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TENTH PARLIAMENT - FOURTH SESSION (2010)

REPORT OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

ON THE REPORT OF THE INTERIM INDEPENDENT BOUNDARIES
REVIEW COMMISSION (IIBRC)

Clerk's Chambers
Parliament Buildings,
NAIROBI

December, 2010

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PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 198(3) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, police, prisons department, and community service orders)
- c) Public prosecutions
- d) Elections
- e) Integrity
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office
- c) The Judiciary
- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

The Committee also has oversight mandate over all matters relating to political parties.

COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

- | | |
|---|--------------------|
| Hon. Ababu Namwamba, M.P | - Chairperson |
| Hon. Njoroge Baiya, M.P | - Vice-Chairperson |
| Hon. Abdikadir Mohammed, M.P | |
| Hon. Millie Odhiambo-Mabona, M.P | |
| Hon. Mutava Musyimi, M.P | |
| Hon. George Omari Nyamweya, M.B.S., M.P | |
| Hon. Amina Abdalla, M.P | |
| Hon. Olago Aluoch, M.P | |
| Hon. Isaac K. Ruto, E.G.H., M.P | |
| Hon. Sophia Noor Abdi, M.P | |
| Hon. Eugene Wamalwa, M.P | |

REPORT OF THE INTERIM INDEPENDENT BOUNDARIES REVIEW COMMISSION (IIBRC)

This is a report of Parliament's Departmental Committee on Justice and Legal Affairs regarding the report produced by the Interim Independent Boundaries Review Commission (IIBRC) at the conclusion of its constitutional mandate. The IIBRC report is defined on page 12 herein.

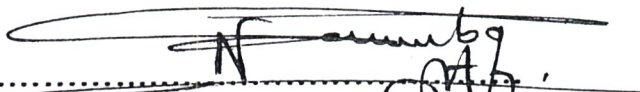
Acknowledgements

The Committee thanks the offices of the Speaker and the Clerk of the National Assembly for the support extended to it preparing this report in the execution of its stated mandate.

Mr. Speaker, Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report to the House for adoption pursuant to Standing Order 181.

Signed.....



Hon. Ababu Namwamba, MP
CHAIRPERSON

Date: 16/12/10

BACKGROUND

The Interim Independent Boundaries Review Commission (IIBRC) was established pursuant to the Constitution of Kenya (Amendment) Act, No. 10 of 2008 as part of the Agenda 4 reforms vehicles to drive electoral transformation. This was in the aftermath of the disbandment of the Electoral Commission of Kenya (ECK), whose functions were subsequently between the IIBRC and the Interim Independent Electoral Commission (IIEC). Section 41B of the Constitution of Kenya (Amendment) Act provided as that:

“there shall be an interim Independent Boundaries Commission which shall consist of a chairman and not more than eight other members”.

The Commission Chairman and the eight Commissioners were duly appointed by the President and gazetted vide Gazette Notice No. 4796 of 12th May, 2009 and sworn into office on 18th May, 2010.

The functions of the Commission were set out in section 41c of the said Constitution (Amendment) Act as being:-

- a) To make recommendations to parliament on the delimitation of constituencies and local authority electoral units and the optimal number of constituencies on the basis of equality of votes taking into account:*
 - (i) Density of population, and in particular the need to ensure adequate representation of urban and sparsely populated rural areas;*
 - (ii) Population trends;*
 - (iii) Means of communication;*
 - (iv) Geographical features; and*
 - (v) Community of interest.*

- b) To make recommendations to parliament on administrative boundaries, including the fixing, reviewing and variation of boundaries of districts and other units.*
- c) And any other functions as may be prescribed by parliament.*

This mandate of the Commission was modified by the new Constitution promulgated on 27th August, 2010. Article 27 of the Sixth Schedule to the Constitution provides as follows:

27. (1) The Boundaries Commission established under the former Constitution shall continue to function as constituted under that Constitution and in terms of sections 41B and 41C but:-

- (a) it shall not determine the boundaries of the counties established under this Constitution;*
 - (b) it shall determine the boundaries of constituencies and wards using the criteria mentioned in this Constitution; and*
 - (c) members of the Commission shall be subject to Chapter Seven of this Constitution.*
- (3) The requirement in Article 89(2) that a review of constituency and ward boundaries shall be completed at least twelve months before a general election does not apply to the review of boundaries preceding the first elections under this Constitution.*
- (4) The Boundaries Commission shall ensure that the first review of constituencies undertaken in terms of this Constitution shall not result in the loss of a constituency existing on the effective date.*

Among the fundamental implications of this new scenario on the functions of the Commission's mandate included the following:-

1. By fixing the maximum number of constituencies at two hundred and ninety for purposes of election of members to the National Assembly, Article 89(1) of the Constitution restricted the Commissions to eighty additional constituencies given the already existing two hundred and ten constituencies.
2. The population quota adopted as a Constitutional formula confined the Commission to set parameters in delimiting constituency boundaries. The initial mandate under the former Constitution had provided for use of population density and population trends as one of the general guides for the process. The new Article 89 gave greater prominence to the population quota formula, though Article 89(7)(b) qualifies its application in the sense that the formula is not to be construed as demanding instant demographic equality for all constituencies.
3. Whereas under the former Constitution the Commission had been required to make recommendations to Parliament on the delimitation of constituencies and boundaries, the new Constitution mandated the Commission to determine by publishing in the Kenya Gazette the optimal number, names and boundaries of constituencies and wards (Article 27(1)(b) of Schedule Six).

To fully understand and appreciate its modified mandate, the Commission did officially seek legal opinion from the Attorney General of the Republic, in his capacity as the chief government legal advisor. In a legal opinion dated 13th September, 2010 the Attorney General advised the Commission as follows:-

1. The Commission had the mandate to determine the boundaries of constituencies and wards. In making this determination, the criteria to be used was not the one set out in section 41C of the former Constitution of Kenya but that in Articles 89 and 27(4) of the Sixth Schedule to the new Constitution.

2. Whereas under the former Constitution of Kenya the Commission was required to make “*recommendations to Parliament*” in respect of boundaries of constituencies and wards, under the new Constitution the Commission was to “*determine*” those boundaries. The Commission was accordingly mandated to Gazette its determination, which is in tandem with the spirit of the new Constitution as exemplified in the mandate envisaged for the new Independent Electoral and Boundaries Commission (IEBC). The determination of the Commission could only be challenged through a judicial process *after* gazette, and such challenge coming after dissolution could still be handled by the IEBC as the successor body.
3. The mandate of making recommendations to Parliament on administrative boundaries, including the fixing, reviewing and varying of boundaries of districts and other units has not been amended or modified by the new Constitution.
4. The Commission was not mandated to determine the boundaries of the Counties established under the new Constitution. Such boundaries are set by the Districts and Provinces Act, and it is clear that the intention was that the boundaries of Counties would be looked into after the next General Election with the Senate in place. (*Article 188 of the Constitution*).

It was with this opinion in mind that the IIBRC went ahead to complete their work, determine eighty new constituencies in addition to the existing two hundred and ten and served the Government Printer with notice to gazette. The Commission also made public the product of their work by publishing in the print media 17th November, 2010 the list of all two hundred and ninety constituencies under the constitution.

The publication of the constituency details elicited intense public reaction, with those in support and those opposed expressing their sentiments with intensity. Three suits were subsequently filed seeking to stop the Commission from gazetting its report - Petition No. 72 of 2010; Petition No 74 of 2010; and HCC Miscellaneous Application No. 339 of 2010. The first suit, No. 72 of 2010 (John Maingi vs Hon. Andrew Ligale, Rozaah

Buyu, Irene Masit, IIBRC and the Attorney General) is of relevance here because it resulted in a substantive ruling. The petitioner had sought the following orders, *inter alia*:-

1. An injunction restraining the Chairman, Hon. Andrew Ligale, and two other Commissioners, Ms Rozaah Buyu and Ms Irene Masit, from participating in or presiding over functions of the Commission on the argument that the three commissioners were ineligible to remain in office under the new Constitution which precludes any person from membership of the Commission if they, among other things, have contested a parliamentary election within the preceding five years or held office in the executive committee of a political party.

The Court ruled that the said three commissioners were validly in office having fulfilled requirements of the former constitution under which they had been properly appointed.

2. An injunction against the Commission restraining it from publishing in the official Gazette the proposed delimitation of constituencies, on the contention that the Commission was to make its recommendations to Parliament and further that it was the yet to be formed Independent Electoral and Boundaries Commission (IEBC) that had the mandate to gazette the new constituencies. The argument was that the IIBRC had usurped powers of the IEBC.

The Court however held that the Commission could and was mandated to delimit and publish boundaries of constituencies and wards. The Court further found that the IIBRC mandated to *determine* the boundaries and in so doing, was not subject to the direction of any of the three arms of government, but subject only to strict adherence to the Constitution.

3. The Petitioner further contended that the Commission had failed to undertake consultations as required by the constitution.

But it was the ruling of the Court that the Commission had indeed undertaken extensive consultations. The Court also agreed with the IIBRC that a special process had been provided by the Constitution where a person may apply to the High Court for review of any decision made by the Commission. That application ought to be filed within 30 days of the publication of the decision in the Gazette.

4. During the hearing of this suit, the IIBRC strongly urged the court to lift an earlier injunction delivered by Lady Justice Jean Gacheche restraining the Commission from gazetting its findings. But the court declined this prayer, on the ground that whilst the IIBRC had conformed with all requirements of the Constitution, it had nonetheless fallen short of the requirement to provide details of both names and respective boundaries of the constituencies.

In considering this particular matter of legal suits brought against the Commission, the Committee's attention was drawn to some fundamental questions involved, including the following:

1. The law allows any person aggrieved by findings of the Commission to seek legal redress, but only after not before gazettelement of the Commission's findings. Were the various legal suits premature? If so, did the various petitioners have *locus standi* as at the time of filling their suits? By entertaining the suits at the time, did the court have jurisdiction at the point, and did it act in consonance with the Constitution? Did the court action prior to gazettelement amount to the judiciary interfering with the work of an independent constitutional commission?
2. It is a trite principle of law that a court cannot act in vain. It cannot make orders that it cannot enforce. Given that even after the court ruling the IIBRC process has nonetheless moved on through parliament, essentially because the judiciary cannot gag the legislature, did the court act in vain?

3. The Judge found that the IIBRC: a) was to determine the names and boundaries of constituencies; b) was to gazette its findings; c) could not be directed in its work by any of the three arms of government; d) had executed its mandate in accordance with the constitution except that it should have gazetted both the names and boundaries simultaneously. But he declined to lift the injunction against the IIBRC to enable the IIBRC cure the “defect”, though aware that: a) the IIBRC had deponed that the boundaries missing from the initial gazette notice were in fact ready; and b) the tenure of the IIBRC was to expire within 24 hours from the time of the ruling.

The Committee also took note of happenings at the Government Printer, which raise the vexing question as to whether it acted in good faith by declining to gazette the draft notice submitted by the Commission.

The IIBRC contended that it had submitted its first draft gazette notice to the state publisher at least twelve hours before the first injunction was delivered by Lady Justice Gacheche. The Commission also holds that Government Printer had never been a party to any of the suits, had no order issued against it, was not served and could therefore not have been enjoined. Further, within hours of the subsequent ruling by Justice Daniel Musinga, the IIBRC presented to the Government Printer a notice to gazette the names and boundaries of the 290 constituencies as required by the ruling, but there was still no progress with the gazette. The Commission was convinced beyond any shade of doubt that it had fulfilled all constitutional requirements for gazette, and expressed concern that the Government Printer was illegally questioning the legality of the work of a Constitutional institution, and has wondered what would happen if the Printer were to decline to gazette results of the 2012 general elections in defiance of the IEBC because of some controversy. Suffice it to say that as at the time of the expiry of the IIBRC’s constitutional term on 27th November, 2010, its gazette notice was still lying at the Government Printer unpublished, while the myriad legal suits remained alive in court, with the Attorney General as the only respondent now.

INTERVENTION BY THE JUSTICE COMMITTEE

Parliament's Departmental Committee on Justice and Legal Affairs is vested with broad mandate that includes the power to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of assigned ministries and departments. The Interim Independent Boundaries Review Commission was one of the commissions under the oversight of the Committee. Further, Parliament has mandate under Article 261(1) of the Constitution to enact any legislation required to govern a particular matter, besides its general oversight role.

The Committee was involved in the establishment of the IIBRC, and continued to oversight the Commission throughout its term. The Committee therefore took a very keen interest in the developments at the Commission, more so when its activities started attracting heated public interest.

At a retreat of all Members of Parliament held at the Kenya Institute of Administration (KIA), Kabete on 8th-9th November, 2010, the Committee was requested to ensure that the IIBRC concluded its work as its mandate drew to a close. The Committee proceeded to quickly convene a working retreat held at Serena Hotel, Mombasa on 13th-14th November, 2010 with the objective, among others, of establishing the progress made by the Interim Independent Boundaries Review Commission and the Interim Independent Electoral Commission (IIEC), and the state of preparedness for the transition to the new Independent Electoral and Boundaries Commission (IEBC). The retreat was attended by the Chairperson of the IIBRC, Hon. Andrew Ndooli Ligale and his IIEC counterpart, Mr. Isaack Hassan, alongside the Minister for Justice, Hon. Mutula Kilonzo. At the retreat the IIBRC Chairperson assured the Committee that his Commission was in the process of concluding its mandate, and also shared the frustrations it was experiencing, including what the Commission regarded as interference in its work by Government, including the parent ministry.

The Committee pursued this matter further by holding a series of subsequent meetings as follows:-

1. 23rd November, 2010: This had been scheduled as a joint meeting between the Committee, the IIBRC and the National Cohesion and Integration Commission (NCIC). But since only the three dissenting members of the IIBRC attended because the rest of the Commission was in another meeting, the Committee went ahead to meet with the NCIC, and rescheduled the meeting with the IIBRC for the next day.
2. 24th, November, 2010: At this meeting, the IIBRC, through the chairperson made a detailed presentation on the work of the Commission, including the methodology and strategy applied in delimitation of electoral units as well as the rationale for decisions taken by the Commission. The Commission also confirmed that due to public pressure, it had published the proposed two hundred and ninety constituencies in the print media. The committee also acknowledged that three commissioners (Mr. Mwenda Makathimo, Dr. John Nkinyangi and Mr. Joseph Kaguthi) had dissented over the final report of the Commission. The three were permitted to present their alternative position.
3. 26th November, 2010: The Chairman of the Commission delivered the Draft Gazette Notice (Special Issue) dated 26th November, 2010 containing the list and details of constituencies signed by the IIBRC Chairman, Mr. Andrew Ndooli Ligale; together with the accompanying affidavit sworn by the IIBRC Deputy Director for Legal Services, Mr. Byram Ongaya dated 26th November, 2010 and the court ruling by Justice Daniel Musinga dated 26th November, 2010.
4. 1st December, 2010: The IIBRC Chairman delivered the final Report of the IIBRC titled: *Delimitation of Constituencies and Recommendations Local Authority Electoral units and Administrative Boundaries for Districts and other Units* dated 27th November, 2010.

Minutes of the Committee meetings are attached to this report as JLA 1.

REPORT OF THE IIBRC

At a Committee meeting held on 2nd, December, 2010, it was resolved that the Interim Independent Boundaries (IIBRC) Report would be defined as constituting the following:

- a) A presentation made by the IIBRC Chairman, Mr. Andrew Ndooli Ligale, on the *Progress made by the Interim Independent Boundaries Review Commission (IIBRC) and the state of preparedness for the transition to the new Independent Electoral and Boundaries Commission (IEBC)*, at a working retreat convened by the Committee in Mombasa on 13th-14th November, 2010; (JLA 2)
- b) A power point presentation titled “*Constituency Delimitation Methodology*” presented by the IIBRC at a meeting with the Committee held on 24th November, 2010 and attended by the full IIBRC, including accompanying reports, maps and diagrams; (JLA 3).
(NB: The committee also placed on its record a presentation of the three dissenting IIBRC Commissioners made at the same meeting); (JLA 4).
- c) The Draft Gazette Notice (Special Issue) dated 26th November, 2010 containing the list and details of constituencies signed by the IIBRC Chairman, Mr. Andrew Ndooli Ligale; together with the accompanying affidavit sworn by the IIBRC Deputy Director for Legal Services, Mr. Byram Ongaya dated 26th November, 2010 and the court ruling by Justice Daniel Musinga dated 26th November, 2010; which bundle of documents were delivered by Mr. Ligale to the Justice and Legal Affairs Committee on 26th November, 2010; (JLA 5), and
- d) The Final Report of the Interim Independent Boundaries Review Commission (IIBRC) titled: *Delimitation of Constituencies and Recommendations Local Authority Electoral units and Administrative Boundaries for Districts and other Units* dated 27th November, 2010. (JLA 6).

COMMITTEE DELIBERATIONS

Guiding Principles

In considering the Interim independent Boundaries review Commission (IIBRC) matter, the Committee anchored its deliberations on five guiding principles:-

1. **THAT** the IIBRC was a constitutional process and its report must be dealt with as a product of the exercise of a constitutional mandate.
2. **THAT**, however, that constitutional process has raised some fundamental questions requiring answers, including the constitutionality of some decisions, fairness of process as well as possible errors and omissions on the record.
3. **THAT** the noted questions notwithstanding, the IIBRC report is now an official public record in the possession of a Committee of the House and forms the basis for discussions on this matter as well as the reference material for any subsequent action.
4. **THAT** any subsequent action on the IIBRC report shall respect and protect gains therein, while maintaining the ends of justice ,fairness and constitutionality.
5. **THAT** for the avoidance of doubt, the Justice Committee has defined the "*IIBRC Report*" in very specific terms to mean the full complement of documents, diagrams, records and maps submitted to the committee by the IIBRC on diverse dates between 13th November and 1stDecember, 2010. Further, the Committee has placed on its record presentations of the three dissenting former IIBRC Commissioners.

OPTIONS CONSIDERED BY THE COMMITTEE

The Committee consulted and identified five working options for consideration in search of a resolution. In addition, the Committee held two joint meetings with the Committee on the Implementation of the Constitution (CIOC) and members of the informal members' caucus to build consensus on the options.

During the joint meetings, it was agreed that the Committee convenes a one day retreat for all members of Parliament at the Kenya Institute of Administration (KIA), Kabete, Nairobi to build further consensus on the preferred option(s), and to mandate the Justice and Legal Affairs Committee to conclude the boundaries process. The retreat took place on Monday, 6th December, 2010, at which the committee reported to the members and proposed the following options to steer the process forward:-

OPTION 1

Return the IIBRC to office with a specific timeframe within which conclude their constitutional mandate including gazettelement of their report.

Advantages

- IIBRC has the original express Constitutional mandate to undertake the first review and determine constituency and ward boundaries (Sections 41 B, C of the former Constitution and Articles 1(a) and 27 of Schedule Six to new Constitution)
- IIBRC has the institutional memory and real time experience on this matter, and would be best placed to answer questions on its work.
- Returning IIBRC would afford it time for activities previously denied it, including the opportunity for public feedback as happened with the Committee of Experts (CoE) on Constitution review.

Challenges:

- Returning IIBRC to office required amending the constitution, raising challenges of time and the two-thirds majority threshold. (Articles 255(1) (g) and 256 of the Constitution).
- IIBRC would have to deal with the strong divisive political sentiments both for and against it.
- The Commission would also have to grapple with the challenge of internal splits that encumbered the tail-end of its work.

OPTION 2

Expand the mandate of the IIEC to include a specific mandate to conclude and publish the IIBRC work within a specific timeframe and defined parameters.

Advantage

- IIEC is available with existing infrastructure and would not waste too much time and resources getting down handling the proposed additional mandate.

Challenges:

- Like the option of returning the IIBRC, expanding the mandate of the IIEC would also require amendment to the constitution.
- This option could also bog down the IIEC with the politics already encumbering the IIBRC report.
- The option could also be open to legal challenge given the specific mandate of the IIEC in light of the rationale behind having both IIBRC and IIEC.

The Committee considered the following specific legal issues in respect of Options (1) and (2):

- (a) *Section 1(a) of the Sixth Schedule to the Constitution defines “Boundaries Commission” to mean the Interim Independent Boundaries Commission (IIBRC). Section 27(4) of the same Schedule provides that: “The Boundaries Commission shall ensure that the first review of constituencies undertaken in terms of this Constitution shall not result in the loss of a constituency existing on the effective date”. Does this mean that the IIBRC had exclusive mandate to undertake the first review? Could it also mean that any other organ undertaking the exercise other than IIBRC may not have the power to save the 27 protected constituencies?*
- (b) *Article 256(c): “a Bill to amend the Constitution may not be called for second reading in either House within ninety days after its first reading”. The timeframe for amendment is now longer; the President also has thirty days [Art. 256(4)] within which to assent, thus three months are the minimum. (Earliest Constitution could be amended would be March 2011, if no referendum).*
- (c) *Article 256(d): Bill needs to be passed by two thirds majority at both Second and Third Reading.*
- (d) *Article 256(2): Bill needs to be published by Parliament for public discussion.*
- (e) *Article 256(5): Debate likely to arise on referendum or no referendum? Article 255(1)(g) requires referendum for amendments relating to constitutional commissions, upon reference by the President under Art 256(5) (a).*

OPTION 3:

Constitute the new Independent Electoral and Boundaries Commission (IEBC) under Article 88 of the Constitution and give it the responsibility of addressing outstanding Issues from the IIBRC Report, guided by legislation under Articles 89(5) and 250 of the Constitution.

Advantage

- The IEBC may not require a constitutional amendment if Article 259(3)(d) of the Constitution is applied, and if it is determined that it can indeed handle issues from the “*first review*” as envisaged in Art. 1(a) and 27(4) of the Sixth Schedule.
- The new body may enjoy higher public trust and goodwill.
- Parliament could determine the character of the Commission (Article 250) and its functions (Article 89[5]).
- This option may be faster than returning IIBRC or expanding the mandate of IIEC.

Challenges:

- Great risk of soiling the image of the IEBC *ab initio* because of the already poisoned political sentiments (*damned either way!*), thus gravely compromising its ability to handle the crucial 2012 general election.
- No institutional memory. Could be challenged as to whether it has the mandate to handle “first review” Articles 1(a), 27(1) of Schedule Six and save “protected” constituencies (Article 27(4) of same Schedule).
- Parliament’s legislative guidance could be challenged for being *ultra vires* in the absence of specific limits.
- Possible compromised independence *ab initio* if its composition is as a result of a political deal.

The Committee looked at the following legal issues in considering this option:

1. *Article 255(g) provides that amendments affecting Commissions and Independent Offices to which Chapter 15 of the Constitution applies must be endorsed by referendum. Article 255(2) lists the IEBC as one of the Commissions under Chapter 15, meaning that any change of its constitutional character or mandate would require a referendum.*
2. *But Article 259(3) (d) provides that “a reference in this Constitution to an office, body or organization is, if the office, body or organization has ceased to exist, a reference to its successor or to the equivalent office, body or organization”. Is this provision applicable to the IEBC in light of Articles 1(a) and 27(4) of Schedule Six? Does the IEBC have the mandate to conduct the “first review” and to “delineate constituency boundaries”? If this provision is applicable to the IEBC, would that preclude the necessity for a constitutional amendment?*
3. *Upon its constitution, the new Commission would automatically draw its mandate and powers from Articles 88 and 89 of the Constitution. Although Art 249(2) dictates autonomy and independence of the Commission, Parliament may, by virtue of Article 88(5) dictate the manner in which the IEBC performs its functions by requiring it, for the purposes of the first review, to take into account firstly the report of the IIBRC and secondly the political consensus arrived at by Parliament as a result of the IIBRC report. A good precedent of this methodology would be found in the Constitution of Kenya Review Act, 2008 where Parliament legislated for the Committee of Experts to be bound by precedent. Section 29 of the said Act provided as follows:-*

29. In the performance of its functions under this Act, the Committee of Experts shall draw upon the views and materials collected or prepared by the various organs of review under the expired Act, including but not limited to-

- (a) the summary of the views of Kenyans collected and collated by the Commission;*

(b) the various draft constitutions prepared by the Commission and the Constitutional Conference;

(c) the Proposed New Constitution, 2005;

(d) documents reflecting political agreement on critical constitutional questions, such as the document commonly known as the Naivasha Accord;

(e) analytical and academic studies commissioned or undertaken by the Commission or the Constitutional Conference

4. In the absence of a comprehensive omnibus legislation relating to the appointment and vetting of members of constitutional commissions, the appointment of the new commission would have to be broadly guided by provisions of article 88 and Chapter Fifteen of the Constitution but owing to the peculiar nature of the IEBC, Parliament may have to move with speed and enact a legislation specific to the IEBC in line with the requirements of Article 250(2) (a).

5. In a nutshell, if this option were to be preferred, then emphasis should immediately shift to conceptualization of a comprehensive legislation under Articles 250(2)(a) and 88(5) that would provide, inter alia, for:

- the manner for identification and recommendation for appointment for members of the IEBC taking in account the interests and confidence of the political players ;*
- the procedural route(subject to the constitutional provisions) to be followed by the IEBC in the exercise of its powers and performance of its functions;*
- the timelines for addressing issues from the first review;*
- the details of the boundaries which the IEBC is required to gazette under Art 88(9);*
- the manner in which the IBRC would consult with stakeholders including Parliament etc*

OPTION 4:

Parliament to debate the IIBRC report, adopt it with any agreed amendments paying due regard to agreed issues outlined in a report by JLA Committee, and proceed to effect it through legislation and/or gazettelement. (Article 254 of the Constitution; Initial IIBRC mandate under Art.41B, C of former Constitution).

Positives:

- Process would benefit from political settlement in Parliament.
- Would be faster than options 1, 2 and 3.

Challenge:

- While Art. 254 empowers Parliament to receive reports of all Commissions, there is no express authority for Parliament to deal with this matter through legislation or otherwise. This could open the option to judicial challenge.

The following legal issues were considered in respect of this option:

1. *The constitutional issue arising in relation to this option would be whether legislation by Parliament would be in conformity with Article 89 where Parliament is not given any role to play in the delimitation of electoral units. This role is wholly vested in the Boundaries Commission (but argument exists as to whether mandate of the IEBC to “review” under article 89 includes power to increase the number of constituencies).*
2. *Contrary argument is that Article 27 of the Sixth Schedule preserved the IIBRC in terms of its previous mandate which was “to make recommendations to Parliament on the delimitation of constituencies...” (Section 41C (a) of defunct Constitution). By implication therefore, the first delimitation of electoral units for purposes of the new Constitution were to be enacted by Parliament and not the Commission*

(Contention that article 89 does not confer upon the IEBC the power to increase boundaries).

3. There is no clear express authority for legislation by Parliament in the new Constitution although this was the position in the former Constitution. As a result, the legislation may be subjected to various interpretations with the resultant risk of judicial challenge.

OPTION 5

Get the IIBRC Report gazetted as presented to the Government Printer, and outstanding issues dealt with through judicial action as contemplated by law, and possibly with input of Parliament.

Positives:

- Process would not require amendment to the Constitution.
- Would be the fastest of all the options.

Challenges:

- How do you deal with the outstanding issues?
- What would be the fate of the many legal suits?
- The gazettelement of the IIBRC report has already become victim of intense politics.

The ROAD-MAP TO RESOLVING THE IMPASSE

After a full day of deliberations, Members of Parliament at the Kabete meeting agreed on the following steps in moving the process forward:-

STEP 1:

THAT the Justice and Legal Affairs Committee to prepare its report on the IIBRC process in detail, its assessment of the exercise and clearly identifying all the outstanding issues that requires resolution.

STEP 2:

THAT the Justice and Legal Affairs Committee tables the IIBRC Report together with its own Report;

STEP 3:

THAT the House considers adopting the Justice and Legal Affairs report and the IIBRC report;

STEP 4:

That the process is concluded through the preferred option from the list of five.

The Members further resolved to **merging Options 3 and 4** presented by the Committee and mandated the Committee to proceed and lead the process as proposed.

The Members specifically resolved as follows:

- The Justice and Legal Affairs Committee prepare its own report on the IIBRC report and make recommendations to the effect that:
- The House considers the report for adoption;

- The House enacts the Independent Electoral and Boundaries Commission (IEBC) Act in accordance with Articles 88(5) and 250 of the constitution to set up the new commission as a successor to the IIBRC and IIEC. The Bill will be prepared by the Justice and Legal Affairs Committee and brought to the House as part of the committee's report.
- The IEBC to be given a specific time-bound frame to address the outstanding issues using the IIBRC report as its reference material.

The Committee held a follow up meeting on Tuesday, 7th December to recap the Kabete meeting and determine the methodology of moving forward. Subsequently, a sub-committee consisting of the following persons was constituted with a specific mandate to identify the outstanding issues ;-

1. Hon. Millie Odhiambo-Mabona, MP - Chairperson
2. Hon. Amina Abdalla, MP,
3. Hon. Isaac Ruto, MP,
4. Hon. George Omari Nyamweya,MP
5. Hon Sophia Abdi Noor,MP

The Sub-Committee held one meeting and a second session where Members of Parliament presented their issues on the IIBRC Report as individual members and as regional caucuses.

THE OUTSTANDING ISSUES

The Committee engaged with the IIBRC in five meetings, during which clarifications were sought in respect of the decisions taken by the commission. The Committee also considered various documentation prepared by the Commission. Further, the Committee received both verbal and written submissions¹ from members of parliament regarding the report of the IIBRC. It is against this backdrop that the Committee isolated the following as issues outstanding from the process undertaken and concluded by the IIBRC:

- (a) **Redistribution of Wards:** there are grievances regarding the placement of some wards which affects the constitutional parameters of community of interest, historical, cultural and economic ties and geographical accessibility.
- (b) **Population Quota/Mean:** there are questions around new constituencies that fall below or above the population quota/mean in Article 89 (6) of the Constitution. This concerns have to be addressed with due regard to Article 89 (7) (b) of the Constitution that requires progressive efforts towards attaining the ideal population quota/mean in each constituency and ward. The effect of Article 89(7)(b) is that the Constitution does not envisage instant demographic equality of all the constituencies as this is impractical, and therefore constituencies above or below the population quota and/or mean are not precluded since reaching the ideal quota/mean has to be sought “progressively” over time. Further, the Commission indicated that the presence of protected constituencies in a given region impacted on the application of the quota/mean;

Definition and Application of Terminologies: How did the IIBRC define and apply the terms “*cities*”, “*urban areas*” and “*sparsely populated*” in the constituency boundaries review exercise? The IIBRC regarded Nairobi as the only legal city with a Charter as required by law. Definition of “*sparse*” and “*dense*” have been used as ordinarily applied by the Central Bureau of Statistics.

¹ The full complement of the written submissions and a summary of the verbal submissions is attached to this report and marked as Annexure JLA 7 and JLA 8, respectively.

- (c) **The Census Figures used:** Whether the IIBRC should have applied enumerated census figures or projected figures. The IIBRC applied enumerated figures, and was precluded by a court ruling from ignoring contested figures in eight districts.
- (d) **Protected Constituencies:** How the issues of protected constituencies affected neighboring constituencies in the application of the population quota/mean.

The Committee also encountered other factors that require immediate attention to ensure equal representation of all Kenyans regardless of where they are situated in the Country. This includes marginalized areas and minorities. Consequently legislation on Article 100 of the Constitution should be first trucked.

The Committee noted that many of the issues considered outstanding would have been easily clarified and settled had the IIBRC been given enough time for feedback and comprehensive validation of its findings.

(See Annexure JLA 2, 9)

COMMITTEE RECOMMENDATIONS

The Committee makes the following Six Recommendations:-

1. REPORT OF THE INTERIM INDEPENDENT BOUNDARIES REVIEW COMMISSION (IIBRC)

THAT the House adopts the annexed IIBRC Report subject to addressing of the outstanding issues as set out in recommendation (2) below.

2. THE OUTSTANDING ISSUES

THAT the House notes the outstanding issues referred to in (1) above as follows:

- (a) Redistribution of wards and relevant administrative units in the affected constituencies as may be appropriate to correct any misplacement or errors that affect constitutional parameters of community of interest, geographical accessibility and historical, cultural and economic ties;
- (b) Addressing issues arising out of any of the eighty new constituencies outside the population quota set in Article 89 (6) of the Constitution, with due regard to Article 89 (7) (b) of the Constitution that requires progressive efforts towards attaining the population quota in each constituency and ward; subject to issues in (c) and (d) hereinbelow. The effect of the said Article 89(7)(b) is that the Constitution does not envisage instant demographic equality of all the constituencies as this is impractical, and therefore constituencies above or below the population quota and/or mean are not precluded since reaching the ideal quota/mean has to be sought “progressively” over time;

- (c) The process of addressing outstanding issues is not subject to new definition of terms used by the IIBRC in the constituency boundaries review exercise, specifically definition of cities, urban areas and sparsely populated areas;
- (d) The process of addressing the outstanding issues is subject to the use of enumerated census figures, not projected figures;
- (e) Addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighboring constituencies as may be appropriate. In doing so, provisions of Article 89(7)(b) of the Constitution applies, to the effect that the Constitution does not envisage instant demographic equality of all the constituencies, and constituencies above or below the population quota and/or mean are not precluded since reaching the ideal quota/mean has to be sought “progressively” over time;

3. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) BILL, 2010

- (a) **THAT** the House expeditiously moves, within a period of one month from the date hereof, to enact a law in accordance with Articles 88(5) and 250 of the constitution to anchor the new Independent Electoral and Boundaries Commission (IEBC) established in Article 88 of the Constitution;
- (b) **THAT** in furtherance of this recommendation, the House adopts the draft Independent Electoral and Boundaries Commission (IEBC) Bill, 2010 annexed to this report. The Bill is part of the consensus on the IIBRC report and its publication, debate and enactment should be expedited.

4. THE MANDATE OF THE IEBC TO ADDRESS ISSUES ARISING FROM THE FIRST REVIEW OF CONSTITUENCY AND WARD BOUNDARIES

- (a) THAT the Independent Electoral and Boundaries Commission (IEBC) be granted a defined limited mandate to address the identified issues outstanding from the first review of constituency and ward Boundaries as undertaken by the Interim Independent Boundaries Review Commission (IIBRC) in accordance with article 41 B and 41 C of the former Constitution and Article 27 of the Sixth Schedule to the Constitution.
- (b) THAT in undertaking its limited mandate over the said first review, the IEBC shall:
 - (i) As its Primary Reference Material, the report of the Interim Independent Boundaries Review Commission (IIBRC) report annexed hereto and adopted by the House;
 - (ii) As its Secondary Reference Material, this report of the Justice and Legal Affairs Committee as Secondary Reference Material.
- (c) THAT at the conclusion of its defined limited task of addressing the identified outstanding issues, the IEBC shall consult widely for purposes of feedback and validation prior to gazettelement. That validation exercise shall include the Commission referring its report to Parliament.
- (d) THAT the proposed IEBC Bill shall include a mechanism for any members of the public to seek judicial redress subsequent to gazettelement.

5. OTHER LEGISLATION

THAT the House notes the significance of enacting legislation on the following matters:

- (a) A law on wards, including determination of the number of wards per County for purposes of County Assemblies. This legislation is urgent.

- (b) A law to address the current and historical concerns of minority and Marginalized communities to advance, *inter alia*, the ends of Article 100 of the Constitution;
- (c) A law on definition of urban areas and cities, and sparsely populated areas which law should impact the subsequent reviews and delimitations of electoral units;
- (d) A law on definitions and application of geographical features, to similarly impact on the subsequent reviews and delimitations of electoral units;

6. REPORT OF THE COMMITTEE

THAT the House adopts this Report of the Departmental Committee on Justice and Legal Affairs on the Report of the Interim Independent Boundaries Review Commission (IIBRC).

-----End-----

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY NOVEMBER
18, 2010 IN THE CONFERENCE ROOM, 1ST FLOOR, COUNTY HALL,
PARLIAMENT BUILDINGS AT 12.00PM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Amina Abdalla, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.

ABSENT WITH APOLOGY

Hon. Olago Aluoch, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Sophia Abdi Noor, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN NO. 191/2010

UPDATE ON INTERIM INDEPENDENT
BOUNDARIES REVIEW COMMISSION (IIBRC)
REPORT

The Chairperson informed the Committee that he had spoken with the Chairperson of the Interim Independent Boundaries Review Commission (IIBRC), who had advised that the IIBRC report would be ready by Tuesday the following week. The Committee resolved to meet with the IIBRC on Tuesday 23rd November 2010 to receive a formal presentation of this report.

The Committee further resolved to invite the National Cohesion and Integration Commission (NCIC) to the meeting since it was apparent that the IIBRC was not cohesive, it is expected that the meeting will convey the

message that the Committee is interested in reconciliation and national healing in this process.

MIN.NO. 193/2010

ANY OTHER BUSINESS

Committee Meetings

The Committee agreed that it would hold meetings with:-

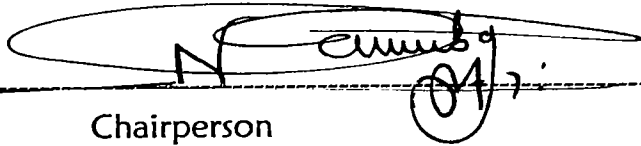
- meetings with the IBRC and NCIC,
- vetting of Judicial Service Commission candidates,
- meeting with the Ministries of Finance and Justice, National Cohesion and Constitutional Affairs regarding funding for the Truth, Justice and Reconciliation Commission (TJRC).

MIN.NO. 194/2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at fifteen minutes past twelve o'clock until Tuesday 23rd November 2010 at 10.00am.

SIGNED



Chairperson

DATE

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY NOVEMBER
23, 2010 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroje Baiya, M.P. - Vice-Chairperson
Hon. Amina Abdalla, M.P.
Hon. Nyamweya George, M.B.S, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Eugene Wamalwa, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Mutava Musyimi, M.P.

ABSENT WITH APOLOGY

Hon. Abdikadir Mohamed, M.P.
Hon. Olago Aluoch, M.P.
Hon. Sophia Abdi Noor, M.P.

NON-MEMBERS

Hon. Dr. Joyce Laboso, M.P.
Hon. Rachel Shebesh, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN. NO.195 /2010

MEETING WITH INTERIM INDEPENDENT
BOUNDARIES REVIEW COMMISSION (IIBRC)

The following were the only members of the IIBRC who appeared before the Committee:

- (i) Mr. Joseph Kaguthi - Commissioner
- (ii) Mr. Mwenda Makathimo - Commissioner
- (iii) Dr. John Nkinyanyi - Commissioner

The Commissioners stated that :-

- They had received the invitation letter too late.
- Some of the IIBRC members had received an injunction restraining them from transacting matters on behalf of the Commission.
- There appeared to be a communication problem between Members of the Commission.

NATIONAL COHESION & INTEGRATION COMMISSION (NCIC)

The NCIC also sat in as observers in this meeting, and was represented by:

- | | | | |
|--------|---------------------|---|-------------|
| (i) | Dr.Mzalendo Kibunja | - | Chairperson |
| (ii) | Mrs. Mary Onyango | | |
| (iii) | Mrs. Jane Kiano | | |
| (iv) | Mrs. Milly Lwanga | | |
| (v) | Mrs. Alice Nderitu | | |
| (vi) | Mr. Halakhe Wago | | |
| (vii) | Mrs. Fatuma Mohamed | | |
| (viii) | Mr. Lawrence Bonett | | |
| (ix) | Mr. Hassan Muhamed | - | Secretary |

The Committee expressed the following concerns about the Boundaries Commission:-

- The Committee recognized that the boundaries issue was serious and if not resolved appropriately would spark violence similar to that of 2008.
- That it was not proper for IIBRC to publish the updated constituency information in the newspaper without explanations.
- The Committee resolved to postpone the meeting with the IIBRC since only three Commissioners out of nine attended the meeting.
- The list of new boundaries proposed by the Commission appeared to be randomly created as opposed to actual determination of boundaries.

- The Committee concluded that it was important for IIBRC to be investigated on whether it had executed its mandate fairly and constitutionally, and whether its actions have amounted to an ultra vires state.
- The Committee agreed that it was of paramount importance to meet the entire membership of IIBRC before the end of the day.

The NCIC stated that:

- They believed it was of paramount importance to guard the country's peace at all costs. The Commission believed that the IIBRC issue had sparked controversy all over the country.
- The boundaries issue should not be rushed. This is to ensure boundaries are correctly done and avoid spending decades correcting the errors.
- The entire IIBRC process cost a lot of money and cannot be started again. However, it is important for the boundaries process to be given to technical people with good political will to take Kenya out of the current stalemate.
- The Commission urged the leaders to refrain from political utterances on this matter.

MIN.NO.196 /2010

VETTING OF NOMINEES TO THE
JUDICIAL SERVICE COMMISSION (JSC)

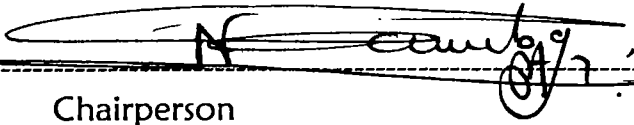
Affidavit on Ahmednasir Abdullahi

The Committee was informed of a document that had come to the attention of the Committee touching on the integrity of Mr. Ahmednasir Abdullahi, a nominee to the JSC. The Committee observed that this matter had taken long to conclude and it should be concluded at the earliest.

The Committee resolved to invite Ms Emily Wangari of the State Law Office, the author of affidavit and Mr. Dan Ameyo who wrote the letter against which the affidavit was based to expound on the matter. It was also agreed that this would be the last evidence the Committee would entertain on this nominee.

And there being no other business the Chairperson adjourned the sitting at thirty minutes past one o'clock until Wednesday 24th November 2010 at 10.00am.

SIGNED



Chairperson

DATE

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY
NOVEMBER 24, 2010 IN COMMITTEE ROOM NO. 7, PARLIAMENT
BUILDINGS AT 4.00PM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Eugene Wamalwa, M.P.
Hon. Mutava Musyimi, M.P.

ABSENT WITH APOLOGY

Hon. Olago Aluoch, M.P
Hon. Sophia Abdi Noor, M.P

ATTENDANCE BY NON-MEMBERS OF THE COMMITTEE

Hon. Joyce Laboso, M.P.
Hon. Rachel Shebesh, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN NO.198 /2010

MEETING WITH INTERIM INDEPENDENT
BOUNDARIES REVIEW COMMISSION (IIBRC)

Mr. Andrew Ligale, Chairman of the IIBRC, appeared before the Committee accompanied by:

(i) Mrs. Rozaah Buyu - Commissioner
(ii) Mr. Murshid Mohamed - Commissioner
(iii) Mrs. Irene Mosit - Commissioner
(iv) Mr. Joseph Kaguthi - Commissioner
(v) Mr. Mwenda Makathimo - Commissioner

(vi) Dr. John Nkinyangi	-	Commissioner
(vii) Mr. Abdullahi Sharawe	-	Commissioner
(viii) Mrs. Jedidah Ntoyai	-	Commissioner
(ix) Mrs. Catherine Kola	-	Secretary to the Commission

The Committee expressed its desire to initiate dialogue with the IIBRC and get some insight into its workings so as to lead to consensus on this boundaries matter.

The Chairperson gave a brief history of the formation and mandate of the Commission, as set out in Article 41(b) of the old constitution. He also explained the process of information-gathering from the various stakeholders and the public around the country.

The Committee heard that the new constitution affected the mandate of the IIBRC in two major ways:

- (i) The IIBRC was required to gazette the new constituencies instead of forwarding its recommendations to Parliament.
- (ii) The Constitution had determined the number of constituencies at 290.
- (iii) The population quota was now defined in the Constitution, including the parameters for deviation.

The IIBRC demonstrated to the Committee the various scenarios considered while creating the new list of constituencies. After a study of the census results, the Commission noted that over the years, gerrymandering had taken place in all parts of the country, in terms of the number of constituencies, not only in particular areas.

The Committee also heard dissenting views to the final IIBRC product from three commissioners, who claimed not to have seen it before it went to the Government Printer. They cited some of the causes of their disagreement as follows:

- The formula used was not proper. Boundaries were determined on the basis of three types of population quotas instead of just one.
- Use of regions and provinces as units of analysis, which is not mentioned in the Constitution.
- Cities and urban areas were treated similarly. The definition of 'city' was not agreed on.
- Description of boundaries was based on wards or sub-locations.

- There was inconsistency in division of constituencies, e.g., some constituencies have many people but were not split, while those with less people were split.
- Boundaries were created or altered without taking into consideration geographical features and community interests.
- Little or no consultation was done with the stakeholders, thus the public couldn't own the process.
- Eight constituencies had nullified census results, and it was unclear how these were delineated.
- Emphasis had been placed on only constituency boundaries, excluding county boundaries.
- Their proposals on which scenario to apply in delimiting the constituencies were never considered, neither were they kept informed of the process towards the end of the Commission's term.

The three dissenting Commissioners expressed their concern that if the boundaries were not properly delineated, tensions or conflicts would emerge in the affected areas.

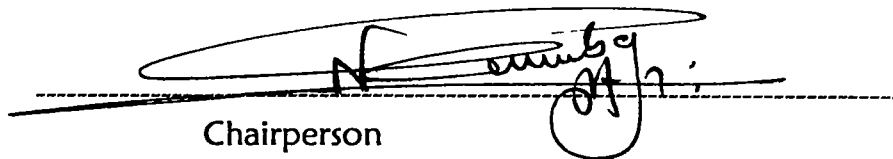
After deliberations, the Committee resolved to communicate the information received in this meeting to the House, at a *Speaker's meeting (Kamukunji)*. The Committee also urged the Commission to persist and resolve its internal wrangles and provide a way forward for the country on this critical issue before the expiration of its term on November 27, 2010.

MIN.NO.199 /2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty five minutes past nine o'clock until Thursday 24th November 2010 at 8.30am.

SIGNED



 Chairperson

DATE

MINUTES OF THE 54TH SITTING OF THE DEPARTMENTAL
COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY
NOVEMBER 26, 2010 IN COMMITTEE ROOM, 5TH FLOOR,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 6.00PM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.

ABSENT WITH APOLOGY

Hon. Njoroge Baiya, M.P.
Hon. Olago Aluoch, M.P.
Hon. Sophia Abdi Noor, M.P
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Eugene Wamalwa, M.P.

NON-MEMBERS

Hon. Joyce Laboso, M.P.
Hon. Rachel Shebesh, M.P.
Hon. Benedict Gunda, M.P.
Hon. Moses Lessonet, M.P.
Hon. Adan Keynan, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant

MIN NO.200 /2010

MEETING WITH INTERIM INDEPENDENT
BOUNDARIES REVIEW COMMISSION (IIBRC)

Mr. Andrew Ligale, Chairman of the IIBRC, appeared before the Committee to present the Commission's report of its work before the expiry of its term the following day, 27 November, 2010.

Mr. Ligale explained that a judge had ruled earlier in the day that Mr. Ligale and the two commissioners could resume their duties on behalf of IIBRC,

and that the Commission could gazette but not publish the list of constituencies. This appeared to be a contradiction, so the IIBRC submitted the list to the Government Printer for gazette while the issue awaited clarification. The Committee was also informed that the IIBRC lawyers would continue to pursue this matter even after the expiry of the Commission's term. The Committee resolved to have a meeting the following week to discuss the import of this court ruling, and will not state its position on the matter now until a way forward is determined.

In accordance with Article 254 of the Constitution, which allows the IIBRC to hand over any documents to Parliament, Mr. Ligale presented the following documents to the Committee:

- Gazette notice as submitted to the Government Printer.
- The list of the boundaries for the 290 constituencies.
- EIS map showing the boundaries.

There was a press conference after the meeting for the public to witness the formal handing over of the IIBRC report from the Chairperson of the IIBRC to the Chairperson of the Parliamentary Committee on Justice and Legal Affairs. The report would now go to Parliament for further action.

MIN.NO.201 /2010

ANY OTHER BUSINESS

The Committee observed that this issue was more political than technical, and would therefore require a political solution after extensive consultations.

The Committee therefore resolved to consider the issues raised in this matter and chart a way forward at its meeting the following week. The discussions in this meeting will also touch on the outcome of debate in the House the previous day regarding the nominees to the Commission on Implementation of the Constitution.

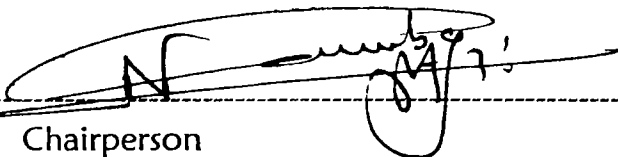
The Committee will also consult on how to proceed on the Commission on Implementation of the Constitution and the Commission on Revenue Allocation as they were not set up within the stipulated timelines.

MIN.NO.202 /2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at seventeen minutes past eight o'clock until Monday 29th November 2010 at 3.00pm.

SIGNED



Chairperson

DATE

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY NOVEMBER
30, 2010 IN COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 9.00AM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Eugene Wamalwa, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Sophia Abdi Noor, M.P.
Hon. Olago Aluoch, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Abdikadir Mohamed, M.P.

ATTENDANCE BY NON-MEMBERS OF THE COMMITTEE

Hon. Jeremiah Kioni, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN NO. /2010

PRAYERS

The meeting started with a word of prayer.

MIN.NO.203 /2010

INTRODUCTORY REMARKS

The Chairperson welcomed the members to the meeting and invited them to discuss the report by the Interim Independent Boundaries Review Commission (IIBRC) submitted to the Committee on Friday November 26, 2010. He stated that the Speaker had requested the Committee to discuss the matter and propose a way forward.

MIN.NO.204 /2010

REPORT BY THE IIBRC

The following were the issues raised during the discussion:

1. Is the report as presented by the Commission complete? (The report does not have explanatory notes)
2. Did the Commission carry out its mandate in accordance with the Law?
3. The issues under dispute are political and will require a political solution.
4. How have the suits affected the completion of the process of gazetting the proposed constituencies?
5. There were procedural omissions that denied the Commission a chance to go back to the grassroots before concluding its mandate.
6. The Commission was a Constitutional product but has raised issues which need to be addressed. (Who addresses the issues?)

The Committee proposed the way forward as follows:

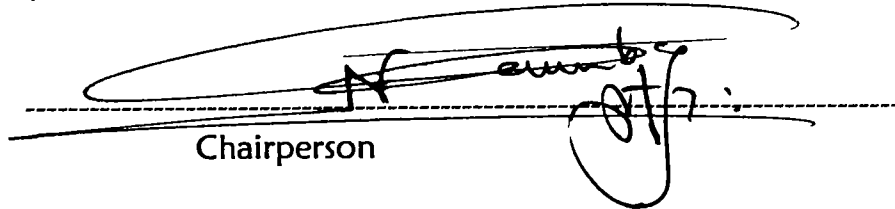
1. Extend/reconstitute the IIBRC for a specific period and for a specific task.
2. Expand the Interim Independent Electoral Commission mandate to incorporate the boundaries matter.
3. Adopt the report through legislation or through a motion.
4. Constitute the Independent Electoral and Boundaries Commission to take over the report and finalize.
5. Resolve the impasse through a political process.

MIN.NO.205 /2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at thirty minutes past eleven o'clock until two o'clock same day.

SIGNED



Chairperson

DATE

MINUTES OF THE 57TH SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY NOVEMBER
30, 2010 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT
2.30PM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Sophia Abdi Noor, M.P.
Hon. Olago Aluoch, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.

ABSENT WITH APOLOGY

Hon. Amina Abdalla, M.P.
Hon. Abdikadir Mohamed, M.P.
Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO.206 /2010

REVIEW OF OPTIONS FOR RESOLUTION
OF IIBRC ISSUE

The Committee considered the options below:

6. Extend/reconstitute the IIBRC for a specific period and for a specific task.
7. Expand the Interim Independent Electoral Commission mandate to incorporate the boundaries matter.
8. Adopt the report through legislation or through a motion and execute it.
9. Constitute the Independent Electoral and Boundaries Commission to take over the report and finalize.

The Committee deliberated extensively on the options and agreed on the following:

- All the material received from the IIBRC is to be compiled into a report.
- This Committee is to prepare a report of its observations, highlighting the outstanding issues needing resolution, and specific recommendations on a way forward on each of these issues.
- A detailed legal opinion is to be sought on each option so as to know its efficacy, and possible challenges facing it.

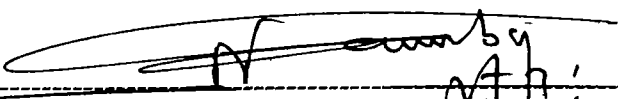
The Committee was informed of its joint sitting with the Committee on Oversight of Implementation of the Constitution the following day for further discussion of this issue. The Chairperson urged the Committee to work towards having a united position on this matter.

MIN.NO.207 /2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty five minutes past four o'clock until Wednesday 1st December 2010 at 9.00am.

SIGNED



Chairperson

DATE

MINUTES OF THE 58TH SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY
DECEMBER 1, 2010 IN MAIN CONFERENCE ROOM, 1ST FLOOR,
COUNTY HALL, PARLIAMENT BUILDINGS AT 9.00AM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Sophia Abdi Noor, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Olago Aluoch, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.

ABSENT WITH APOLOGY

Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN. NO.208 /2010

WAY FORWARD ON IIBRC

The Committee reviewed a proposed roadmap to settling the impasse on the new constituencies that arose out of the discussions of the previous sitting. The Committee considered the four options presented, with the legal aspect of each, and gave their additional input on the same.

After various deliberations, the Committee resolved to do the following:

- (i) Present a report to the House based on information received from the documents and oral presentations from the IIBRC, including what the Committee views as outstanding issues needing resolution.
- (ii) In this report, specifically define all the documents received from IIBRC, that is, the draft gazette notice, court affidavits and other

- related documents. These are to be annexed to the Committee report.
- (iii) Committee is to get all documents presented during its meeting with the IIBRC last week from the Ministry of Justice, National Cohesion and Constitutional Affairs, and confirm the validity of the same.
 - (iv) The Committee will also get a more comprehensive legal analysis of all the options under discussion, highlighting any that needs constitutional amendment.

The Committee adopted the following as the working options, subject to future additions or amendments:

1. Return the IIBRC to office and hand it a specific timeframe and restricted mandate to resolve the issues clearly set forth in the report adopted by the House and proceed to gazette the final product of this exercise; or
2. Extend the mandate of the Interim Independent Electoral Commission (IIEC) and hand it a specific timeframe within which to settle the issues determined in the House report. The IIEC would also be mandated to gazette the final product of its work; or
3. Constitute the new Independent Electoral and Boundaries Commission (IEBC) under Article 88 of the Constitution and hand it the mandate to complete the IIBRC work in the terms determined in the House report. The IEBC would also be mandated to gazette the final product of its work; or
4. Parliament to proceed and enact an Electoral Boundaries Act to give effect to its report, paying due regard to the identified outstanding issues *(on the legal ground that an Act of Parliament is superior to a gazette notice, which is subsidiary legislation)*.

MIN.NO.209 /2010

ANY OTHER BUSINESS

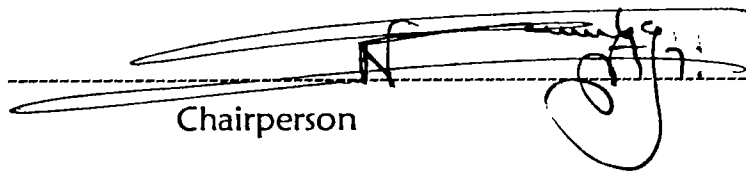
The Committee resolved to discuss other business already in the House that fell under its mandate in the next day's sitting.

MIN.NO.210 /2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty five minutes past eleven o'clock until later in the morning.

SIGNED



Chairperson

DATE

MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE
H-ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, DECEMBER
2ND 2010 IN CONFERENCE ROOM, COUNTY HALL PARLIAMENT
BUILDINGS AT 9.00 A.M.

MEMBERS PRESENT

Hon.Ababu Namwamba, M.P
Hon.Baiya Njoroge, M.P
Hon.Nyamweya George, M.B.S, M.P
Hon. Isaac Ruto, E.G.H., M.P
Hon. Millie Odhiambo, M.P
Hon.Amina Abdalla M.P
Hon.Olago Aluoch, M.P
Hon.Sophia Abdir Noor, M.P

ABSENT WITH APOLOGY

Hon.Eugene Wamalwa, M.P
Hon.Mutava Musyimi, M.P
Hon.Abdikadir Mohamed, M.P

ATTENDANCE BY NON-MEMBERS OF THE COMMITTEE

Hon. Jeremiah Kioni, M.P
Hon. Beth Mugo, M.P
Hon. David Ngugi, M.P

IN ATTENTANCE

Mrs. Lucy Wanjohi
Mr.George
Miss. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN. 211/2010

OPENING PRAYER

The meeting started with a word of prayer.

(i) Documentation Received From Interim Independent Boundaries Commission (IIBRC)

The Committee received copies of the earlier requested presentation materials made by the Interim Independent Boundaries Commission (IIBRC) on the 24th November 2010. The Committee was also given a copy of the Interim Independent Boundaries Commission (IIBRC) boundaries report. The Committee agreed to include the presentation from the dissenting commissioners as part of the documents to be used in the report.

(ii) Guiding Principles to the Choice Of The Best Option

The committee agreed that whichever option they were to agree on as the way forward ought to reflect the following:-

- Avoid constitutional amendments.
- Preserve the gains in the Interim Independent Boundaries Commission (IIBRC) report.
- Enable parliament to identify and deal with the contentious issues.
- Preserve the independence of established Constitutional offices and commissions.
- Address marginalized and geographical issues in conformity to Article 100 of the Constitution.

OPTION 3:- Constitute the new Independent Electoral and Boundaries Commission (IEBC) under article 88 of the constitution and hand it the mandate to complete the IIBRC work in the terms determined in the House report. The IEBC would also be mandated to gazette the final product of its work.

The Committee agreed and adopted option 3 as the most favorable option out of the stalemate.

(iii) Appointment of Commissioners

The Committee acknowledged that the procedure of appointment of commissioners to the Independent Electoral and Boundaries Commission (IEBC) was crucial. The commission ought to be formed in a manner that is

impartial and not influenced in any way to avoid interferences of any nature.

(iv) Merging of this option with option Four

Option 4 provided the option for parliament to proceed and enact an Electoral Boundaries Act to give effect to its report, paying due regard to the identified outstanding issues. The committee agreed that this option should be merged with the preferred option 3.

(v) Exploration of the Underlying Issues Brought Out By The Impasse

The committee agreed that they would seek for mandate before diverging into the exploration of issues causing the stalemate. However, the committee highlighted the following issues to have emerged so far:-

- There was need to define Sparsely populated areas, urban areas and cities as used to determine boundaries
- Neglected marginalized areas
- Use of projected population in determining of boundaries

(vi) Speakers Meeting(Kamukunji)

The Committee agreed to have a Kamukunji where they would inform the members on the various available options out of the stalemate.

(vii)Commission For The Implementation Commission

The Committee expressed concern on the implications of constituting the Commission after lapse. The committee resolved to seek opinion on the matter and also opinion on the way-forward in the Boundaries Matter from the following entities:

- Law society of Kenya(LSK)
- International commission for jurists, Kenya chapter,(ICJ)
- Federation of Women Lawyers(FIDA)

(viii) Key Anticipated Laws To Be Passed By Parliament

The Committee acknowledged the following as the anticipated pieces of legislation that were crucial in addressing the stalemate:-

- Legislation on the Appointment of Commissioners to the Independent Electoral and Boundaries Commission (IEBC) in accordance with Article 88 of the constitution.
- Legislation to promote the representation in parliament of marginalized communities in accordance with Article 100 of the constitution.

MIN.213/2010

ANY OTHER BUSINESS

(i) Recently Passed Bills

It was agreed by the Committee that the following Bills had already gone through the first reading and should come to the Committee for deliberations:-

- Judicial Service bill
-

(ii) Joint Meeting with The Constitution Implementation Oversight Committee

The Committee was informed of a joint meeting with the oversight committee on December 4, 2010 at 10.00a.m.

MIN NO. 214/2010

ADJOURNMENT

And there being no business the chairman adjourned the meeting at thirty eight minutes past one until, December 3rd 2010 at 9.00 a.m

SIGNED.....

CHAIRPERSON

DATE.....

MINUTES OF THE 62ND SITTING OF THE DEPARTMENTAL COMMITTEE
H – ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY DECEMBER 7,
2010 IN COMMITTEE ROOM, 4TH FLOOR, COUNTY HALL, PARLIAMENT
BUILDINGS AT 11.30AM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Sophia Abdi Noor, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Olago Aluoch, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.

ABSENT WITH APOLOGY

Hon. Eugene Wamalwa, M.P.

ATTENDANCE BY NON-MEMBERS OF THE COMMITTEE

Hon. Beth Mugo, M.P.
Hon. Moses Lessonet, M.P.
Hon. Jeremiah Kioni, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. George Otieno
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN. NO.215 /2010 FEEDBACK ON KIA RETREAT

The Committee reviewed the proposed way forward that arose out of the KIA retreat for all MPs the previous day, that is:

The Justice and Legal Affairs Committee brings a report to the House, along with its recommendations which are:

- a) Adopt the IIBRC report.

- b) Parliament to adopt legislation to provide for the framework and functions of the IEBC. The constituted body should work within the parameters of the IIBRC material as one of its terms of reference.
- c) Departmental Committee on Justice and Legal Affairs to assist in coming up with the Act in accordance with Articles 89(5) and 250 of the Constitution, and ensure that the new body is mandated to conclude the work of the IIBRC.

The Committee is now to look at the law further to ensure the option chosen is in accordance with the Constitution thus able to withstand judicial challenge. While doing this, the Committee will also consider the related legal opinion received on the matter from the Law Society of Kenya , Federation of Women Lawyers, Kenya Law Reform Commission and International Commission of Jurists, Kenya Chapter.

The Committee will also include the outstanding issues, and the experts' opinions and in its report as well as proposals on the way forward. All information received from IIBRC and the legal opinions are to be forwarded to the Parliamentary Legal Counsel to a consolidation of all the positions.

It was also noted that Parliament cannot amend the IIBRC report when it is tabled as part of the Committee's report, since it's not a product of the House. The IIBRC report will serve as the primary reference material.

MIN.NO.216 /2010

ANY OTHER BUSINESS

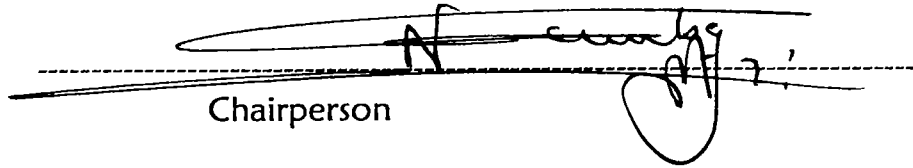
The Committee resolved to form a sub-committee to begin receiving views from the Members of Parliament and regional caucuses, so as to identify the various outstanding issues requiring resolution. The following Members were nominated to this sub-committee:

- i) Hon. Millie Odhiambo-Mabona, MP (Chairperson)
- ii) Hon. Isaac Ruto, MP
- iii) Hon. George Nyamweya, MP
- iv) Hon. Sophia Abdi Noor, MP
- v) Hon. Amina Abdalla, MP

The sub-committee resolved to meet on Thursday 9th December 2010 at 10.00am to receive oral submissions on outstanding issues. The Hon. Speaker is to make a communication from the Chair to this effect so as to inform the House of the meeting.

And there being no other business the Chairperson adjourned the sitting at thirty five minutes past one o'clock until Thursday 9th December 2010 at 10.00am.

SIGNED



Chairperson

DATE

MINUTES OF THE 1st SITTING OF THE REPORT-WRITING RETREAT
HELD BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS MEETING HELD ON MONDAY , 12TH DECEMBER 2010 IN THE
OAK ROOM,WINDSOR GOLF HOTEL &COUNTRY CLUB AT 9.00 A.M.

PRESENT:

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Sophia Abdi Noor, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.
Hon. Eugene Wamalwa, M.P

ABSENT WITH APOLOGY

Hon. Olago Aluoch, M.P.

IN ATTENDANCE IN ATTENDANCE
ASSEMBLY

NATIONAL

Mr.jeremiah Ndombi Counsel	Senior	Legal
Mrs. Lucy Wanjohi Assistant	Second	Clerk
Mr.Z.Mogere	“	
Ms. Wanjiru Ndindiri	Third Clerk Assistant	
Ms. Annette Bosibori Intern	Parliamentary	

KENYA LAW REFORM

Mr. Kathurima M’Inoti – Chairman-Kenya Law Reform Commission

MIN. NO. 1/2010 PRELIMINARIES

The Chairperson called the meeting to order with a word of prayer.

MIN. 2/2010

REPORT OF THE SUB-COMMITTEE

The chairperson of the sub-committee Hon. Millie Odhiambo-Mabona, MP presented the committees' findings as follows:-

- Redrawing of findings
- Minorities issues
- Marginalization
- Community of interest
- Geographical features
- Means of communication
- Results of the population census
- Population quota deviations
- Security
- Historical ties

MIN. 3/2010

DELIBERATIONS ON THE REPORT OF THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS ON THE INTERIM INDEPENDENT
BOUNDARIES REVIEW COMMISSION REPORT

The Committee deliberated on a draft report on the report and proposed the following amendments made;-

- Comparative explanation of IIBRC mandate under the former and current constitution
- Definition of report to be made in chronological order of dates
- A list of the civil suits against IIBRC be included

All the proposed changes to the report were adopted.

MIN. 4/2010

ANALYSIS ON THE PROPOSED BILL OF THE
INDEPENDENT ELECTORAL BOUNDARIES
COMMISSION FROM THE MINISTRY AND THE
PARLIAMENTARY LEGAL DEPARTMENT

The Committee was taken through the bills by Mr. J. Ndombi. The following are some of the issues raised concerning the proposed bill:-

- That the procedure of appointment should be considered at length

The committee proposed to continue further deliberations on the same on 13th December 2010.

MIN. 5/2010

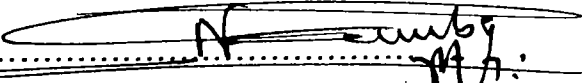
ANY OTHER BUSINESS

The Committee agreed to continue their deliberations on the proposed recommendations on the 13th December.

MIN. NO. 6/2010

ADJOURNMENT

There being no other business, the meeting adjourned at 8.30 P.M

Signed.....
(CHAIRPERSON)

Date.....

MINUTES OF THE 2st SITTING OF THE REPORT-WRITING RETREAT BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON TUESDAY , 13TH DECEMBER 2010 IN THE OAK ROOM, WINDSOR GOLF HOTEL & COUNTRY CLUB AT 9.00 A.M.

PRESENT:

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Sophia Abdi Noor, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Abdikadir Mohamed, M.P.
Hon. Eugene Wamalwa, M.P

ABSENT WITH APOLOGY

Hon. Olago Aluoch, M.P.

IN ATTENDANCE

Mr. Jeremiah Ndombi
Mrs. Lucy Wanjohi
Mr. Z. Mogere
Ms. Wanjiru Ndindiri
Ms. Annette Bosibori

NATIONAL ASSEMBLY

Senior Legal Counsel
Second Clerk Assistant
Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

STATE LAW OFFICE

Hon. S. Amos Wako, MP - Attorney General

KENYA LAW REFORM COMMISSION

Mr. Kathurima M'Inoti - Chief Executive Officer

MIN. NO. 7/2010 PRELIMINARIES

The Chairperson called the meeting to order with a word of prayer.

MIN. NO. 8/2010

REVIEW OF THE RECOMMENDATIONS

The Committee deliberated on the proposed recommendations for adoption.

MIN. NO. 9/2010

ANALYSIS ON THE PROPOSED BILL OF THE INDEPENDENT ELECTORAL BOUNDARIES COMMISSION FROM THE MINISTRY AND THE PARLIAMENTARY LEGAL DEPARTMENT

The Committee deliberated on the Independent Electoral Boundaries Commission Bill and incorporated provisions to address outstanding issues. The Parliamentary Legal Counsel would develop the Bill for further discussions.

MIN. NO. 10/2010

ADOPTION OF REPORT

The Committee Report on the Interim Independent Boundaries Review Commission Report was discussed at length, recommendations and the way-forward agreed to. The Report was then unanimously adopted.

The Committee further resolved to table the report on Wednesday 14^h December 2010.

MIN. NO. 11/2010

ADJOURNMENT

There being no other business, the meeting adjourned at 2.55 P.M

Signed.....

(CHAIRPERSON)

Date.....

JLA 1

JLA 2

ANALYSIS OF ORAL SUBMISSIONS ON THE OUTSTANDING ISSUES

No.	CONSTITUENCY	PRESENTER	PROBLEM/ISSUE RAISED	PROPOSED SOLUTION
1.	NYARIBARI CHACHE	HON. DR. ROBERT MONDA, MP; HON. GEORGE NYAMWEYA, MP	i) Community of interest: A ward has been carved out of Nyaribari Chache and taken to a new constituency, Borabu constituency.	i) Leave ward as it is to avoid conflict due to loss of historical, familial & cultural ties, and community of interest. Is better to carve this constituency out of North Mugirango due to historical ties.
2.	IJARA	HON. YUSUF HAJI, MP; HON. SOPHIA ABDI NOOR, MP	i) Discrimination: The big clans each now have a constituency, but the smaller clans have only one between them. ii) Means of Communication: Area of Ijara has been marginalized historically, with poor road network especially in its vast area. iii) Minority Interests: There is a minority group of hunters & gatherers, the Boni, found in only one district in the constituency, who have no representation in any leadership posts. The Abdulla community is also a minority in the region, at county level and nationally, and needs better representation.	i) Integrate the clans, so that not only one clan is getting its own constituency, carve part of Ijara, Lagdera & Fafi to form the new constituency; this ensures no clan is in the majority. ii) Give Ijara its own constituency to resolve this problems of being marginalized as it will get its own funds to develop the area. iii) Ensure the rights of the Boni are protected as minorities, and they are represented to avoid being swallowed up by bigger tribes. iv) Return the Abdullahi Community to Ijara. v) Revoke the 3-mile rule and re-draw the boundary to the middle of the Tana River to allow the Ijara residents to access the river's resources and also conduct farming and other activities; specifically, re-

3.	NORTH HORR	HON. CHACHU GANYA, MP; HON. AMINA ABDALLA, MP	<p>iv) Historical ties: in 1986, when the Fafi constituency was created, the Abdulla community was moved there from Ijara without consultation.</p> <p>v) Re-drawing of boundaries: the boundary between the North Eastern province and Coast province needs to be resolved i.e. the 3-mile territory of the Tana River. IBRC also did not define sparsely populated/urban areas and cities as used to determine boundaries.</p> <p>vi) Geographical Features: Ijara has an area of 11,323 sq. km with a population of 92,000 but didn't get any additional constituency. There is also a major river running through the constituency.</p>	<p>draw the boundary between Fafi and Ijara Constituencies.</p>
			<p>i) Geographical Features: North Horr has a wide expanse and is the largest constituency in Kenya, yet only has a population of 75,596.</p> <p>ii) Means of communication/Economic Marginalization: Means of communication should have</p>	<p>i) North Horr should be divided to form new constituencies and other parameters taken into consideration.</p> <p>ii) Taking cue from other jurisdictions, the North Horr MP should be better equipped with facilities to improve his constituency.</p>

			<p>been taken into consideration by the commission. It is quite difficult for the people of North Horr to be reached. North Horr has a poor means of communication and has been economically marginalized.</p> <p>iii) Formula used: The commission failed to define sparsely populated areas, urban areas and cities as used to determine boundaries.</p> <p>iv) Census: Use of projected population in determining of boundaries North Horr disputed the results of the census as it is far below the real value. During the period the census was carried out, members of the community had migrated to Somalia because of drought.</p>	<p>i) The constituency should be split into two.</p> <p>ii) Alternatively, the wards should be returned and those close to the newly formed constituency be absorbed.</p>
4.	KIHARU	HON. B.C. MUTURI MWANGI, MP	<p>i) The Commission failed to take account of the population, communication and Geographical features.</p> <p>ii) Geographical Features: The Commission transferred two wards to Kangema, which is a</p>	

			<p>protected constituency. These wards are situated right in the middle yet the Commission neglected wards that are closest to each other.</p> <p>iii) Economic Marginalization: The Commission's division of the wards has greatly weakened Kiharu's economic stability and broken cultural ties. A tea factory has been moved to another constituency.</p> <p>iv) Formula used: The population quota used (40%) for rural areas were unsuitable and should have been used for only urban areas.</p> <p>v) Historical Ties: Muraranda and Gaturi were transferred to Mathioya constituency without consultations with the community members.</p>	
5.	OL KALOU	HON. ERASTUS MUREITHI, MP	<p>i) Geographical Features: The geographical features were not taken into consideration by the</p>	<p>i) The transferred ward should be reverted back.</p>

			<p>Commission.</p> <p>ii) Re-drawing of boundaries: There is a transferred ward that ought to have stayed in Ol Kallau.</p> <p>iii) Means of Communication: Formation of the new constituency has interfered with the means of communications as residents have to travel far to access the services at the headquarters and use an untracked road.</p> <p>iv) Historical Ties: The newly formed constituency comprises of communities in disagreement.</p>	
6.	ELDAMA RAVINE & BARINGO CENTRAL	HON. MOSES LESSONET, MP; HON. SAMMY MWAITA, MP	i) Community of Interest: The IIBRC report varied the names of the wards.	i) Ensure the ward names are corrected; otherwise, people are satisfied with the new constituency.
7.	WAJIR NORTH	HON. MOHAMMED GABOW, MP	i) Minority Interests: His clan, the Ajuran, which is a minority clan, didn't get any constituency, yet all five major clans got additional constituencies.	i) Would like to be treated as the minority clan in North Eastern province per Article 100(d) of the Constitution
8.	WAJIR WEST	HON. ADAN KEYNAN, MP	i) Marginalization: The Ajuran and Abdalla clans are marginalized communities.	i) They need to be recognized per Article 100(e) of the Constitution. ii) There needs to be a resolution on

			ii) Geographical features: The Abdalla clan resides at the border of Coast & North Eastern province; they're not sure which province they're in.	the boundaries where on region ends and another begins for clarity.
9.	KITUTU MASABA	HON. WALTER NYAMBATI, MP	i) Historical Ties: During this review, 60,000 people were moved to Borabu constituency without consultations being done. ii) Formula used: Other constituencies in the area with less people were given extra constituencies.	i) Borabu constituency should get people from North Mugirango as there are sufficient numbers to do that there. ii) If no extra constituency possibly for them, even with the high population, the people are willing to remain as they are.
10.	KIENI	HON. NEMESYUS WARUGONGO, MP	i) Geographical Features: Has approximately 30,000 people located on Solio Ranch in the next constituency who are served by his constituency as they're far from basic services.	i) Move this Solio Ranch to Kieni constituency to ensure easier access to food and other services.
11.	MOYALE; & UPPER EASTERN REGION	HON. MOHAMMED ALI, MP; HON. ABDUL BAHARI, MP; HON. DR. MOHAMED KUTI, MP	i) Census: Population figures used to delineate this region were unreliable as many people were not counted due to vastness of the area. ii) Means of Communication: There are poor means of communication. iii) Formula used: Population deviation used is too low for the sparsely populated areas.	i) Increase representation in this area so that it can receive more benefits. ii) Use a higher deviation quota, like 60% for the sparsely populated areas, like in other international jurisdictions.
12.	WAJIR EAST	HON. MOHAMMED	i) Geographical features – area	i) An upper limit should be set on

		ELMI, MP	<p>too vast.</p> <p>ii) Census: Flawed census process and results.</p> <p>iii) Minority Interests/Discrimination: Under-represented minority groups.</p>	<p>each constituency area, by square km; shouldn't be more than 8000 sq. km.</p> <p>ii) The structure and independence of census review should be looked at to ensure better performance, especially in capture of numbers for mobile groups of people or widely spread out groups.</p> <p>iii) Expert views should be sought on better representation of minority groups.</p>
13.	KAPENGURIA	HON. REV. JULIUS MURGOR, MP	<p>i) Geographical features & Historical Ties: Two wards, Kanyarkwat and Chemochoi, were wrongly taken to the new Pokot South constituency.</p>	<p>i) They should remain in Kapenguria constituency, as Kanyarkwat ward especially is on the western side of the current constituency, far from its new one.</p>
14.	SIGOR	HON. WILSON LITOLE, MP	<p>i) Economic Marginalization: Administrative, economic and community interests not considered.</p> <p>ii) Tapach, Bartei, Parua & Lokopo wards were moved to new constituency.</p>	<p>i) Per the people, only Lelal division should be moved to the new Pokot South constituency together with the other wards.</p> <p>ii) Tapach, Bartei, Parua & Lokopo wards should remain in Sigor constituency.</p>
15.	ELDORET SOUTH	HON. PERIS C. SIMAM, MP	<p>i) Re-drawing of boundaries: Some wards were swapped.</p> <p>ii) Change of names: One ward had its name incorrect.</p>	<p>i) Correct ward should be moved, i.e., Kipchamo ward to the new Tarakwa constituency.</p> <p>ii) Name of the ward should be corrected from Kapkoi ward to Chepitiret-Kapkoi ward.</p>
16.	AINAMOI	HON. BENJAMIN	<p>i) Historical ties: The people were</p>	<p>i) The people are fine with the new</p>

		LANG'AT, MP	<p>unaware intentions to split the constituency.</p> <p>ii) Re-drawing of boundaries: No consultations done on the ground as to where the new boundary should be.</p>	constituency but would like to be consulted on where the new boundaries should be.
17.	MOLO	HON. JOSEPH KIUNA, MP	<p>i) Re-drawing of boundaries One sub-location, Piape, was to be moved from Rongai to Njoro constituency but was not done.</p>	i) Move this sub-location to correct constituency.
18.	MANDERA	HON. MAHMOUD ALI	<p>i) Geographical Features: This region needs more constituencies.</p>	i)
19.	LAISAMIS	HON. JOSEPH LEKUTON, MP	<p>i) Geographical features – is a big area, but not given a new constituency.</p> <p>ii) Poor means of communication.</p> <p>iii) Community of interest – inhabited by different peoples.</p> <p>iv) Census: Unfair census results that were used to determine the population – some people were not reached due to poor road network.</p> <p>v) Insufficient wards in his & the neighbouring constituency.</p>	<p>i) Split the area for better representation and bring services closer to the people.</p> <p>ii) In neighbouring Saku constituency, a ward should be formed called 'Songa' for better representation. In his constituency, a ward named 'Kargi' should be formed also for better representation.</p>
20.	BOBASI	HON. CHRIS OBURE, MP	<p>i) Re-drawing of boundaries: Transfer of wards to the new Gucha constituency from the neighbouring Bobasi & Bomachoge constituencies.</p>	<p>i) This transfer of wards should be fair; the people have no problem with the new constituency.</p> <p>ii) Combination of wards and population should be equitable, having the same number of wards & people from each old</p>

21	SUBUKIA & RONGAI	HON. NELSON GAICHUIHE, MP; HON. LUKA KIGEN, MP	<ul style="list-style-type: none"> i) Re-drawing of boundaries: There was a mixup in the transfer of divisions, locations and sub-locations. ii) Minority Interests/Discrimination: A minority group, the Ogiek, now in the new Njoro constituency, requested a constituency of their own. 	<ul style="list-style-type: none"> i) Ensure the accurate movement of divisions, locations and sub-locations moved to the right constituency per the people's requests. ii) Look into how to adequately represent the minority group without them being swallowed up by the bigger groups.
22.	KINANGOP	HON. DAVID NGUGI, MP	<ul style="list-style-type: none"> i) Presentations of area residents to llBRC ignored, so they've taken matter to court. ii) Historical Ties: Half of the constituency was moved to Kipipiri constituency. iii) Formula used: It covers same area & has similar population to neighbouring Kipipiri & Ndaragwa but wasn't given a new constituency. iv) Geographical features: Some land in the upper plateau is in Naivasha administratively but gets services from Kinangop. 	<ul style="list-style-type: none"> i) If satisfactory solution found, the residents are willing to withdraw the court case. ii) The area moved to Kipipiri should be returned as it's historically known as Kinangop. iii) Split the constituency into two just like its neighbours as it's similar in population & size. iv) Land in the upper plateau should be returned to Kinangop constituency as that's where it was originally, plus residents are closer to the services.
23.	NORTH MUGIRANGO/BORABU	HON. WILFRED OMBUI, MP	<ul style="list-style-type: none"> i) Re-drawing of boundaries: Some wards were moved to the existing or new constituencies in error. 	<ul style="list-style-type: none"> i) Correct the anomalies in the movement of wards to the right places. ii) Give the additional 2 constituencies

24.	WAJIR SOUTH	HON. AMB. MOHAMMED A. AFFEY, MP; HON. M.M. SIRAT, MP	<p>ii) Only 3 out of 5 requested constituencies were received in this area.</p> <p>iii) Community of Interest: North Mugirango not split in two as requested.</p> <p>i) Means of communication should have been taken into consideration by the Commission.</p> <p>ii) Economic Marginalization: Wajir South has been economically marginalized; there are no telephone services, or tarmac roads.</p> <p>iii) Geographical Features: Wajir South has a wide geographical expanse and this should have been considered.</p> <p>iv) Census: Wajir South disputed the use of projected population in determining of boundaries.</p> <p>v) Formula used: The Commission failed to define sparsely populated areas, urban areas</p>	<p>requested so as to maintain peace long into the future by protecting cultural, economic & historical ties, and development of communication infrastructure and community of interest.</p> <p>i) An amendment to Article 89(4).</p> <p>ii) The creation of more constituencies will beef up security in the border.</p>
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			and cities as used to determine boundaries.	
25.	DUJIS	HON. ADEN DUALE, MP	<p>i) Geographical Features: The Commission did not take into account the wide geographical expanse.</p> <p>ii) Formula used: The fundamental of protected constituency is unclear and ambiguous. North Eastern did not have any protected constituency.</p> <p>iii) Formula used: The constitutional deviation provided for under Article 89 of the Constitution was not used by the Commission.</p> <p>iv) Formula used: The Commission locked out the other parameters provided under Article 89 and only applied the population quota.</p>	j)
26.	ISLANDS (LAKE VICTORIA & INDIAN OCEAN)	HON. AMINA ABDALLA, MP	<p>j) Geographical Features: These regions are often spread out over a large area and</p>	

			<p>separated by bodies of water.</p> <p>ii) Community of interest, Historical, Economic and Cultural Ties: difficult to review boundaries of these areas without consultation as there are various historical and familial ties that connect people on the islands to groups on the mainland.</p> <p>iii) Means of Communication: Areas are difficult to access due to distance and may require special means of transport in some cases.</p>	
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OUTSTANDING ISSUES

1. Geographical Features and Urban Centres
2. Community of Interest, Historical, Economic and Cultural ties
3. Means of Communication
4. Population Quota
5. Consulting all interested parties
6. Minorities/Marginalization
7. Other Concerns

The above listed parameters 1-4 were set out in Article 89(5) and (6) of the Constitution to guide the work of the IIBRC as it conducted its review, in addition to the provisions of Article 41(b) & (c) of the former Constitution. The other items listed as parameters 5-7 were issues that arose across the board during oral and written submissions to the sub-committee on outstanding issues. Following is an analysis of issues noted per constituency that need resolution.

WRITTEN SUBMISSIONS ON OUTSTANDING ISSUES

- i) **KITUI SOUTH – Geographical Features:** vast region covering 12,544 sq. km, with a population of 166,050.
 - **Means of Communication:** Poor road network due to historical neglect and vastness of the area. Has a problem with transport and communication.
 - **Population Quota:** Should be categorized as sparsely populated as population density is 13 people/sq km, and split into two.
- ii) **IGEMBE NORTH – Community of interest, Historical, Economic and Cultural Ties/Consulting all interested parties:** Community wishes to have constituency divided into two so as to have smaller administrative units to enable availability of more resources.
 - **Population Quota:** Has a large population of 156,331 on an area of 1366 sq.km, and this is expected to grow fast, thus meriting a split into two constituencies.
 - **Means of Communication:** Has limited infrastructure development – roads, electricity connection etc – and markets are inaccessible.
- iii) **KURESOI - Community of interest, Historical, Economic and Cultural Ties/Minorities/Marginalization:** The minority group & marginalized in the area, the Ogiek, will be further marginalized as the new constituency, Njoro, is bigger than the mother constituency, Molo, thus offering less chance of representation for this people.

- iv) **KITUTU CHACHE – Community of interest, Historical, Economic and Cultural Ties:** Wards belonging historically to specific clans were to be returned to the original constituencies per community resolution but this was not fully done.
- **Consulting all interested parties:** The community residents presented their views to IIBRC, but they were implemented only for one group in Kisii Central ward, and not for the Jogoo ward group.
- v) **MAKUENI – Community of interest, Historical, Economic and Cultural Ties:** Proposed boundaries for Kibwezi West constituency and shifting of Nzau district to Kibwezi constituency were created against community wishes and will likely cause disharmony.
- **Population Quota:** This quota was not used as with a population of 224,613 and an area of 1,571.90 sq. km, it was not split while other areas with less people were split.
- vi) **BOMACHOGE – Community of interest, Historical, Economic and Cultural Ties:** creation of the new Gucha Constituency seeks to cluster two communities that have had historical conflicts and rivalries, and will likely cause friction.
- **Population Quota:** its population of 200,729 meets the quota for sub-division into two constituencies instead of remaining the same.
 - **Consulting all interested parties:** Name of new Gucha constituency and ward names not acceptable to the local community as they were never proposed by the constituents.
- vii) **BONCHARI – Community of interest, Historical, Economic and Cultural Ties:** Gusii leaders had agreed and presented to IIBRC that any new constituency would be hived off only one main constituency, instead of straddling across two former ones. However, the new constituency does that.
- viii) **NAIVASHA - Community of interest, Historical, Economic and Cultural Ties:** the area is home to diverse people groups, and would benefit from better representation
- **Population Quota:** has a high population of 226,056, and by the quota, qualifies for 2 extra constituencies instead of only 1 as proposed.
- ix) **LAIKIPIA WEST – Population Quota:** has a population of 100,361, with its neighbours also having higher populations, but boundaries were not adjusted or a new constituency added to even out the populations.
- **Consulting all interested parties:**
- x) **DAGORETTI – Population Quota:** Since Nairobi is highly populated, it is under-represented, and needs an addition of 1 more constituency.
- **Consulting all interested parties:** Residents opposed to the name 'Kawangware' for the new constituency as it doesn't the will of the people and the area's history.
 - **Community of interest, Historical, Economic and Cultural Ties:** The people also desire to retain Woodley ward in Dagoretti instead of moving it to Kibra constituency.

- xi) **MALAVA – Population Quota:** population beyond the quota at a population of 205,166 in an area of 427.40 sq. km.
- xii) **COAST REGION – Population Quota:** Kilifi County has a population of 1,109,735 with only 5 constituencies; Kwate County has a population of 649,931 with only 3 constituencies; and Mombasa County has 939,370 people but only 4 constituencies. Each county should receive additional constituencies.
 - **Minorities/Marginalization:** The distribution of new constituencies is skewed, with less being given to areas with higher populations. This region has been marginalized & must be protected.
- xiii) **NATION-WIDE – Population Quota:** Splitting of constituencies has not been uniform, with areas having fewer populations and less land mass getting more new constituencies over those with higher populations and larger sizes; there appears to be selectiveness in rebalancing of the constituencies by population size.
- xiv) **WEBUYE (HON. KOMBO) – Consulting all interested parties:** the split of the constituency and the naming of some wards and divisions did not reflect the wishes of the community.
- xv) **IMENTI NORTH – Consulting all interested parties:** Two wards were moved from central Imenti to the new Buuri constituency against the community's wishes. Some of the wards are also not named correctly.
- xvi) **FAFI – Consulting all interested parties:** The boundaries between Fafi and Ijara are fine and do not need to be reviewed.
- xvii) **TINDERET – Consulting all interested parties:** there was a mix-up of wards and sub-locations, with them going to Tinderet instead of the new Nandi Hills Constituency.
- xviii) **NAIROBI COUNTY – Population Quota:** use of the quota and other parameters has given this county the appropriate number of constituencies, that is, 17.
 - **Community of interest, Historical & Cultural Ties/Consulting all interested parties:** the name of some wards and boundaries need to be changed or preserved to uphold community wishes.
- xix) **EMBAKASI – Population Quota/Consulting all interested parties:** the constituency should be split into five constituencies using the formula of quota + maximum deviation per constituency, giving 186,393 people per constituency, and divide the wards as proposed by the leaders and constituents.
- xx) **MWINGI SOUTH – Means of Communication/Consulting all interested parties:** A new constituency, Mwingi Central, was created in the middle of Mwingi South, leaving two portions of Mwingi South without a means of communication from the rest. The boundaries need to be redrawn per the resident's views.
- xxi) **MOSOP & EMGWEN – Consulting all interested parties:** some wards were omitted while others appeared in both constituencies. This needs to be corrected.

- xxii) **NYERI COUNTY – Population Quota:** the population in this area of Mathira and Kieni is too large to be served by only two constituencies. The area needs to have an additional constituency hived off jointly from the two constituencies.
- xxiii) **KEIYO NORTH – Community of Interest, Historical, Economic & Cultural Ties:** The community requested a review of the boundary between two neighbouring constituencies in different counties.
- **Means of communication:** Residents of a location & sub-location in Eldoret East would like to be moved to Keiyo North as they're too far away from the services in their constituency headquarters.
 - **Other concerns:** The residents would like the issue of county boundaries looked at in future boundary reviews.
- xxiv) **KIPKELION WEST – Means of communication** – the headquarters of the new constituency is far from the residents.
- **Population Quota:** the wards need to be redistributed to ensure balanced population in the Kipkelion West and East constituencies.
- xxv) **TURKANA CENTRAL – Population Quota:** based on the population in this area and the entire Turkana County, it deserves to get 5 additional constituencies to ensure adequate representation.

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THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2010

PART I—PRELIMINARY

- 1—Short title.
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THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2010

A Bill for

AN ACT of Parliament to make provision for the appointment and effective operation of the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution and to provide for various matters connected therewith and incidental thereto.

ENACTED by the Parliament of Kenya as follows –

PART I—PRELIMINARY

Short title. 1. This Act may be cited as the Independent Electoral and Boundaries Commission Act, 2010.

Interpretation. 2. In this Act, unless the context otherwise requires—

“Chairperson” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution;

“Commission” means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

“former Boundaries Commission” means the Interim Independent Boundaries Commission established under section 41B of the former Constitution;

“former Constitution” means the Constitution in force immediately before the 27th of August, 2010;

“member” means a member of the Commission;

“Minister” means the Minister for the time being responsible for matters relating to constitutional affairs;

“outstanding issues” means the issues specified in paragraph 2(2) of the Fifth Schedule;

“Parliamentary Committee” means the relevant departmental committee of the National Assembly

responsible for matters relating to the Commission;

“Registrar of Persons” means the office in charge of identification, registration and issuance of identity cards to all Kenyan citizens;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under article 230(1) of the Constitution.

“Secretary” means the Secretary to the Commission appointed under Article 250(12) of the Constitution.

Object and
purpose of the
Act.

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

- (a) provide a legal framework for the identification and appointment of the chairperson and members of the Commission pursuant to Article 250(2) of the Constitution;
- (b) provide for the manner of the exercise of the powers and functions of the Commission pursuant to Article 88(5) of the Constitution; and
- (c) establish mechanisms for the Commission to consult with interested parties pursuant to Article 89(7) of the Constitution.
- (d) establish mechanisms for the Commission to address the outstanding issues arising out of the first review.

PART II—ADMINISTRATION

Functions of the
Commission.

4. As provided for by Article 88(4) of the Constitution, the Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

- (a) the continuous registration of citizens as voters;
- (b) the regular revision of the voters’ roll;

- (c) the delimitation of constituencies and wards;
- (d) the regulation of the process by which parties nominate candidates for elections;
- (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
- (f) the registration of candidates for election;
- (g) voter education;
- (h) the facilitation of the observation, monitoring and evaluation of elections;
- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development of a code of conduct for candidates and parties contesting elections; and
- (k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

Composition and
appointment of
the Commission

5. (1) The Commission shall consist of a chairperson and eight other members appointed in accordance with the Constitution and the provisions of this Act.

(2) Subject to section 32, the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The procedure set out in the First Schedule shall apply, with the necessary modifications whenever there is a vacancy in the Commission.

(4) In short listing, nominating or appointing persons as chairperson and members of the Commission, the Selection Committee set out in the First Schedule, the National Assembly and the President and the Prime Minister shall ensure that-

(a) not more than two-thirds of the members of the Commission are of the same gender;

(b) the composition of the Commission reflects the regional and ethnic diversity of the people of Kenya.

Qualifications for appointment as chairperson or member of the Commission

6. (1) The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

(2) A person is qualified for appointment as a member of the Commission if such person—

(a) is a citizen of Kenya;

(b) possesses a degree from a recognized university;

(c) has proven relevant experience in any of the following fields—

(i) electoral matters;

(ii) management;

(iii) finance;

(iv) governance;

(v) public administration; or

(vi) law; and

(d) meets the requirements of Chapter Six of the Constitution.

Oath of Office.

7. (1) Before assuming office, the chairperson and members of the Commission shall take and subscribe to an oath of office as prescribed under the Second Schedule.

(2) The chairperson shall—

(a) be the spokesperson of the Commission; and

(b) supervise the work of the Commission.

Secretary to the
Commission.

8. (1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the Commission and to serve on such terms and conditions as the Commission may determine.

(2) A person is qualified for appointment as the Secretary of the Commission if the person—

- (a) is a citizen of Kenya;
- (b) possesses a degree from a recognized university;
- (c) has had at least ten years proven experience at management level;
- (d) has proven relevant experience in any of the following fields—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance; or
 - (v) public administration; and
- (e) meets the requirements of chapter six of the Constitution.

(2) No person shall be appointed under subsection (1) unless such person has been approved by the National Assembly.

(3) Before assuming office,, the Secretary shall take and subscribe to an oath of office as prescribed under the First Schedule.

(4) The Secretary shall hold office for a period of five years and shall be eligible for re-appointment for a further and final term of five years.

(5) Where the Commission does not intend to re-appoint the Secretary, the Commission shall cause the

vacancy in the office of the Secretary to be advertised at least three months before the expiry of the incumbent's term..

(6) The Secretary shall be the chief executive officer of the Commission and, in the performance of the functions and duties of office, shall be responsible to the Commission.

(7) The Secretary shall be the accounting officer and shall be responsible for the—

- (a) carrying out of the policy decisions of the Commission;
- (b) day-to-day administration and management of the affairs of the Commission;
- (c) control of other employees of the Commission; and
- (d) performance of such other functions as may be assigned by the Commission.

(8) The Secretary may be removed by the Commission only for—

- (a) inability to perform functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct; or
- (c) incompetence.

(9) Before removal under subsection (8), the Secretary shall be—

- (a) informed in writing of the reasons for the intended removal;
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

Staff of the
Commission.

9. (1) There shall be a secretariat of the Commission which shall be headed by the Secretary.

(2) The secretariat shall comprise of—

(a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and

(b) such public officers as may be seconded to the Commission upon its request.

(3) The employees of the Commission may be appointed, on such terms and conditions as the Commission may, subject to its approved budgets, determine.

(4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (2) (b), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to elections and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

(5) The Commission shall ensure that in the appointment of employees, at least one-third of the employees are of either gender.

Units of the
Commission

10. (1) The Commission may create within itself such directorates, field offices, units, divisions or committees and appoint thereto such employees, on such terms and conditions of service, as it may determine.

(2) Every directorate, field office, unit, division or committee created by the Commission shall act in accordance with any directions given to it in writing by the Commission.

Legal personality
of the
Commission.

11. (1) The Commission shall be a body corporate with perpetual succession and a common seal and shall be capable, in its own name, of—

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued; and

(c) doing or performing all such acts and things as a body corporate may by law do or perform.

Cap. 40 (2) Any legal proceedings for execution of judgments against the Commission shall be subject to the Government Proceedings Act.

Seal of the Commission. 12. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by a resolution of the Commission;

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Protection from personal liability. 13. Nothing done by a member of the Commission or by any electoral officer shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Code of conduct. 14. Members and the employees of the Commission shall subscribe to the code of conduct prescribed under the Third Schedule.

PART III—FINANCIAL PROVISIONS

Funds of the Commission. 15. (1) The funds of the Commission shall consist of—
(a) monies provided by Parliament for purposes of the Commission;
(b) any grants, gifts, donations or other endowments given to the Commission;
(c) such funds as may vest in or accrue to the

Commission in the performance of its functions under this Act or under any other written law.

Independent Electoral and Boundaries Commission Fund

16. (1) The funds of the Commission shall be held in a fund to be known as the Independent Electoral and Boundaries Commission Fund which shall be administered, on behalf of the Commission, by the Secretary.

(2) There shall be paid from the Fund—

- (a) the salaries, allowances and loans of the employees of the Commission;
- (b) such other remuneration to persons in its service as it may consider appropriate;
- (c) such reasonable travelling and subsistence allowances for the members and members of any committee of the Commission when engaged in the business of the Commission, and at such rates as the Commission may determine; and
- (d) any other expenses incurred by the Commission in the performance of its functions.

(3) Subject to the applicable law, the Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

(4) The Secretary shall, subject to the provisions of the Public Audit Act, manage the Fund in such manner as promotes the functions of the Commission and the objects and purposes of this Act.

Act No. 12 of 2003

Expenses of the Commission to be a charge on the Consolidated Fund.

17. The administrative and other expenses of the Commission, including the salaries, allowances, gratuities and pensions of the members and employees of the Commission shall be a charge on the Consolidated Fund.

Remuneration and allowances.

18. A member of the Commission shall be paid such remuneration or allowances as the Salaries and

Remuneration Commission shall determine.

Annual estimates.

19. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the relevant Parliamentary Committee for consideration and tabling in the National Assembly.

Financial year of the Commission.

20. The financial year of the Commission shall be the period from the 1st July in any year to the 30th June in the immediately succeeding year, both days inclusive

Accounts and audit.

21. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General, the accounts of the Commission together with—

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of that year.

(3) All accounts kept under this Act shall be audited by the Auditor-General at least once in every financial year.

(4) The Commission shall be entitled, upon application to the Minister responsible for finance, to exemption from duty chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of or in favour of the Commission which, but for this section, the Commission would be liable to pay.

(5) The Commission may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of employees of the Commission and may grant pensions and gratuities from any such fund to the said

officers upon their resignation, retirement or separation from the service of the Commission or, as the case may be, to the dependants of any such officer upon such officer's death.

Annual report.

22. (1) Within three months after the end of each financial year, the Commission shall submit a report to the President and to Parliament.

(2) The annual report shall contain, in respect to the year it relates—

(a) the financial statements of the Commission;

(b) the activities the Commission has undertaken, and

(c) any other information the Commission may consider relevant.

(3) The Commission shall publish the annual report in the Gazette and in at least one newspaper with national circulation.

PART IV—MISCELLANEOUS PROVISIONS

General principles

23. In fulfilling its mandate, the Commission shall, in accordance with the Constitution, observe the following principles—

(a) freedom of citizens to exercise their political rights under Article 38 of the Constitution;

(b) not more than two-thirds of the members of elective public bodies shall be of the same gender;

(c) fair representation of persons with disabilities and other persons or groups with special needs;

(d) universal and equal suffrage based on the aspiration for fair representation and equality of votes; and;

(e) free and fair elections, which are—

(i) by secret ballot;

- (a) shall addressed to the Secretary or such other person as the Commission may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant on the following grounds—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Commission;
- (c) failure of payment of a prescribed fee; or
- (d) failure of the applicant to satisfy confidentiality requirements by the Commission

(4) The right of access to information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

(5) Every member and employee of the Commission shall sign a confidentiality agreement

Publicity.

26. The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying—

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Legal advice.

27. The Commission may request legal advice from the Attorney General.

- (ii) free from violence, intimidation, improper influence or corruption;
- (iii) conducted independently;
- (iv) transparent; and
- (v) administered in an impartial, neutral, efficient, accurate and accountable manner;

(f) elections have to be undertaken on a regular basis;

(g) ethical conduct; and

(h) fairness.

Independence of
the Commission.

24. (1) Except as provided in the Constitution and this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

(2) For the avoidance of doubt, every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently and without direction or interference of—

- (a) any State Officer;
- (b) any public officer;
- (c) any organ of the Government;
- (d) any political party;
- (e) any candidate; or
- (f) any other person or organization.

Management of
information

25. (1) The Commission shall publish and publicise all important information within its mandate affecting the nation.

(2) A request for information by a citizen-

Regulations

28. (1) The Commission may make Regulations for the better carrying out of this Act.

(2) Without prejudice to the generality of subsection(1), such regulations may provide for—

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which it is responsible under this Act;
- (b) the disciplinary control of persons holding or acting in any office in respect of which it is responsible under this Act;
- (c) the termination of appointments and the removal of persons from any office, in respect of which it is responsible under this Act;
- (d) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (e) the progressive registration of citizens outside Kenya and putting into effect their right to vote;
- (f) the delegation of its functions or powers; and
- (g) any other matter required under the Constitution, this Act or any other written law.

(3) The purpose and objective for making the rules and regulations under subsection (1) is to enable the Commission to effectively discharge its mandate under the Constitution and under this Act.

PART V—SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation of Part.

29. In this Part, unless the context otherwise requires—

“Commission” means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

“first Commission” means the Commission first appointed under this Act;

“first review” means the delimitation of boundaries of constituencies and wards occasioned by the coming into force of the Constitution on the 27th August,2010;

“former Boundaries Commission “means the Interim Independent Boundaries Review Commission established under section 41B of the former Constitution;

“former Constitution” means the Constitution in force immediately before the 27th of August,2010;

“former Electoral Commission “means the Interim Independent Electoral Commission established under section 41 of the former Constitution;;

“Parliamentary Committee” means the relevant departmental committee of the National Assembly responsible for matters relating to the Commission.

Transition.

30. (1) The former Electoral Commission shall continue in office in terms of the former Constitution for its unexpired term or until the Commission is established, whichever is later.

(2) Notwithstanding the provisions of this Act—

(a) any orders or notices made or issued by the former Electoral Commission or the former Boundaries Commission shall be deemed to have been made or issued under this Act;

(b) any function carried out by the former Electoral Commission and the former Boundaries Commission under sections 41A and 41C of the former Constitution respectively, shall be deemed to have been carried out under this Act.

Transfer of assets,
etc.

31. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former Electoral Commission or the former Boundaries Commission shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against

the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

Appointment of
the first
Commission.

32. (1) For purposes of the appointment of the first Commission under this Act, four members of the Commission shall be appointed from amongst those persons who were chairpersons or members of the former Electoral Commission or former Boundaries Commission in the spirit of section 28(2) of the Sixth Schedule to the Constitution and in accordance with the procedure set out in the First Schedule.

(2) This section shall lapse upon the appointment of the first Commission under this Act.

Delimitation
during first
review

33. (1) The provisions of the Fifth Schedule shall have effect for the purposes of the first review.

(2) This section shall lapse upon the completion of the first review under this Act.

FIRST SCHEDULE

**PROCEDURE FOR APPOINTMENT OF
CHAIRPERSON AND MEMBERS OF THE
COMMISSION**

Selection
Committee.

1. (1) For the purposes of this Act, the Minister shall, within fourteen days of the commencement of this Act or within fourteen days of a vacancy arising in the Commission, convene a Selection Committee comprising of-

- (a) six persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly;
- (b) three persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate.

(2) The Selection Committee shall elect a chairperson and vice chairperson from amongst its number who shall be persons of opposite gender.

(3) Subject to the provisions of this Schedule, the Selection Committee shall determine its own procedure

Selection of
nominees.

2. (1) The Selection Committee shall, within seven days of its convening under paragraph 1, invite applications from qualified persons and publish the names of all applicants and their qualifications.

(2) An application under paragraph (1) may be made by-

- (a) qualified person; or;
- (b) any person, organization or group of persons proposing the nomination of any qualified person

(3) The Committee shall consider the applications,

shortlist and interview the applicants.

(4) After carrying out the interviews, the Committee shall select two persons qualified to be appointed as chairperson and sixteen persons qualified to be appointed members of the Commission and forward those names to the Parliamentary Committee.

(5) The Committee shall consider the applications, shortlist, interview the applicants and select the persons within a period of twenty one days from the date it is convened.

(6) For purposes of the appointment of the first Commission, the Selection Committee shall ensure that eight of the persons selected under subparagraph (4) are members of the former Electoral Commission and the former Boundaries Commission.

Nomination by
Parliamentary
Committee.

3. (1) The Parliamentary Committee shall, within fourteen days of receipt of the names forwarded under paragraph 2 (4) consider the names received and recommend to the National Assembly one person for approval for appointment as chairperson and eight persons for approval for appointment as members of the Commission.

(2) For purposes of the appointment of the first Commission, the Parliamentary Committee shall ensure that four of the persons recommended under subparagraph (1) are members of the former Electoral Commission and the former Boundaries Commission.

Approval by the
National
Assembly.

4. (1) The National Assembly shall, within fourteen days of the date when it next sits after receipt of the names under paragraph 2 consider all nominations and approve or reject such nomination.

(2) Upon consideration and approval by the National Assembly, the Speaker shall within seven days of the approval, forward the names of the approved persons to the President for appointment.

Rejection by
National
Assembly.

5. (1) Where the National Assembly rejects any nomination pursuant to paragraph 4 (1), the Parliamentary Committee shall within fourteen days of the rejection,

submit to the National Assembly a fresh nomination from amongst the persons received from the Selection Committee under paragraph 3 (1).

(3) If the National Assembly rejects all or any subsequent nominee submitted by the Parliamentary Committee for approval under subparagraph (1), the Selection Committee shall forward to the Parliamentary Committee fresh names from the persons shortlisted and interviewed under paragraph 2 (3) and the provisions of paragraph 2 (4) and paragraphs 3,4 and 5 shall apply with the necessary modifications..

Appointment of
chairperson and
members

6. The President shall, within seven days, by notice in the gazette, appoint the chairperson and the members approved and forwarded by the National Assembly.

Dissolution of
Selection
Committee

7. (1) The Selection Committee shall stand dissolved upon the appointments under paragraph 6.

(2) Where the provisions of paragraphs 5 apply, the Selection Committee shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph 6.

SECOND SCHEDULE

OATH OF OFFICE/SOLEMN AFFIRMATION OF
CHAIRPERSON/MEMBER/SECRETARY OF THE
COMMISSION

I,.....
being appointed chairperson/member/Secretary of the
Commission do solemnly swear/do solemnly and sincerely
declare and affirm that I will faithfully, fully, impartially
and to the best of my ability discharge the trust and
perform the functions and exercise the powers devolving
upon me by virtue of this appointment without fear, favour,
bias, affection, ill-will or prejudice and to the end that in
the exercise of the functions and powers of such member, I
shall not be influenced by the Government, any public
officer, any political party, candidate participating in an
election, religious society, other organization or any other
person or authority.

(So help me God).

.....
Chairperson/Member/Secretary

.....
Chief Justice

Date

THIRD SCHEDULE

CODE OF CONDUCT FOR MEMBERS AND
EMPLOYEES OF THE COMMISSION

Impartiality and
independence of
members

1. (1) Every member of the Commission shall
impartially and independently perform the functions of a
member in good faith and without fear, favour or prejudice,
and without influence from—

- (a) the Government;
- (b) any public officer;
- (c) any political party;

(d) candidate participating in an election; or

(e) any other person or authority.

Independence
from political or
public office.

2.(1) No member of the Commission shall, during tenure of office, be eligible for—

(a) appointment or nomination to a political office; or

(b) appointment to another public office.

(2) No member of the Commission may—

(a) whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating in a referendum, or any of the issues in contention between parties, candidates or sides;

(b) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission,

(c) make private use of or profit from any confidential information gained as a result of being a member of the Commission; or

(d) divulge any information to any third party, save in the course of official duty

Disclosure of
Conflicting
Interests

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

(2) A member whose personal interest conflicts

with their official duties shall—

(a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(2) A member whose personal interest conflicts with their official duties shall—

(a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict;

(b) and refrain from participating in any deliberations with respect to the matter.

Professionalism

4. An officer of the Commission shall—

(a) perform their duties in a manner that maintains public confidence in the Commission;

(b) treat the public and colleagues with courtesy and respect;

(c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and

(d) respect the rights and freedom of all persons that he may interact with.

Improper
enrichment

5. No member of the Commission shall—

(a) use their office or organization to improperly enrich themselves or others;

(b) accept or request gifts or favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business

of the Commission; or

- (c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others

Integrity in
private affairs

6. A member shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Commission as a whole and shall—

- (a) not evade paying taxes;
- (b) not neglect their financial obligations;
- (c) submit an annual declaration of their income, assets and liabilities to the Commission responsible for such declarations from public officers;
- (d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Commission; and
- (e) not preside over or play a central role in the organization of a fundraising activity.

Sexual
harassment

7. A member or employee shall not sexually harass a member of the public or colleague. Sexual harassment includes –

- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature; or
- (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality

Nepotism

8. A member shall not practice favouritism on the grounds of tribe, race, kin, culture, sex or acquaintance or otherwise in performance of their duties.

Privileged

9. A member shall—

Information and
Security of
Interests of the
State

(a) not act for foreigners in a manner detrimental to the security interest of Kenya; and

(b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure.

Breach of code

10. Any breach of the Code by a member or an officer of the Commission shall be treated as misbehaviour for a member and misconduct for an officer.

FOURTH SCHEDULE

PROCEEDINGS OF MEETINGS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Commission in any financial year.

2. A meeting of the Commission shall be held on such date and at such time as the Commission shall decide.

3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.

4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.

5. The quorum for the conduct of business at a meeting of the Commission shall be half of all the members of the Commission.

6. The Chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the

chairperson.

7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.

8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

9. (1) The Secretary shall be the Secretary at all meetings of the Commission.

(2) The Commission shall, subject to sub-paragraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose including a general purposes Committee.

(3) The Political Parties Liaison Committees established under the Political Parties Act consists of the designated members of the Commission and the representatives of every political party with one or more candidates validly nominated for the election; and the Commission shall consult with the committee on all matters relating to the election.

10. Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson and the Secretary.

11. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

12. Except as provided by this Schedule, the Commission may regulate its own procedure.

13. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee

otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) No member or employee of the Commission shall transact any business or trade with the Commission.

FIFTH SCHEDULE

PROVISIONS RELATING TO THE FIRST REVIEW

Resolution of
outstanding
issues.

1. The Commission shall resolve all outstanding issues relating to the delimitation of boundaries of constituencies and wards in respect of the first review within a period of six months of the date of its appointment under this Act.

Reference
materials.

2. (1) The Commission shall, in addressing the outstanding 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 outstanding 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 neighboring constituencies where appropriate.

Delimitation of electoral units.

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 incorporating the views received under that subparagraph and submit the revised delimitation of boundaries to the Parliamentary Committee.

(4) The Parliamentary Committee shall, within fourteen days of receipt of the report under subsection (2), table the revised proposed delimitation of boundaries and before the National Assembly together with its recommendations.

(5) The National Assembly shall, within seven days of the tabling of the draft Constitution under subsection (3), debate it and approve the proposed delimitation of boundaries with or without amendments.

(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

Sensitization on
the proposed
boundaries.

4. 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

5. 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.