delimitation reflects current demographic realities.
Emphasis on universal vote and equality	While we support these principles, we urge the Committee to consider how they can be balanced with other constitutional criteria such as community interests and geographical features.
Population quota as primary consideration	<p>We are diametrically opposed to the emphasis on population quota at the expense of other important factors. A holistic approach to delimitation is crucial for fair representation. We therefore strongly advise for inclusion of land mass/size as a key imperative as well for delimitation.</p> <p>The concept of "tyranny of numbers" and the historical development disparities between regions necessitate a more nuanced approach.</p>
Allowance for variations	The proposed variations of 40% for cities/sparsely populated areas and 30% for others provide necessary flexibility. However, we recommend clear guidelines on when and how these variations should be applied.

Representativeness	<p>Constituencies should be drawn taking into account cohesive communities, defined by such factors as administrative boundaries, geographic features, and communities of interest and national cohesion.</p> <p>We urge against demarcating boundaries that put only one community or one clan together. Heterogeneity and national cohesion must be considered.</p>
Electoral Unit Viability	<p>We urge Parliament to consider financial viability and administrative capacity of electoral area.</p>

IV. ALTERNATIVE MODELS AND INTERNATIONAL EXAMPLES

Given Kenya's unique challenges, we propose considering alternative models that have been used in other diverse societies:

- a) India's Delimitation Commission: India, with its vast population and diverse communities, uses a Delimitation Commission that considers factors beyond population, including physical features, administrative boundaries, communication facilities, and public convenience. The Commission also reserves seats for Scheduled Castes and Scheduled Tribes to ensure representation of marginalized communities.
- b) South Africa's Municipal Demarcation Board: Post-apartheid South Africa faced similar challenges of historical inequality. Their Municipal Demarcation Board considers factors such as population density, land use patterns, existing and expected patterns of human settlement and migration, and the need to correct past spatial injustices.
- c) Canada's Electoral Boundaries Commissions: Canadian law allows for deviations from strict population equality to respect communities of interest, historical patterns, and sparsely populated regions. In some cases, these factors can justify variations of up to 25% from the electoral quota.
- d) New Zealand's Representation Commission: New Zealand's system considers not just population, but also communities of interest, facilities for transport and communications, geographical features, and any projected population changes.
- e) China's People's Congress System: While not directly applicable to Kenya's democratic system, China's approach of giving greater representation to rural and

minority areas in its National People's Congress could offer insights into balancing diverse interests.

V. ADDITIONAL PROPOSALS

Given these considerations, we propose the following additional recommendations:

- a) Develop a multi-factor approach to boundary delimitation that considers:
 - 1) Historical development disparities
 - 2) Literacy rates and education access
 - 3) Infrastructure development levels
 - 4) Economic opportunities
 - 5) Geographical and communication challenges
- b) Establish mechanisms to ensure representation for historically marginalized communities, possibly through reserved seats or adjusted quotas.
- c) Consider a phased approach to implementing population-based delimitation, allowing time for development disparities to be addressed through devolution and targeted national projects.
- d) Incorporate regular reviews of the delimitation process to assess its impact on representation and development equity.
- e) Ensure robust public participation, particularly from historically underrepresented communities, in the delimitation process.

VI. RECOMMENDATIONS

In light of our analysis and drawing from Commonwealth legal precedents, IRCK proposes the following recommendations:

- a) Include provisions for meaningful public participation in the delimitation process. Legal precedent: In the case of Reference re Provincial Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, the Supreme Court of Canada emphasized the importance of public input in the delimitation process.

- b) Specify the frequency of boundary reviews, ideally aligning them with the national census cycle. Legal precedent: The Australian Electoral Commission is required by law to review electoral boundaries after each census, typically every five years, as per the Commonwealth Electoral Act 1918.
- c) Provide clear guidelines on balancing population quota with other constitutional criteria for delimitation. Legal precedent: In *Raïche v. Canada (Attorney General)*, [2005] 1 F.C.R. 93, the Federal Court of Canada ruled that strict adherence to voter parity at the expense of other factors like community of interest was an error in law.
- d) Establish a mechanism for appeals or reviews of IEBC delimitation decisions. Legal precedent: In India, the Delimitation Commission Act, 2002 provides for a transparent process including publication of proposals and consideration of objections before finalization.
- e) Set clear timelines for the delimitation process, especially in relation to election cycles. Legal precedent: In the UK, the Parliamentary Constituencies Act 1986 (as amended) sets out specific timelines for boundary reviews to ensure they are completed well before elections.
- f) Include provisions for addressing significant population changes between censuses. Legal precedent: In *Reynolds v. Sims*, 377 U.S. 533 (1964), the U.S. Supreme Court ruled that states must conduct regular redistricting to reflect population changes.
- g) Ensure that the emphasis on population quota does not marginalize minority communities or areas with unique geographical challenges. Legal precedent: In *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, the Supreme Court of Canada allowed deviation from strict voter parity to protect minority representation and manage geographic challenges.
- h) Appreciating the viability of Ward Development Fund, it could be useful to consider capping Wards in developed urban areas as compared to rural areas.

VII. Conclusion

The IRCK believes that fair and transparent boundary delimitation is crucial for democratic representation and peaceful elections. While we support many aspects of the proposed amendments, we urge the Committee to consider our recommendations, which are grounded in both Kenyan constitutional principles and international best practices as evidenced by Commonwealth legal precedents.

These legal precedents underscore the complexity of the delimitation process and the need for a balanced approach that considers multiple factors beyond mere population

numbers. They also highlight the importance of transparency, public participation, and regular reviews in maintaining the legitimacy of electoral boundaries.

We stand ready to engage further on these important matters and to support efforts that enhance the integrity of our electoral processes

Signed and submitted on behalf of the Inter-Religious Council of Kenya on 27th September 2024

Signed:



Abdirahman Ismail, OGW
Executive Director
Inter-Religious Council of Kenya

ORPP MEMORANDUM ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023

1. Pursuant to Article 118(1) (b) of the Constitution and the National Assembly Standing Orders under Standing Order 127(3), the National Assembly called for submission of written memoranda on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2023.
2. The Office of the Registrar of Political Parties (ORPP) is established under Section 33 of the Political Parties Act, 2011 as an independent State Office within the meaning of Article 260 of the Constitution. Its mandate includes registration and regulation of political parties as well as administration of the Political Parties Fund.
3. We invite the Committee to note that during its meeting of 28th October 2023 held in Mombasa wherein ORPP was represented, the present Bill was discussed with the goal of harmonizing bills on boundary delimitation. Nonetheless, we appreciate that the legislative authority vests in Parliament under Article 94 of the Constitution hence the Mombasa meeting cannot form the basis to oust the present bill.
4. In this regard, the ORPP submits as follows;


S/No.	SECTION	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	Section 2	Clause 2	The clause seeks to insert the definition of population quota into the interpretation section.	The definition of population quota mirrors that of the Constitution under Article 89 (12). The ORPP agrees with this proposal.
2.	Section 3	Clause 3	The clause seeks to insert an additional object and purpose of the IEBC Act to include providing a framework for the delimitation of constituencies and wards.	Article 88 (4) of the Constitution stipulates the functions of the IEBC which include <i>inter alia</i> the delimitation of constituencies and wards. This proposal further reinforces the

				<p>function of IEBC stipulated under Section 24B of the IEBC Act as introduced through the Independent Electoral and Boundaries Commission (Amendment) Act, 2024 being the procedure for delimitation of electoral boundaries. In this regard, ORPP agrees with this proposal.</p>
3.	Section 36	Clause 4	<p>The clause seeks to introduce various provisions on the procedure for delimitation of electoral boundaries.</p>	<p>The Independent Electoral and Boundaries Commission (Amendment) Act, 2024 (Amendment Act) repealed Section 36 of the Independent Electoral and Boundaries Commission Act, CAP 7C in its entirety. The implication is that the said Section 36 proposed for repeal does not exist, therefore not available for amendment.</p> <p>The repeal of Section 36 notwithstanding, Parliament may still take note of the following:</p> <ul style="list-style-type: none"> • Clause 4 (d) (i) which provides for the variation of the number of inhabitants from the population quota under Article 89 (6) of the Constitution has been provided for under Clause 24B (2) (d) (i) of the IEBC Act CAP 7C (IEBC Act). • Clause 4 (d) (ii) which provides for the progressive realization of the requirement of the number of inhabitants being as nearly as possible equal to the population quota in each constituency and ward has been provided for under Clause 24B (2)

d) (ii) of the IEBC Act.

- Clause 4 (d) (iii) which provides for the use of the most recent enumerated census figures to the review has been provided under paragraph 3 (1) (b) of the fifth schedule to the IEBC Act.
- Clause 4 (d) (iv) which seeks to ensure that the delimitation process is in line with the principle of universal suffrage and equality of vote has been provided for under Section 25 (d) of the IEBC Act.
- Clause 4 (2A) which provides for the use population quota as the primary consideration in the delimitation process does not align with Article 89 (5) of the Constitution which requires the IEBC to consider other non-population factors such as geographical area and means of communication.
- Clause 4 (2B) seeks to ensure that the IEBC provides reasons where it varies the population quota-ORPP agrees with this proposal as the same will preserve the integrity of the delimitation process. However, Parliament should consider the effect of the proposal on sparsely populated areas.

				<ul style="list-style-type: none">• Clause 4 (2C) - The ORPP agrees with this proposal as it is a transparency and accountability measure.
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ANN N. NDERITU, CBS
REGISTRAR OF POLITICAL PARTIES
OFFICE OF THE REGISTRAR OF POLITICAL PARTIES