

1 copy



*Paper laid
by the Chairperson of
the Constitutional
Implementation Oversight
Committee on Tuesday
24.05.2011.*

[Signature]

PARLIAMENT
OF KENYA
LIBRARY

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

REPORT

ON THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION BILL, 2011

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

MAY, 2011

Mr. Speaker Sir,

The Constitutional Implementation Oversight Committee is a select committee established under Section 4 of the Sixth Schedule of the Constitution with a mandate of overseeing the implementation of the Constitution and which among other things:-

- (a) shall receive regular reports from the Commission on the Implementation of the Constitution on the implementation of this Constitution including reports concerning—
- (i) the preparation of the legislation required by this Constitution and any challenges in that regard;
 - (ii) the process of establishing the new commissions;
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and
 - (v) any impediments to the process of implementing this Constitution;
- (b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and
- (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.

COMMITTEE MEMBERSHIP

The Committee as constituted by the House on 5th October, 2010 comprise of the following members:-

1. The Hon. Hussein Mohammed Abdikadir, M.P. **Chairperson**
2. The Hon. Millie Odhiambo, M.P. **Vice-Chairperson**
3. The Hon. Beth Mugo, EGH, M.P.
4. The Hon. Chirau Ali Mwakwere, EGH, M.P.
5. The Hon. Martha Wangari Karua, EGH, M.P.
6. The Hon. (Prof.) Phillip Kaloki, M.P.
7. The Hon. (Dr.) Kilemi Mwiria, M.P.
8. The Hon. Charles Kilonzo, M.P.
9. The Hon. Ekwee Ethuro, M.P.
10. The Hon. Cecily Mbarire, M.P.
11. The Hon. (Dr.) Eseli Simiyu, M.P.

12. The Hon. Moriasi Ombui, M.P.
13. The Hon. Amina Abdalla, M.P.
14. The Hon. David M. Ngugi, M.P.
15. The Hon. Ababu Namwamba, M.P.
16. The Hon. Danson Mwazo, M.P.
17. The Hon. Sophia Abdi, M.P.
18. The Hon. (Dr.) Joyce Laboso, M.P.
19. The Hon. Joseph Kasaine Nkaiserry, M.P.
20. The Hon. Charles Onyancha, M.P.
21. The Hon. Alfred Khang'ati, M.P.
22. The Hon. John Mbadi, M.P.
23. The Hon. Elizabeth Ongoro, M.P.
24. The Hon. Rev. Julius Murgor, M.P.
25. The Hon. Lucas K. Chepkitony, M.P.
26. The Hon. Benedict Fondo Gunda, M.P.
27. The Hon. Rachel Shebesh, M.P.

Mr. Speaker Sir,

The Independent Electoral and Boundaries Commission Bill, 2011 was read a First Time on 13th April, 2011 and subsequently referred to the Departmental Committee on Justice and Legal Affairs in accordance with the Standing Orders.

The Speaker, in a Communication from the Chair, on 11th May, 2011 stated that *'The House Business Committee (HBC) during its sitting held yesterday, Tuesday 10th May, 2011, expressed concern on the inability of the Departmental Committee on Justice and Legal Affairs to consider Bills referred to it and other matters within its purview and requested the Speaker to explore other ways of facilitating business in the House, including the study and review of the Independent Electoral and Boundaries Commission (IEBC) Bill which has not been attended to by the said relevant Committee. In the light of the above, and after consultations with and the concurrence of the HBC, pursuant to Standing Order No.1, I direct that the Independent Electoral and Boundaries Commission (IEBC) Bill, 2011 be committed to the Constitutional Implementation Oversight Committee (CIOC) for study and review and that the Committee should report to the House not later than 23rd May, 2011. In taking this decision, I have taken cognizance of the fact that the CIOC is charged, amongst other things, with addressing any impediments to the process of implementing the Constitution pursuant to the provisions of Section 4 of the Sixth Schedule of the Constitution. Given that the number and Membership of the Committee is constituted as it is, I have no doubt that the Committee will address adequately issues pertaining to the Bill. I once again request all Members who may wish to propose amendments to*

the Bill to now submit them to the CIOC for consideration along with the ones that had earlier been submitted to the Office of Legal Counsel'.

As directed, the Committee took up the matter and held four (4) sittings to deliberate on the Bill. The Committee in conformity with the Constitution held a meeting with stakeholders on the Bill. The stakeholders who presented their views to the Committee are the Interim Independent Electoral Commission (IIEC), the Commission for the Implementation of the Constitution (CIC), the Law Society of Kenya (LSK), the Federation of Women Lawyers of Kenya (FIDA-Kenya), the Kenya Section of the International Commission of Jurists (ICJ-Kenya), and the Institute of Education in Democracy (IED).

Mr. Speaker Sir,

The debate on the Bill during Second Reading took eight (8) sitting days with a total of forty eight (48) Members contributing to the debate. The Committee in its deliberations took into consideration key and recurring issues raised by Honourable Members during the debate. The Committee also considered recommendations contained in the report by the Departmental Committee on Justice and Legal Affairs on the Interim Independent Boundaries Review Commission, adopted by the House on 21st December, 2010.

Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of Constitutional Implementation Oversight Committee, to present and commend this report on the proposed amendments to the Independent Electoral and Boundaries Commission Bill, 2011, to the House for adoption pursuant to the Communication from the Chair on 11th May, 2011 and in accordance with Standing Order 111.

SIGNED.....

**HON. ABDIKADIR HUSSEIN MOHAMED, M.P
CHAIRPERSON**

DATE: 23RD MAY 2011

PROPOSED AMENDMENTS TO THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION BILL, 2011

Clause 2

THAT clause 2 of the Bill be amended by deleting the definition of the expression “first review” and substituting therefor the following-

“first review” means the review conducted by the former Boundaries Commission taking into account any outstanding work of that Commission and issues arising from that review.”

Clause 3

THAT clause 3 of the Bill be amended-

(a) in paragraph (a) by inserting the word “responsibilities” after the words “provide for the operations, powers”; and

(b) in paragraph (c) by inserting the word “responsibilities” after the words “exercise of the powers”.

Clause 4

THAT clause 4 of the Bill be amended-

(a) in paragraph (c) by deleting the words “using appropriate technologies and approaches” appearing after the words “constituencies and wards” and substituting therefor the words “in accordance with the Constitution”;

(b) in paragraph (l) by inserting the words “pursuant to Article 157(12) of the Constitution” at the end of that paragraph; and

(c) by inserting a new paragraph after paragraph (l) as follows-

“(IA) the use of appropriate technology and approaches in the performance of its functions.”

Clause 5

THAT clause 5 of the Bill be amended-

(a) in sub-clause (1) by inserting the words “Article 250(4) of” after the words “in accordance with”; and

(b) by deleting sub-clause (4).

Clause 6

THAT clause 6 of the Bill be amended in sub-clause (1) by deleting the words “a Superior Court” appearing after the words “hold the office of judge of” and substituting therefor the words “the Supreme Court”.

Clause 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause-

- 7 (1) The members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.
- (2) The members of the Commission shall serve on a full-time basis.
- (3) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

Clause 9

THAT clause 9 of the Bill be amended in sub-clause 4 by inserting the words “term of five years” after the words “one further”.

Clause 25

THAT clause 25 of the Bill be amended-

- (a) in sub-clause (1) by inserting the words “but shall observe the principle of public participation and the requirement for consultation with stakeholders” after the words “any person or authority”;
- (b) by deleting sub-clause (2); and
- (c) by deleting sub-clause (3).

New Clause 28A

THAT the Bill be amended by inserting a new clause after clause 28 as follows-

Offences. **28A.** (1) A member or employee of the Commission who knowingly subverts the process of free and fair elections or who knowingly obstructs the Commission in the discharge of its functions or otherwise interferes with the functions of the Commission commits an offence and is liable, on conviction, to a term of imprisonment not exceeding three years or to a

fine of not more than one million shillings or to both.

(2) A person who is convicted of an offence under subsection (1) shall not be eligible to hold public office for a period of ten years following the conviction.

Clause 31

THAT clause 31 of the Bill be amended by-

- (a) re-numbering the existing provision as sub-clause (1); and
- (b) inserting the following new sub-clause after sub-clause (1)-

(2) A person who immediately before the commencement of this Act was an officer of the former Electoral Commission shall, subject to the provisions of the Constitution, this Act and any other relevant law, be an officer of the Commission.

FIRST SCHEDULE:

Paragraph 1 of the First Schedule

THAT paragraph 1 of the First Schedule be amended by deleting sub-paragraph 1 and substituting therefor the following new sub-paragraphs-

- (1) Within fourteen days of the commencement of this Act, the President shall, in consultation with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel comprising-
 - (a) two persons, being one man and one woman, nominated by the President;
 - (b) two persons, being one man and one woman, nominated by the Prime Minister;
 - (c) one person nominated by the Judicial Service Commission;
 - (d) one person nominated by the Kenya Anti-Corruption Advisory Board; and
 - (e) one person nominated by the Association of Professional Societies of East Africa.

(1A) The respective nominating bodies under sub-paragraph (1)(c), (d) and (e) shall, for purposes of making their nominations, each propose and submit two names of nominees, being one man and one woman, to the Clerk of the National Assembly.

(1B) The National Assembly shall, upon receipt of the names of the nominees, consider them and-

(a) approve one of the nominees; or

(b) reject both of the nominees.

(1C) The Clerk of the National Assembly shall notify the respective nominating bodies of the approval or rejection under sub-paragraph (1B).

(1D) If the National Assembly approves a nominee, the Clerk of the National Assembly shall forward the name of the nominee to the President and the President shall appoint the nominee as a member of the Selection Panel.

(1E) If the National Assembly rejects the names of both nominees submitted by a nominating body, the Clerk of the National Assembly shall request the nominating body to submit the names of new nominees to the National Assembly for consideration and sub-paragraphs (1A), (1B), (1C) and (1D) shall apply, with necessary modifications, to the consideration of the new nominees.

(1F) Subject to sub-paragraph (1G), whenever a vacancy arises in the Commission, the President shall, within twenty-one days of the vacancy, with the approval of the National Assembly, appoint a Selection Panel consisting of the persons listed in sub-paragraph (1) using, with necessary modifications, the procedure detailed in sub-paragraphs (1), (1A), (1B), (1C), (1D) and (1E).

(1G) After the first elections under the Constitution, the persons to be nominated under sub-paragraph (1)(b) shall be nominated by the President.

Paragraph 2 of the First Schedule

THAT paragraph 2 of the First Schedule be amended in sub-paragraph (2) by inserting the word “chairperson” after the words “shall elect a”.

New Paragraph in the First Schedule

THAT the First Schedule be amended by inserting the following new paragraph after sub-paragraph (2)-

(2A) The interviews to be conducted under sub-paragraph (2) shall be conducted in public.

SECOND SCHEDULE:

Paragraph 10 of the Second Schedule

THAT paragraph 10 of the Second Schedule be deleted.

THE FIFTH SCHEDULE

THAT the Fifth Schedule be deleted and substituted with the following new Schedule-

PROVISIONS RELATING TO THE FIRST REVIEW

Resolution of issues arising from the first review.

1. The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries of constituencies and wards and publish its final report within a period of four months of the date of its appointment under this Act.

Reference materials.

2. (1) The Commission shall, in addressing the issues arising out of the first review-

(a) use as its primary reference material the report of the former Boundaries Commission on the first review as tabled before the National Assembly; and

b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.

- (2) The issues arising out of the first review are –
- (a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;
 - (b) subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89 (6) of the Constitution but at the same time ensuring that such a process shall-
 - (i) take into account the provisions of Article 89 (7) (b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
 - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;
 - (iii) be subject to the use of enumerated national census figures and not projected figures.
 - (c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

3. (1) 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 demographical details relating to such delimitation;

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

(3) Upon the expiry of the period provided for in sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.

(4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under sub-paragraph (3), table the revised preliminary report to the National Assembly together with its recommendations.

(5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.

- (6) Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under sub-paragraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the Gazette.
- (7) Any person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph 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 shall be liable to imprisonment for a term of one year.
- (8) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall, within seven days of 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.

Review of
decision of
Commission

4. A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.

Application for review.

5. An application for the review of the decision made under sub-paragraph (4) shall be made within thirty days of the publication of the decision in the Gazette and shall be heard and determined within thirty days of the date on which it is filed.

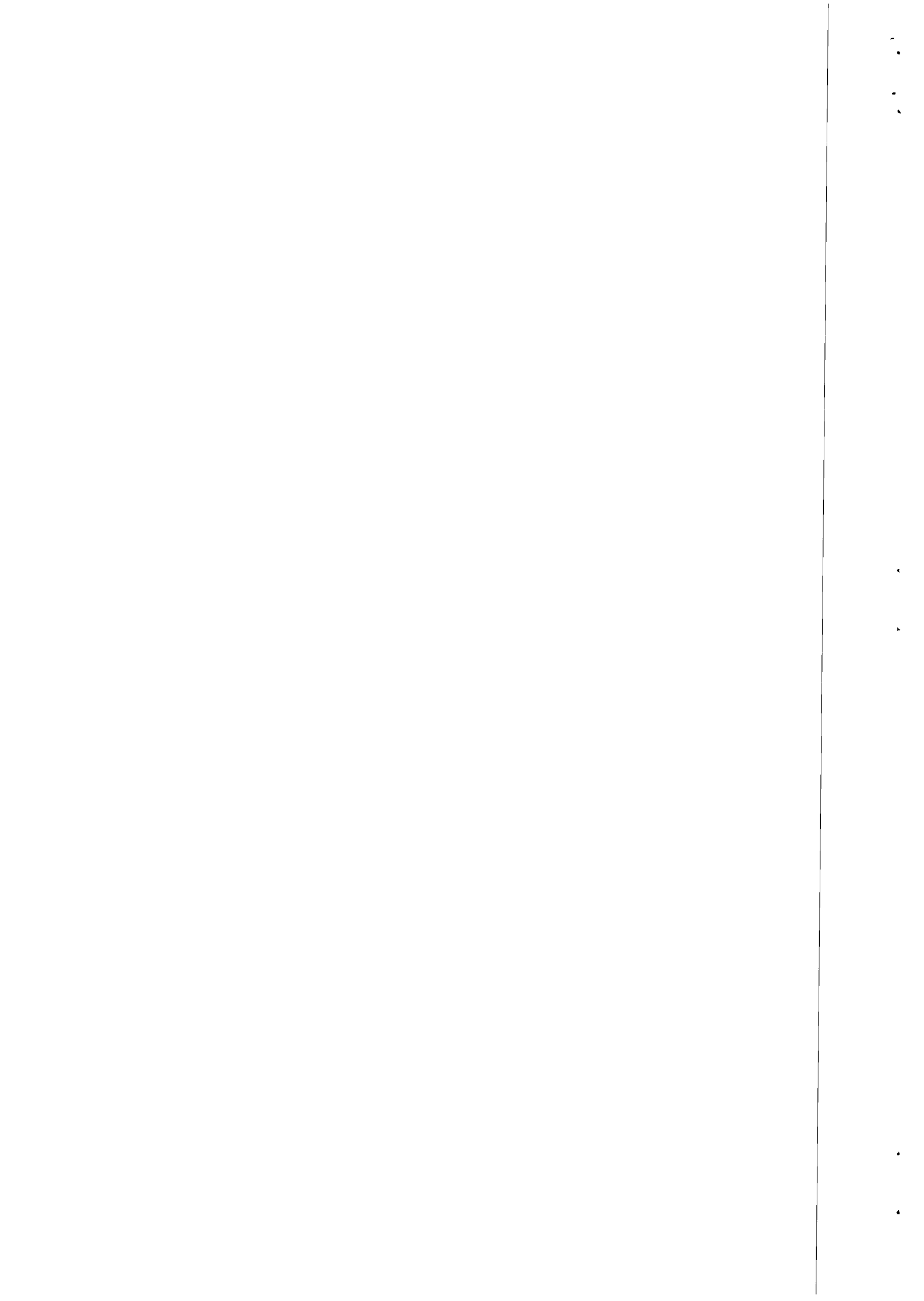
Sensitization on the proposed boundaries.

6. The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.

Maintenance of records.

7. 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.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX



MINUTES OF THE TWENTIETH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON FRIDAY 20TH MAY, 2011 AT 10.00 AM.

PRESENT:

1. The Hon. Hussein Mohammed Abdikadir, M.P.
2. The Hon. Millie Odhiambo, M.P.
3. The Hon. Martha Wangari Karua, EGH, M.P.
4. The Hon. Ababu Namwamba, M.P.
5. The Hon. Joseph Kasaine Nkaiserry, M.P.
6. The Hon. Lucas K. Chepkitony, M.P.
7. The Hon. David M. Ngugi, M.P.
8. The Hon. Charles Kilonzo, M.P.
9. The Hon. Ekwee Ethuro, M.P.
10. The Hon. Amina Abdalla, M.P.
11. The Hon. Rachel Shebesh, M. P.
12. The Hon. Elizabeth Ongoro, M.P.
13. The Hon. Alfred Khang'ati, M.P.
14. The Hon. Sophia Abdi, M.P.

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGY

1. The Hon. Beth Mugo, EGH, M.P.
2. The Hon. John Mbadi, M.P.
3. The Hon. (Dr.) Joyce Laboso, M.P.
4. The Hon. Charles Onyancha, M.P.
5. The Hon. Benedict Fondo Gunda, M.P.

ABSENT

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Moriasi Ombui, M.P.
3. The Hon. Rev. Julius Murgor, M.P.
4. The Hon. (Prof.) Phillip Kaloki, M.P.
5. The Hon. (Dr.) Eseli Simiyu, M.P.
6. The Hon. Chirau Ali Mwakwere, EGH, M.P.
7. The Hon. Danson Mwazo, M.P.
8. The Hon. (Dr.) Kilemi Mwiria, M.P.

IN ATTENDANCE

1. Hon. Mohammed H. Gabbow, MP-
2. Ms. Eunice Gichangi -
3. Mr. Zakayo Mogere -
4. Mrs. Rebecca Tonkei -
5. Mr. Oscar Namulanda -

NATIONAL ASSEMBLY

Member of Parliament
Senior Legal Counsel
Second Clerk Assistant
Research Officer I
Third Clerk Assistant

MIN. NO. 033/2011: PRELIMINARIES

The meeting was opened with a word of prayer.

MIN. NO. 034/2011: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

1. Minutes of the Eleventh Sitting of the Committee held on 30th November, 2010 were confirmed as a true record of the deliberations after being proposed by Hon. Rachel Shebesh, MP and seconded by Hon. Alfred Khang'ati, MP.
2. Minutes of the First Joint Sitting with the Departmental Committee on Justice and Legal Affairs held on 1st December, 2010 were confirmed as a true record of the deliberations after being proposed by Hon. Millie Odhiambo, MP and seconded by Hon. Alfred Khang'ati, MP.
3. Minutes of the Second Joint Sitting with the Departmental Committee on Justice and Legal Affairs held on 3rd December, 2010 were confirmed as a true record of the deliberations after being proposed by Hon. Ababu Namwamba, MP and seconded by Hon. Rachel Shebesh, MP.
4. Minutes of the Twelfth Sitting of the Committee held on 19th January, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Martha Karua, MP and seconded by Hon. Ekwee Ethuro, MP.
5. Minutes of the Thirteenth Sitting of the Committee held on 1st April, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Amina Abdalla, MP and seconded by Hon. Millie Odhiambo, MP.
6. Minutes of the Fourteenth Sitting of the Committee held on 7th April, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Alfred Khang'ati, MP and seconded by Hon. Millie Odhiambo, MP.
7. Minutes of the Fifteenth Sitting of the Committee held on 14th April, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Rachel Shebesh, MP and seconded by Hon. Alfred Khang'ati, MP.
8. Minutes of the Sixteenth Sitting of the Committee held on 21st April, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Alfred Khang'ati, MP and seconded by Hon. Millie Odhiambo, MP.
9. Minutes of the Seventeenth Sitting of the Committee held on 12th May, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Martha Karua, MP and seconded by Hon. Joseph Nkaissery, MP.
10. Minutes of the Eighteenth Sitting of the Committee held on 17th May, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Lucas Chepkitony, MP and seconded by Hon. Millie Odhiambo, MP.
11. Minutes of the Nineteenth Sitting of the Committee held on 19th May, 2011 were confirmed as a true record of the deliberations after being proposed by Hon. Joseph Nkaissery, MP and seconded by Hon. Martha Karua, MP.

MIN. NO. 035/2011: DRAFT REPORT ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) BILL, 2011

Members went through the draft report on the Independent Electoral and Boundaries Commission (IEBC) Bill, 2011 and proposed further amendments -

- i) To provide for penalties for members of the Commission and staff who knowingly subverts the process of free and fair elections. The penalty will include a jail term not exceeding 3 years, a fine not exceeding one million shillings and further that such a person upon convicted to be barred from holding any public office for ten (10) years.
- ii) To provide for a reduction of timelines as contained in the proposed Fifth Schedule.

The Committee unanimously adopted the draft report on the IEBC bill, 2011 as amended above.

MIN. NO. 036/2011: ADJOURNMENT

There being no Any Other Business, the Chairperson adjourned the meeting at Forty Five Minutes past Eleven O'clock.

SIGN:.....

(CHAIRPERSON)

DATE:..... 23RD MAY 2011

MINUTES OF THE NINETEENTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY 19TH MAY, 2011 AT 10.00 AM.

PRESENT:

1. The Hon. Hussein Mohammed Abdikadir, M.P.
2. The Hon. Millie Odhiambo, M.P.
3. The Hon. Martha Wangari Karua, EGH, M.P.
4. The Hon. Ababu Namwamba, M.P.
5. The Hon. Joseph Kasaine Nkaiserry, M.P.
6. The Hon. Rev. Julius Murgor, M.P.
7. The Hon. Lucas K. Chepkitony, M.P.
8. The Hon. David M. Ngugi, M.P.
9. The Hon. Charles Kilonzo, M.P.
10. The Hon. Moriasi Ombui, M.P.
11. The Hon. Amina Abdalla, M.P.
12. The Hon. Rachel Shebesh, M. P.
13. The Hon. Elizabeth Ongoro, M.P.
14. The Hon. John Mbadi, M.P.

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGY

1. The Hon. Beth Mugo, EGH, M.P.
2. The Hon. Ekwee Ethuro, M.P.
3. The Hon. (Dr.) Joyce Laboso, M.P.
4. The Hon. Charles Onyancha, M.P.

ABSENT

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. (Prof.) Phillip Kaloki, M.P.
3. The Hon. Benedict Fondo Gunda, M.P.
4. The Hon. (Dr.) Eseli Simiyu, M.P.
5. The Hon. Chirau Ali Mwakwere, EGH, M.P.
6. The Hon. Danson Mwazo, M.P.
7. The Hon. Sophia Abdi, M.P.
8. The Hon. (Dr.) Kilemi Mwiria, M.P.
9. The Hon. Alfred Khang'ati, M.P.

IN ATTENDANCE

1. Hon. Isaac Ruto, MP
2. Ms. Eunice Gichangi
3. Mr. Zakayo Mogere
4. Mrs. Rebecca Tonkei
5. Mr. Oscar Namulanda

NATIONAL ASSEMBLY

- Member of Parliament
- Senior Legal Counsel
- Second Clerk Assistant
- Research Officer I
- Third Clerk Assistant

MIN. NO. 030/2011: PRELIMINARIES

The meeting was opened with a word of prayer.

MIN. NO. 031/2011: THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) BILL, 2011

The Committee deliberated on the IEBC Bill together with memoranda from stakeholders and resolved as follows:-

Clause 2: THAT Clause 2 be amended by deleting the interpretation of “**first review**” and replacing it with a new definition that takes into account the fact that the former Boundaries Commission (IIBRC) undertook the first review but did not conclude and there are issues arising that require the resolution of the IEBC.

Clause 3: THAT Clause 3 be amended-

- i) In sub-clause (a) by inserting the word ‘**responsibilities**’ immediately after the word ‘**powers**’.
- ii) In sub-clause (c) by inserting the word ‘**responsibilities**’ immediately after the word ‘**powers**’.

Rationale: To include the responsibilities of the Commission in addition to its powers and functions.

Clause 4: THAT Clause 4 be amended-

- i) In sub-clause (c) by deleting the words ‘**using appropriate technologies and approaches**’ and substitute therefor the words ‘**in accordance with the Constitution**’.
- ii) in paragraph (l) by inserting the words “**pursuant to Article 157(12) of the Constitution**” at the end of that paragraph; and
- iii) By inserting a new sub-clause ‘**(n) the use of appropriate technologies and approaches**’.

Clause 5: THAT Clause 5 be amended-

- i) In sub-clause (1) by inserting the words ‘**Article 250 (4) of**’ immediately before the words ‘**the Constitution**’.
- ii) By deleting sub-clause (4)

Clause 6: THAT Clause 6 be amended in sub-clause (1) by deleting the word ‘**Superior**’ and substituting therefor the word ‘**Supreme**’.

Clause 7: THAT Clause 7 be amended-

- i) In sub-clause (1) by inserting the word ‘**be**’ immediately after the words ‘**shall not**’.
- ii) In sub-clauses 2, 3, 4, 5, and 6 by providing that Commissioners will serve on full time basis and that there will be no staggering of appointments.

Clause 8: Agreed to.

Clause 9: THAT Clause 9 be amended in sub-clause (4) by inserting the word **'term of five years'** at the end thereof.

Clause 11: Agreed to.

Clause 12: Agreed to.

Clause 13: Agreed to.

Clause 14: Agreed to.

Clause 15: Agreed to.

Clause 16: Agreed to.

Clause 17: Agreed to.

Clause 18: Agreed to.

Clause 19: Agreed to.

Clause 20: Agreed to.

Clause 21: Agreed to.

Clause 22: Agreed to.

Clause 23: Agreed to.

Clause 24: Agreed to.

Clause 25: THAT Clause 25 be amended by deleting sub-clause (2).

Clause 26: Agreed to.

Clause 27: Agreed to.

Clause 28: Agreed to.

Clause 29: Agreed to.

Clause 30: Agreed to.

Clause 31: THAT Clause 31 be amended by inserting a new sub-clause (2) **'Every person, who immediately before the commencement of this Act was an employee of the former Electoral Commission, shall be deemed to be an employee of the Commission'**.

Clause 32: Agreed to.

Clause 33: Agreed to.

Clause 34: Agreed to.

FIRST SCHEDULE:

THAT the First Schedule be amended to provide for

- i) 7 members of the selection panel to be appointed as follows:-
 - a) 4 members by the Executive (a man and woman by the President, a man and a woman by the PM)
 - b) 3 members by institutions (one each by JSC, KACA Board and Association of Professional Societies of East Africa (APSEA)) (while nominating each body to nominate 2 persons- a man and woman)
 - c) Parliamentary approval for all nominees.
- ii) In Article 2(2) to provide for public interviews of the members of the Commission.

SECOND SCHEDULE:

THAT the Second Schedule be amended by deleting Article 10.

THIRD SCHEDULE:

Agreed to.

FOURTH SCHEDULE:

Agreed to.

FIFTH SCHEDULE:

THAT the Fifth Schedule be deleted and substituted therefor with the following new schedule:-

FIFTH SCHEDULE [s. 34]

PROVISIONS RELATING TO THE FIRST REVIEW

1. The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries of constituencies and wards within a period of five months of the date of its appointment under this Act.
2. (1) The Commission shall, in addressing the issues arising out of the first review-
 - (a) use as its primary reference material the report of the former Boundaries Commission on the first review as tabled before the National Assembly; and

- b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.
- (2) The issues arising out of the first review are –
- (a) redistribution of such wards or administrative units in the affected constituencies as may be appropriate;
 - (b) addressing issues of new constituencies falling outside the population quota as provided for by Article 89 (6) of the Constitution but at the same time ensuring that such a process shall-
 - (i) take into account the provisions of Article 89 (7) (b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
 - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;
 - (iii) be subject to the use of enumerated census figures and not projected figures.
 - (c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.
- 3. (1) 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 demographical details relating to such delimitation;
- (2) 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.
- (3) Upon the expiry of the period provided for in sub paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that subparagraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.
- (4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under subsection (3), table the revised preliminary report to the National Assembly together with its recommendations.
- (5) The National Assembly shall, within seven days of the tabling shall consider the revised preliminary report under subsection (3).
- (6) Within fourteen days of the expiry of the period provided for in subparagraph (5), the Commission shall prepare and submit its final report, outlining the matters set out in subparagraph (1) (a) for publication in the Gazette.

(7) Any person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph 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 shall be liable to imprisonment for a term of one year.

(8) Where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall within 14 days of 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.

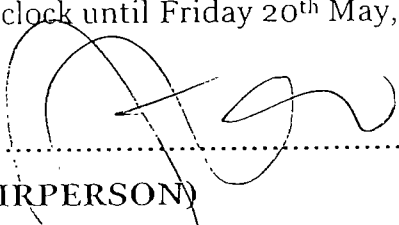
4. A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.
5. An application for the review of the decision made under subparagraph (4) shall be made within 30 days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.
6. The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.
7. 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.

Clause 1: Agreed to.

Title: Agreed to

MIN. NO. 032/2011: ADJOURNMENT

There being no Any Other Business, the Chairperson adjourned the meeting at Fifteen Minutes past One O'clock until Friday 20th May, 2011 at 9.00 am.

SIGN:.....

(CHAIRPERSON)

DATE: 20.05.2011.....

MINUTES OF THE EIGHTEENTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON TUESDAY 17TH MAY, 2011 AT 10.00 AM.

PRESENT:

1. The Hon. Hussein Mohammed Abdikadir, M.P.
2. The Hon. Millie Odhiambo, M.P.
3. The Hon. Chirau Ali Mwakwere, EGH, M.P.
4. The Hon. Sophia Abdi, M.P.
5. The Hon. Lucas K. Chepkitony, M.P.
6. The Hon. (Dr.) Eseli Simiyu, M.P.
7. The Hon. David M. Ngugi, M.P.
8. The Hon. Charles Kilonzo, M.P.
9. The Hon. Moriasi Ombui, M.P.
10. The Hon. Amina Abdalla, M.P.
11. The Hon. Rachel Shebesh, M. P.
12. The Hon. Benedict Fondo Gunda, M.P.
13. The Hon. Elizabeth Ongoro, M.P.
14. The Hon. John Mbadi, M.P.

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGY

1. The Hon. Beth Mugo, EGH, M.P.
2. The Hon. Martha Wangari Karua, EGH, M.P.
3. The Hon. Ekwee Ethuro, M.P.
4. The Hon. Joseph Kasaine Nkaiserry, M.P.
5. The Hon. (Dr.) Joyce Laboso, M.P.
6. The Hon. Charles Onyancha, M.P.
7. The Hon. Danson Mwazo, M.P.
8. The Hon. (Prof.) Phillip Kaloki, M.P.

ABSENT

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. (Dr.) Kilemi Mwiria, M.P.
3. The Hon. Ababu Namwamba, M.P.
4. The Hon. Rev. Julius Murgor, M.P.
5. The Hon. Alfred Khang'ati, M.P.

IN ATTENDANCE

1. Mr. Ahmed Issack
2. Mr. Davis Chirchir
3. Ms. Winnie Guchu
4. Mr. Yusuf A. Nzibo
5. Mr. Douglas J.M. Mwashigadi
6. Mr. Simiyu Abiud Wasike
7. Mr. James H. Oswago

INTERIM INDEPENDENT ELECTORAL COMMISSION (IEC)

- Chairman
- Commissioner
- Commissioner
- Commissioner
- Commissioner
- Commissioner
- Commission Secretary/ CEO

LAW SOCIETY OF KENYA (LSK)

- Mr. Apollo Mboya Secretary

ICJ – KENYA

- 1. Ms. Anne Nderi - Programme Officer
- 2. Mr. Gitonga Murang'a - Assistant Programme Officer

FIDA – KENYA

- 1. Ms. Caroline Khasoa
- 2. Ms. Mogeni Shiro-Shilako

**INSTITUTE OF EDUCATION IN
DEMOCRACY (IED)**

- Mr. Peter Aling'o - Executive Director

NATIONAL ASSEMBLY

- 1. Hon. Jeremiah Kioni, MP - Member of Parliament
- 2. Mr. Jeremiah Nyegenye - Head, Office of Legal Counsel
- 3. Ms. Eunice Gichangi - Senior Legal Counsel
- 4. Mr. Zakayo Mogere - Second Clerk Assistant
- 5. Mrs. Rebecca Tonkei - Research Officer I
- 6. Mr. Oscar Namulanda - Third Clerk Assistant

MIN. NO. 027/2011: PRELIMINARIES

The meeting was opened with a word of prayer. Thereafter the Committee adopted the only agenda of the meeting – *Meeting with IIEC, LSK, FIDA and ICJ on the Independent Electoral and Boundaries Commission Bill, 2011.*

MIN. NO. 028/2011: THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2011

The Chairperson welcomed the stakeholders to the meeting and asked them to present their memoranda on the Bill.

The Chairperson of the Interim Independent Boundaries Commission (IIEC) presented a memorandum on the Bill highlighting issues on:-

- i). Composition and appointment of the Commission and the Selection Panel;
- ii). Term of office and retirement of the Commissioners;
- iii). Appointment and removal of the Secretary to the Commission;
- iv). Code of conduct for the Commission;
- v). Remuneration of staff of the Commission;
- vi). Transition of staff of the former Commission (IIEC); and
- vii). Liaison Committees with political parties envisaged under the Political Parties Act.

The Secretary of the Law Society of Kenya (LSK) presented a memorandum from the Society on the Bill highlighting issues on:-

- i). the First Review of boundaries including the definition of the term “First Review” ;
- ii). Oath of Office /Solemn Affirmation by Chairperson/Member of the Selection Panel
- iii). Qualification of the Chairperson of the Independent Electoral and Boundaries Commission(whether supreme Court Judge or Superior Court Judge)
- iv). Transition of staff from the Interim Independent Electoral Commission and recruitment of staff
- v). Whether Chairperson, Vice Chairperson and Commissioners should serve on full-time non executive basis
- vi). Oath of office for the Chairperson, Vice Chairperson and commissioners

A Programme Officer of the Federation of Women Lawyers of Kenya (FIDA-Kenya) presented a memorandum on the Bill, on behalf of the Federation and highlighted issues on:-

- i). Composition, functions, term of office and appointment of the Commission;
- ii). Qualifications of the Chairperson of the Commission;
- iii). Staff and Secretary of the Commission; and
- iv). Appointment of the Selection Panel.

A Programme Officer of the International Commission for Jurists (Kenya Chapter) (ICJ) presented a memorandum on the Bill highlighting issues on:-

- i). Composition and appointment of the Commissioners;
- ii). Qualifications of the Chairperson; and
- iii). Relationship between the Commission and Secretariat.

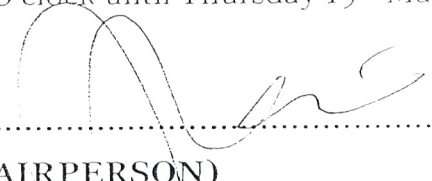
The Executive Director of the Institute of Education in Democracy (IED) highlighted issues on:-

- i). Roles of the Commissioners and the Secretariat;
- ii). Qualifications of the Chairperson of the Commission;
- iii). Requirement of a working knowledge on ICT;
- iv). Appointment of the Selection Panel;
- v). Staggering of appointment of Commissioners; and
- vi). Transition of IIEC and IIBRC staff.

The Committee deliberated on the presentations and resolved to meet on Thursday 19th May, 2011 to further deliberate on the Bill and propose necessary amendments.

MIN. NO. 029/2011: ADJOURNMENT

There being no Any Other Business, the Chairperson adjourned the meeting at Twelve Minutes past One O'clock until Thursday 19th May, 2011 at 9.30 am.

SIGN:.....

(CHAIRPERSON)

DATE:..... 20. 05. 2011

MINUTES OF THE SEVENTEENTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY 12TH MAY, 2011 AT 4.00 PM.

PRESENT:

1. The Hon. Hussein Mohammed Abdikadir, M.P.
2. The Hon. Millie Odhiambo, M.P.
3. The Hon. Martha Wangari Karua, EGH, M.P.
4. The Hon. Ekwee Ethuro, M.P.
5. The Hon. Joseph Kasaine Nkaiserry, M.P.
6. The Hon. Sophia Abdi, M.P.
7. The Hon. Lucas K. Chepkitony, M.P.
8. The Hon. Ababu Namwamba, M.P.
9. The Hon. Moriasi Ombui, M.P.
10. The Hon. Amina Abdalla, M.P.
11. The Hon. Rachel Shebesh, M. P.
12. The Hon. Benedict Fondo Gunda, M.P.
13. The Hon. Elizabeth Ongoro, M.P.
14. The Hon. John Mbadi, M.P.
15. The Hon. Charles Onyancha, M.P.

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGY

1. The Hon. Chirau Ali Mwakwere, EGH, M.P.
2. The Hon. Beth Mugo, EGH, M.P.
3. The Hon. Cecily Mbarire, M.P.
4. The Hon. (Dr.) Joyce Laboso, M.P.
5. The Hon. (Prof.) Phillip Kaloki, M.P.

ABSENT

1. The Hon. David M. Ngugi, M.P.
2. The Hon. (Dr.) Eseli Simiyu, M.P.
3. The Hon. Danson Mwazo, M.P.
4. The Hon. (Dr.) Kilemi Mwiria, M.P.
5. The Hon. Charles Kilonzo, M.P.
6. The Hon. Rev. Julius Murgor, M.P.
7. The Hon. Alfred Khang'ati, M.P.

IN ATTENDANCE

1. Mr. Jeremiah Nyegenye
2. Ms. Eunice Gichangi
3. Mr. Zakayo Mogere
4. Mr. Oscar Namulanda

NATIONAL ASSEMBLY

- | | |
|---|-------------------------------|
| - | Head, Office of Legal Counsel |
| - | Senior Legal Counsel |
| - | Second Clerk Assistant |
| - | Third Clerk Assistant |

MIN. NO. 024/2011: PRELIMINARIES

The meeting was opened with a word of prayer. Thereafter the Committee adopted the only agenda of the meeting - ***Deliberations on the Independent Electoral and Boundaries Commission Bill, 2011.***

MIN. NO. 025/2011: THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2011

The Chairperson informed the Committee that the Speaker, in consultation with the House Business Committee, committed the Independent Electoral and Boundaries Commission Bill, 2011 to the Committee and directed that the Committee should report to the House not later than 23rd May, 2011. The Chairperson appealed to the Members to take up the task and take the process forward.

The Committee was then taken through the broad issues of concern in the Bill, by the Head of the Office of Legal Counsel. The issues were picked from the proposed amendments submitted by various Members of Parliament.

The Committee directed the Secretariat to do research and prepare a brief covering the following among others:-

- i). Provisions of the Constitution versus the Bill;
- ii). Comparison with other jurisdictions like Ghana;
- iii). Penalties under the Bill and in the proposed Electoral law;
- iv). Technology and personal responsibility;
- v). Departmental linkages with other bodies such as the Kenya Bureau of Statistics and Registrar of Persons;
- vi). Concerns raised by MPs while debating the Bill in the Second Reading; and
- vii). The Bill versus resolutions and spirit of Parliament in adopting the report of the Justice and Legal Affairs Committee on the electoral boundaries.

Further, the Secretariat was directed to circulate the brief to the Members of the Committee by Tuesday 17th May, 2011.

The Committee noted that in the process of drafting the Bill, several stakeholders were consulted. The Committee further noted that it had received written memoranda from the Commission on the Implementation of the Constitution (CIC) and the Interim Independent Electoral Commission (IIEC) on the Bill. The Committee resolved to invite the following stakeholders to submit their views on the Bill in a meeting to be held on Tuesday 17th May, 2011:-

- i). The Interim Independent Electoral Commission (IIEC);
- ii). The Law Society of Kenya (LSK)
- iii). The International Commission for Jurists (Kenya Chapter) (ICJ); and
- iv). FIDA.

MIN. NO. 026/2011: ADJOURNMENT

There being no Any Other Business, the Chairperson adjourned the meeting at Fifteen Minutes past Five O'clock.

SIGN:.....

(CHAIRPERSON)

DATE:..... 20.05.2011