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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 40 OF 2023 REGARDING DELIMITATION
OF ELECTORAL UNITS

 THE NATIONAL ASSEMBLY PAPERS LAID APRIL 2025	
DATE: 30 APR 2025	
DAY: 30.04.25	
TABLED BY:	Chair, Public Petitions Committee Hon. Kivai Kagesi, MP
CLERK-AT THE-TABLE:	M. Mado



Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 40 of 2023 regarding Delimitation of Electoral Boundaries. The petition was reported to the House pursuant to Standing Order No. 225(2)(b) by the Speaker on behalf of Mr. Tom Macharia.

The Petitioner prayed that the Committee engages the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution. The Committee considered the Petition by engaging the Petitioner, and the IEBC and observed that at the time of considering this report the recruitment process of the IEBC Commissioners was ongoing consequently there was no Commission to discharge the mandate under Article 89 of the Constitution.

The Committee recommends that upon reconstitution of the Independent Electoral and Boundaries Commission, the Commission should commence the delimitation process expeditiously with a view to concluding the process in compliance with Article 89 (4).

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



for HON. ERNEST KIVAI OGESI KAGESI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date..... 24-04-2025

PART ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was first constituted in October 2022 and reconstituted in March 2025 and comprises the following Members:

Chairperson

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
Dagoretti North Constituency
Orange Democratic Movement (ODM)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Peter Irungu Kihungi, M.P.
Kangema Constituency
United Democratic Alliance (UDA)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

1.3 Committee Secretariat

The Public Petitions Committee was facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Ms. Isaac Nabiswa
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Ms. Nancy Akinyi
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer

PART TWO

2 BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 40 of 2023 regarding Delimitation of Electoral Units was conveyed by the Honorable Speaker on behalf of Mr. Tom Macharia being the Chairperson of Centre for Accountability, Reform and Democracy on 8th August 2023.
2. The Petitioner stated that the Independent Electoral and Boundaries Commission (IEBC) published the revised preliminary report relating to the delimitation of boundaries of Constituencies and Wards on 9th January 2012, which was presented to the Departmental Committee on Justice and Legal Affairs (JLAC) on the same date.
3. After considering the recommendations by Parliament on its revised preliminary report, IEBC published the National Assembly Constituencies and County Assembly Wards Order, 2012 dated 6th March, 2012 in the Kenya Gazette as Legal Notice No. 14 of 2012.
4. Following the publication of the final report and the National Assembly Constituencies and County Assembly Wards Order, 2012, complaints were raised regarding the manner in which 80 extra Constituencies and 1450 County Assembly Wards were created, their distribution, their names, boundaries and areas of allocation.
5. The Petitioner stated that pursuant to the provisions of Article 89(2) of the Constitution, the next review of boundaries of Constituencies and Wards ought to be undertaken and concluded not later than March 2024.
6. He further averred that Parliament had not developed a legal framework for the the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity.
7. In the Petition, Mr. Macharia argued that the IEBC had been dysfunctional since August 2022 General Election therefore it was in limbo pending the recruitment of the new Commissioners.

2.1 Prayers

8. The Petitioner prayed that National Assembly through the Public Petitions Committee engages the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 The Petitioner

On the 16th April 2024, Mr. Tom Macharia appeared before the Committee and submitted as follows—

9. Article 89(2) of the Constitution states that: "The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years."
10. On 9th January 2012, the IEBC published its *Preliminary Report on the First Review Relating to the Delimitation of Boundaries of Constituencies and Wards* ("the Preliminary Report"). On 9th February 2012, the IEBC published the *Revised Preliminary Report relating to the Delimitation of Boundaries and Wards* ("the Revised Preliminary Report") which was presented to the Justice and Legal Affairs Committee of Parliament on the same date. On 2nd March 2012, the IEBC received the *Recommendations of Parliament on the Revised Preliminary Report*.
11. After considering the recommendations of Parliament on its *Revised Preliminary Report*, the IEBC published the *National Assembly Constituencies and County Assembly Wards Order, 2012* dated 6th March 2012 published in the Kenya Gazette as *Legal Notice No. 14 of 2012*. The said gazette notice informed the constituencies and wards in place.
12. By virtue of the provisions of Section 27(4) of the Sixth Schedule to the Constitution, twenty-seven (27) constituencies that did not qualify to be retained as constituencies as they were below the constitutional population quota threshold were saved. Particulars of the said constituencies were as follows—

S/No.	Name of Constituency	Current Member of Parliament	Party
1.	Lamu East	Hon. Captain Ruweida Mohammed	Jubilee
2.	Lamu west	Hon. Stanley Muiruri Muthama	Jubilee
3.	Mvita	Hon. Mohamed Soud Machale	ODM
4.	Mwatate	Hon. Peter Shake	Jubilee
5.	Wundanyi	Hon. Danson Mwakuwona	Wiper
6.	Voi	Hon. Khamis Abdi	Wiper

7.	Bura	Hon. Yakub Adow	UPIA
8.	Galole	Hon Said Buya Hirabae	ODM
9.	Isiolo South	Hon. Mohamed Tubi Bidu	Jubilee
10.	Kilome	Hon. Thuddeus Kithua Nzambia	Wiper
11.	Laisamis	Hon. Joseph Lekuton	UDM
12.	North Horr	Hon. Wario Guyo	KANU
13.	Saku	Hon. Dido Ali	UDA
14.	Mbeere North (formerly Siakago)	Hon. Geoffrey Ruku	DP
15.	Ndaragwa	Hon. George Gachagua	UDA
16.	Tetu	Hon. Geoffrey Mwangi Wandeto	UDA
17.	Murkurweini	Hon. Kaguchia Gichohi	UDA
18.	Othaya	Hon. Wambugu Wainaina	UDA
19.	Kangema	Hon. Peter Irungu	UDA
20.	Mathioya	Hon. Edwin Mugo	UDA
21.	Samburu East	Hon. Lentoijoni Lekumontare	KANU
22.	Marakwet East	Hon. David Bowen	UDA
23.	Keiyo North	Hon. Adams Korir	UDA
24.	Mogotio	Hon. Reuben Kiborek	UDA
25.	Vihiga	Hon. Kivai Kagesi	ANC
26.	Budalangi	Hon. Raphael Wanjala	ODM
27.	Samburu West	Hon. Josephine Lesuuda	KANU

13. In accord with the provisions of Article 89(2) of the Constitution, the next review ought to be undertaken and concluded no later than March 2024.

14. Following publication of the final report and the *National Assembly Constituencies and County Assembly Wards Order, 2012*, complaints were raised regarding the manner in which the eighty (80) constituencies and 1450

County Assembly Wards were created, their distribution, their names, boundaries and areas of allocation. The complaints were resolved in a High Court decision reported as **Republic v Independent Electoral and Boundaries Commission & another Ex-Parte Councilor Eliot Lidubwi Kihusa & 5 others [2012] eKLR**.

15. In its decision, the high court made the following recommendations, reproduced verbatim, for implementation prior to the second boundaries review process:

- (a) The delimitation process is based on sub-locations. We heard several complaints about the manner in which these units were delimited. Sub-locations constrained the manner in which the IEBC could meet the constitutional criteria particularly that of population parity. For example, Kaptembwo sub-location in Nakuru Town West with a population of 70,352 was delimited into a ward of its own. The other wards in the constituency have populations ranging from 6,781 to 24,596 meaning that in such a place population parity cannot be achieved as long as the unit of delimitation is the sub-location;
- (b) There is therefore a need to develop a legal framework for the creation and determination of sub-locations. Failure to deal with this issue would open a door for indirect gerrymandering by those who have influence to create sub-locations to suit their own tastes. The process adopted to determine sub-locations must take into account the obligation of the IEBC to progressively achieve population parity; and
- (c) Parliament must also address the issue of County boundaries. In some instances, we had conflicting or inaccurate information as to the counties where certain sub-locations were located. The Constitution lists the names of 47 counties but does not define the boundaries of each county. The definition of these boundaries in the Constitution is an imperative and will of necessity address the various disputes as to county boundaries including those, we encountered in the cases we considered.

16. The Senate published the **County Boundaries Bil, 2023** to address the issue of County boundaries and has further published a notice in the daily newspapers on 24th March 2023 inviting views and memorandum from the public regarding the said bill which, among other issues—

- (a) Set out the boundaries of all forty-seven (47) counties which the Constitution does not do as the High court noted in its 2012 decision regarding the boundaries delimitation process;
- (b) Proposes, at Section 23, the **creation of the Independent County Boundaries Commission** as contemplated by Article 188 of COK. Composition of the Commission is at Section 24;
- (c) Proposes mechanisms for resolving county boundary disputes including mediation committees. (There are currently over 15 county

boundary disputes or issues that ought to be resolved prior to or concurrently with the constituency and ward boundaries delimitation process); and

(d) Creates a process for petitioning for county boundary changes.

17. Parliament has not however developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity as directed by the high court. This legal framework is an integral aspect of the boundaries delimitation process since both the constituency and ward boundary delimitation and county boundary delimitation processes (as framed in the County Boundaries Bill, 2003) use locations and sub-locations as the basis for identifying boundaries.

18. On 14th February 2020, the IEBC issued a press statement announcing that it had developed a Boundaries Review Operations Plan (BROP) and had commenced implementation of the plan. The said plan was however not readily available to the public on IEBC's website like other documents prepared by the Commission.

19. As part of the said implementation, the IEBC undertook a pilot study for the review and update of boundaries Geo-database. In its pilot study report released in February 2020, the IEBC stated that the pilot study on update of electoral boundaries geo-database revealed outstanding issues on electoral boundary delimitation that need to be addressed before embarking on the second review including—

- (a) The Sub-location remains the smallest administrative unit used in the delimitation of electoral areas;
- (b) While new administrative units have been created and operationalized since the last delimitation in 2012, these changes have not been reflected in the administrative maps from Survey of Kenya which are the base maps for boundary delimitation;
- (c) There are overlaps in electoral and administrative boundaries that affect service delivery; and
- (d) The pilot exercise was carried out by the commission and Ministry of Interior but excluded the County Government officials, yet the political wing of the County Government (County Assembly) is a major stakeholder in the boundary delimitation.

20. The Commission therefore made the following recommendations as part of the pilot study report—

- (a) It was necessary for the commission to collaborate with Survey of Kenya and Ministry of Interior to regularly update the administrative maps to capture the current status since gazettelement of new administrative units is also done frequently;

- (b) The commission ought to include other stakeholders in the boundaries review process such as ward administrators and village elders;
 - (c) Inter- governmental agency collaboration involving Ministry of Interior, Survey of Kenya and KNBS was necessary to update the administrative maps to capture the status on the ground and have a common base data;
 - (d) Sensitization of the citizens on the county boundaries as stipulated in the constitution and relevant Acts was necessary;
 - (e) There was need for the availing of electoral maps and personnel to both national and county government agencies to assist in resolving disputes; and
 - (f) It was necessary for field visits to be organized to complete the process of the actual updating of maps.
21. The IEBC has been dysfunctional since the August 2022 General Election and was in limbo pending the recruitment of new commissioners. Therefore, no substantive constitutional functions could be discharged by the Commission until the new commissioners were appointed.
22. There was need for all other stakeholders in the process to take a more proactive role to ensure the process is carried out in a constitutionally compliant manner including meeting the deadline established by Article 89(2) as firm constitutional timelines should not be extended.
23. Feedback from Kenyans indicated that the aforesaid interventions were necessary yet they had not been adequately attended to.
24. Further, some of the interventions required in this petition were specifically directed at Parliament by the High court following the 2012 boundaries review and delimitation process.
25. The IEBC which is the constitutional body mandated to oversee the boundaries delimitation process had no commissioners in place and had previously stated a collaborative approach was required for the boundaries review and delimitation process to succeed.
26. There are ongoing efforts to enact the County Boundaries Bill, but the proposed bill cannot and will not address all the issues raised by this petition.
27. Therefore, the Petition requested the National Assembly to—
- (a) Develop a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity;

- (b) Deliberate on and enact an appropriate mechanism to save, during the second review process, the 27 constituencies that were saved by Section 27(4) of the Sixth Schedule to the Constitution of Kenya during the first review.
- (c) Call for the Boundaries Review Operations Plan (BROP) from the IEBC for purposes of preparing an integrated operations plan that takes into account—
 - (i) The County Boundaries Bill, 2023;
 - (ii) The impact of the proposed Independent County Boundaries Commission in the process;
 - (iii) Inter- governmental agency collaboration involving Ministry of Interior, Survey of Kenya, Kenya National Bureau of Statistics, the judiciary and County Governments;
 - (iv) The principle that there should be **no taxation without representation as contemplated in Article 89(7)(b)**;
 - (v) The role and logistical plans for involving other stakeholders in the boundaries review process such as ward administrators and village elders as recommended by IEBC.
 - (vi) The provisions of Section 36 of the Independent Electoral and Boundaries Commission Act.
 - (vii) Municipal areas conferred with the status of cities under the the Urban Areas and Cities Act, 2011 since 2012.
 - (viii) The following Kenya gazette notices by which administrative units have been established as service delivery co-ordination units—
 - Gazette Notice No. 1236 published in February 2022
 - Gazette Notice No. 4571 published in July 2020
 - Gazette Notice No. 1042 published in January 2022
 - Gazette Notice No. 2969 published in March 2022
 - Gazette Notice No. 6809 published in June 2022
 - Gazette Notice No. 5853 published in July 2017
- (d) Consider and propose such further or other measures as the National Assembly deems proper, necessary or appropriate for purposes of ensuring that the second boundaries review and delimitation exercise is constitutionally compliant and thus avoid a constitutional crisis including but not limited to—
 - (i) Dissolution of a significant number of the 27 constituencies saved by Section 27(4) of the Sixth Schedule to the Constitution of Kenya during the first review.

- (i) Unchartered territory resulting from violation of the timelines set by Article 89(2) of the Constitution
- (ii) Resource deprivation and the entrenchment of poverty in dense constituencies arising from violating Article 89(5) which requires, during the second and subsequent boundary reviews, that the boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

3.2 The Independent Electoral and Boundaries Commission

On 28th November 2024, the CEO of IEBC, Mr. Marjan Hussein Marjan appeared before the Committee and submitted on the petition as follows—

Background

28. Article 88 (4) outlines its mandate to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other election as prescribed by an Act of Parliament.
29. Specifically, Article 88(4)(c) of the Constitution provides that the IEBC is responsible for "the delimitation of constituencies and wards". Further, Article 82(1)(a), requires Parliament to enact legislation to provide for "the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and County Assemblies."
30. Pursuant to the aforesaid requirement, Parliament enacted the Independent Electoral and Boundaries Commission Act, 2011 (the IEBC Act) effectively granting a lifeline to the provisions of Article 82(1)(a) as read together with the provisions of Articles 88 and 89.
31. In addition, under Sections 2, 4(c), 36 and the Fifth Schedule of the IEBC Act, CAP 7C, the IEBC was required to resolve all issues arising from the first review and therefore, complete the first review. Following the review, the Commission was required to publish its final report within a period of four (4) months of the date of appointment of its Chairperson and Members as provided under the IEBC Act.
32. By dint of Sections 2, 4(c), 36 and the Fifth Schedule of the IEBC Act, the IEBC resolved all issues, completed the first review of electoral boundaries and published the final report of the National Assembly Constituencies and County Assembly Order, 2012 dated 6th March, 2012 in the Kenya Gazette as Legal Notice No. 14 of 2012.

Response to the issues raised in the Petition

Complaints were raised after the last boundary delimitation exercise regarding the way 80 extra constituencies and 1450 county assembly wards were created.

33. The Interim Independent Boundaries Review Commission (IBRC) was established pursuant to the Constitution of Kenya (Amendment) Act, No. 10 of 2008 as part of the four (4) main reform agendas towards electoral transformation. This was as a result of the aftermath of the disbandment of the Electoral Commission of Kenya (ECK), whose functions were subsequently spread between the IBRC and the Interim Independent Electoral Commission (IIEC).
34. The IIBRC Chairperson and 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 *inter alia*—
- (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; and
 - (c) And any other functions as may be prescribed by parliament.
35. This mandate was further modified by the new Constitution promulgated on 27th August, 2010 under paragraph 27 of the Sixth Schedule which charged the IIBRC with the mandate to determine the boundaries of constituencies and wards using the criteria mentioned in the Constitution.
36. It was pursuant to this constitutional imperative that the IIBRC completed its work, determined eighty new constituencies in addition to the existing two hundred and ten and published the list in the print media on 17th November, 2010.
37. Following this publication and determination of the disputes that ensued thereafter, the TEBC was required, pursuant to the provisions of paragraph 2 (1) (a) and (b) of the Fifth Schedule to the IEBC Act, to address the issues arising out of the first review by:
- (a) Using as its primary reference material the report of the former Boundaries Commission (IIBRC) on the first review as adopted by the National Assembly; and

- (b) Using as its secondary reference material, the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.

38. In carrying out the exercise, the IEBC sought to resolve issues arising from the first review as stated in paragraph 2(2) (a). (b) as follows:

- (a) Re-distribution of such wards or administrative units in the affected constituencies as may be appropriate; and
- (b) Subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution.

39. Pursuant to this, the IEBC conducted public participation to resolve all issues arising from the first review conducted by IBRC while sensitizing the publics on the proposed boundaries of constituencies and wards before the preparation of the final report.

40. Any resultant disputes were handled through the appropriate dispute resolution fora, that is, the Courts. In strict adherence to the rule of law, the Commission implemented the decisions of the Courts.

41. The next review of boundaries should have been undertaken and concluded not later than March 2024 but since the recruitment of Commissioners is pending no substantive constitutional functions can be discharged by the Commission.

42. Articles 82(1) (a) and 89 confer upon the IEBC the mandate to review the names and boundaries of constituencies and the number, names and boundaries of wards. The criteria to consider in delimitation of electoral boundaries is espoused under Article 89.

43. The stipulated constitutional timelines for review of the names and boundaries of Constituencies is not less than eight (8) years and not more than twelve (12) years while the timelines for review of the number, names and boundaries of Wards is periodic.

44. The import of this, is that the eight-year period took effect in 2020 with the twelve-year outer limit terminating in March, 2024. The IEBC has not undertaken the delimitation of boundaries owing to vacancies in the membership of the IEBC.

45. It is imperative to point out that during the intervening period, the legislative framework on review of electoral boundaries morphed through various amendments to Acts of Parliament including but not limited to—

- i. Section 36 of the IEBC Act, 2011;
- ii. The Fifth Schedule to the IEBC Act (now spent) and
- iii. Section 26 of the County Governments Act, 2012,

46. In the review of electoral boundaries, the IEBC has and continues to rely on the following legislative framework for purposes of compliance—
- i. The Constitution of Kenya, 2010;
 - ii. The IEBC Act, 2011;
 - iii. The County Governments Act, 2012;
 - iv. The Urban Areas and Cities Act, 2011;
 - v. The Survey Act, 1961 (Rev 2020) and
 - vi. Statistics Act, 2006.
47. The term of the Commissioners lapsed on 17th January, 2023. Prior to that, IEBC had prepared a Boundaries Review Operation Plan (BROP) to provide a road map for the delimitation exercise. It used a phased approach as follows—
- (i) **Phase I: Pre-Delimitation-Preparatory:** Activities such as planning, development of documents, legal framework, capacity building, collection, and validation.
 - (ii) **Phase II: Delimitation:** Gazettement of intent to conduct delimitation, Conduct of stakeholder engagement and education, collection and analysis of memoranda, public hearing and gazette of descriptions of new electoral units and generation of new electoral maps.
 - (iii) **Phase III: Post-Delimitation:** Post-delimitation report, petitions and implementation of high court decisions.
48. The IEBC has not completed phase one while phases two and three are yet to commence. The pending work in phase one encompasses geo-data validation and capacity enhancement of all necessary staff.
49. It is worth noting that while vacancies exist within the membership of the Commission, the IEBC remains legally and constitutionally obligated to undertake the delimitation of boundaries. It is not clear whether the Constitution permits the timelines under Article 89 to be extended.
50. The IEBC invoked Section 29 of the IEBC Act and sought the guidance of the Attorney General whose office advised that the IEBC Secretariat cannot conduct functions under Article 88 (4) of the Constitution. The Attorney General also laid emphasis that the failure to conduct boundary delimitation would likely result in legal challenges as well as compromising the right to fair representation, political stability, social cohesion and electoral integrity.
51. In this regard, the IEBC in July, 2024, filed a Reference requesting an Advisory Opinion from the Supreme Court on how to proceed taking into account the lapsed constitutional timelines and absence of Commissioners necessary for the electoral process. The matter is pending before the Supreme Court.

52. As a matter of information and owing to the lacunae in the membership of Commissioners, the Commission has sought an advisory from the Supreme Court with regard to the lapsed timelines for delimitation of boundaries in order to get guidance on the next steps given the current legal crisis.

53. The IEBC craves for the Supreme Court's advisory opinion of the following issues—

- (i) Whether the applicant can undertake the process of delimitation of electoral boundaries and other electoral processes in the absence of Commissioners or the requisite quorum of Commissioners;
- (ii) Whether the applicant can conduct a review of the names and boundaries of constituencies and wards when the timelines envisage under Articles 89(2) and (3) as read together with Section 26 of the of the County Governments Act have lapsed; and
- (iii) Whether the constitutional timelines envisaged under the provisions of Articles 89(2) and 89(3) as read together with Section 26 of the of the County Governments Act can be extended, if so, by whom and under what circumstances.

Parliament has not developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity

54. The IEBC is guided by an elaborate legal framework streaming from the Constitution and operationalized by the IEBC Act and the Procedures for Delimitation of Electoral Units enacted by Parliament on 15th July, 2024.

55. Notably, during delimitation of electoral boundaries, the IEBC utilizes data resident in other state agencies. In addition, the respective agencies would be required to submit the necessary data to the IEBC to facilitate its process of delimitation of electoral boundaries.

56. Specifically, Kenya National Bureau of Statistics (KNBS) will submit population data which is in Geodata format.

57. As a matter of information, sub-locations are administration structures of the National Government. The sub-location population data is drawn from collating enumerated population of contiguous enumeration blocks. It is neither a basic unit of population census nor elections.

The National Assembly to engage the relevant authorities and stakeholders to ensure the review of electoral units is carried out in a constitutionally compliant manner.

58. In pursuit of its electoral legal reform agenda, the IEBC ensures robust engagements and public participation with relevant stakeholders. Parliament enacted the IEBC (Amendment) Act, 2024 on 15th July, 2024, that provides the

mechanisms for the IEBC to engage stakeholders on the delimitation of boundaries under the Fifth Schedule.

59. As such, the process of boundary delimitation would be able to be sufficiently undertaken under the current legal framework once the Commissioners are appointed. This is of course dependent on the advisory opinion that the supreme Court will render on the constitutional timelines for delimitation of electoral units.

Conclusion

60. The Commission notes with appreciation the intention of the Petition to ensure the delimitation of boundaries as provided under Article 89 is undertaken. However, for the reasons discussed above, the Commission submits that it cannot currently undertake delimitation and awaits further direction on the matter.
61. The Commission recommends that the process of recruitment of Commissioners be fast tracked to enable the Commission to discharge its constitutional mandate which includes delimitation of constituency and ward boundaries.
62. **Regarding the possible outcomes from the Supreme Court's determination,** the Commission outlined potential outcomes from the Supreme Court's decision. If the Court allows the Secretariat to proceed with delimitation, the process can continue. However, a critical question remains about who has the authority to extend the guidelines. If the Commission's constitution is expedited, they can fulfill their mandate accordingly. The Supreme Court's involvement became necessary due to lapsed timelines. A bench had been constituted to address the issues presented by the IEBC Secretariat.
63. **Regarding the Supreme Court's role vs. the Commission's independence,** the Supreme Court's role was to interpret the Constitution. The Court would likely consider the elapsed timelines, the rationale behind these timelines, and the circumstances following the departure of the Commissioners a year prior. It may examine which institution is responsible for ensuring a quorum within the Commission and whether external factors contributed to the delays. A purposive interpretation of the timeline provisions is needed. For instance, as the 2027 General Election approaches, a second review of boundaries is essential to avoid conducting the election without updated delimitations. The Supreme Court may extend timelines, as delimitation must not exceed one year before the 2027 elections. Parliament may also need to amend the timelines legislatively.
64. **On the fate of wards and constituencies without representatives,** byelection matters required intervention from the Commission itself. The Secretariat handles administrative tasks and implements the Commission's policy resolutions.

65. Regarding the establishment of additional polling stations, Article 88 states that establishing additional polling stations requires voter registration, which necessitates the presence of the Commission.

PART FOUR

4 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and IEBC, the Committee made observations as follows—

66. That pursuant to Article 89 (2) of the Constitution the timeline for the delimitation of boundaries and review of names and boundaries lapsed in March 2024.
67. That at the time of considering this report the recruitment process of the IEBC Commissioners was ongoing consequently there was no Commission to discharge the mandate under Article 89 of the Constitution.
68. Pursuant to Article 82 (1)(a) the Independent Electoral and Boundaries Commission Act was amended in July 2024 to provide a framework for the delimitation process in part IIIA of the Act and the Fifth Schedule of the Act.
69. That the issue of sublocations as raised by the Petitioner was distinct from the issue of delimitation as they do not equate to electoral units but are administrative units.
70. Wards and sublocations may overlap however the process of creation of these two units are distinct. The IEBC has the mandate for the creation or review of new electoral units while the Cabinet Secretary Ministry of Interior has the power to gazette sublocations for service delivery pursuant to Section 14 of the National Government Co-ordination Act 2013.
71. On the issue of the twenty-seven (27) constituencies in section 27(4) of the Sixth Schedule of the Constitution that were saved during the first review, the committee observed that pursuant to Article 89 (2) the Commission has the mandate of review of boundaries for Constituencies and therefore Parliament cannot dictate over the process of review.
72. On the issue of the Boundaries Review Operations Plan (BROP) by IEBC, the committee observed that the Plan was not in the public domain.

PART FIVE

5 COMMITTEE RECOMMENDATIONS

73. Pursuant to the provisions of Standing Order 227, the Committee responds to the Petition as follows—

- (i) On the prayer that the National Assembly through the Public Petitions Committee engages the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution, the Committee recommends that—
 - (a) Upon reconstitution of the Independent Electoral and Boundaries Commission, the Commission should commence the delimitation process expeditiously with a view to concluding the process in compliance with Article 89 (4);
 - (b) Upon reconstitution, the IEBC appraises the National Assembly Departmental Committee on Justice and Legal Affairs on the Boundaries Review Operations Plan (BROP) within three months from the date of reconstitution;
- (ii) On the issue of provision of a framework for the creation and determination of sub-locations, the Committee recommends the amendment of section 14 of National Government Coordination Act to provide criteria for determination of sub-locations.

Signed: 

Date: 24-04-2025

FOR
HON. ERNEST KIVAI OGESI KAGESI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 30 APR 2025	
DAY: WED	
TABLED BY:	HON ERNEST KAGESI CHAIRPERSON
CLERK-AT THE-TABLE:	M. MOBO

ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 40 of 2023 regarding the Delimitation of Electoral Units
- Annex 3: Minutes of the 25th Sitting of 2024 held on 16th April 2024
- Annex 4: Minutes of the 64th Sitting of 2024 held on 28th November 2024
- Annex 5: Minutes of the 6th Sitting of 2025 held on 11th April 2025



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 40 OF 2023
REGARDING DELIMITATION OF ELECTORAL UNITS

DATE.....11-04-2025

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of regarding **Delimitation of Electoral Units** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Ernest Ogesi Kivai Kagesi, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, CBS, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Nimrod Mbithuka Mbai, M.P.	Member	
5.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
6.	Hon. Beatrice Kadeveresia Elachi, CBS, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
11.	Hon. Peter Mbogho Shake, M.P.	Member	
12.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
13.	Hon. John Bwire Okano, M.P.	Member	
14.	Hon. Peter Irungu Kihungi, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 40 of 2023)

REGARDING THE DELIMITATION OF ELECTORAL UNITS

1. **Honourable Members**, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
2. **Honourable Members**, in this regard, I wish to report to the House that my office has received a petition from Centre for Accountability, Reform and Democracy calling for delimitation of electoral units.
3. The Petitioners states that on 9th January 2012, the Independent Electoral and Boundaries Commission (IEBC) published the revised preliminary report relating to the delimitation of boundaries of Constituencies and Wards, which was presented to the Departmental Committee on Justice and Legal Affairs on the same date.
4. The Petitioners further state that after considering the recommendations by Parliament on its revised preliminary Report, the IEBC published the National Assembly Constituencies and County Assembly Wards Order, 2012 dated 6th March, 2012 published in the Kenya Gazette as **Legal Notice No. 14 of 2012**. The gazette informs the present constituencies and wards in place.
5. The Petitioners appreciate that following the publication of the final report and the National Assembly Constituencies and County Assembly Wards Order, 2012, complaints were raised regarding the manner in which 80 extra Constituencies and 1450 County Assembly Wards were created, their distribution, their names, boundaries and areas of allocation.

6. The Petitioners note that in accordance with the provisions of Article 89 (2) of the Constitution, the next review of boundaries of Constituencies and Wards must be undertaken and concluded not later than March 2024.
7. **Honourable Members**, the Petitioners are worried that Parliament has not developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity.
8. **Honourable Members**, the Petitioners aver that the Independent Electoral and Boundaries Commission (IEBC) has been dysfunctional since August 2022 General Election. The Commission is presently in limbo pending the recruitment of new commissioners thus no substantive constitutional functions can therefore be discharged by the Commission.
9. **Honourable Members**, the Petitioners therefore pray that the National Assembly engages the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution.
10. **Honourable Members**, having determined that the matters raised by the petitioner are well within the authority of this House; and further that the matters raised in the Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
11. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. (DR.) MOSES E.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date 8/8/23



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 25TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, APRIL 16, 2024, IN COMMITTEE ROOM 12, PARLIAMENT BUILDINGS AT 03.00. P.M

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. Edith Vethi Nyenze, M.P. | | |
| 5. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 6. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

- | | | |
|---|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Maisori Marwa Kitayama, MP | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 7. Hon. Caleb Mutiso Mule, M.P. | | |
| 8. Hon. Sloya Clement Logova, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |

IN ATTENDANCE

Centre for Accountability, Reform and Democracy

- | | | |
|---------------------------|---|--------------------------|
| 1. Mr. Tom Macharia | - | Chairperson (Petitioner) |
| 2. Mr. Jackson Kamau | - | Member |
| 3. Mr. Dick Gichohi Kagwe | - | Member |

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Miriam Modo | - | Clerk Assistant I |
| 2. Ms. Anne Shibuko | - | Clerk Assistant I |
| 3. Ms. Penninah Simiren | - | Legal Counsel II |
| 4. Mr. Martin Sigei | - | Research Officer III |
| 5. Mr. Calvin Karungo | - | Media Relations Officer III |
| 6. Mr. Peter Mutethia | - | Audio Officer |

7. Ms. Feistas Muiya

- Public Communications Officer

MIN./PPETC/2024/ 153: PRELIMINARIES

The Chairperson called the meeting to order at 03:00 p.m. and proceedings began with prayers by Hon. Hon. Suzanne Kiamba, M.P.

MIN./PPETC/2024/154: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 40 of 2023 regarding Delimitation of Electoral Units
- *Meeting with the Petitioner, Mr. Tom Macharia*
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Hon. Joshua Chepyegon Kandie, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/155:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/156:

CONSIDERATION OF PUBLIC PETITION NO. 40 OF 2023 REGARDING DELIMITATION OF ELECTORAL UNITS

The Secretariat guided the Member through a brief on the Petition as follows:

1. The Petitioner was Centre for Accountability, Reform and Democracy, a Non-Governmental Organization duly registered in Kenya for the purpose, inter alia, of engaging the Country's institutions of governance to deliver on their mandate and where appropriate propose required interventions.
2. On 9th January 2012, the Independent Electoral and Boundaries Commission (IEBC) published the revised preliminary report relating to the delimitation of boundaries of Constituencies and Wards, which was presented to the Departmental Committee on Justice and Legal Affairs (JLAC) on the same date.
3. After considering the recommendations by Parliament on its revised preliminary report, IEBC published the National Assembly Constituencies and County Assembly Wards Order, 2012 dated 6th March, 2012 in the Kenya Gazette.

4. Following the publication of the final report and the National Assembly Constituencies and County Assembly Wards Order, 2012, complaints were raised regarding the manner in which 80 extra Constituencies and 1450 County Assembly Wards were created, their distribution, their names, boundaries and areas of allocation.
5. Pursuant to the provisions of Article 89(2) of the Constitution, the next review of boundaries of Constituencies and Wards must be undertaken and concluded not later than March 2024.
6. Parliament has not developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity.
7. The petitioner therefore seeks the intervention of the National Assembly through this Committee to engage the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution.

Meeting with the Petitioner

The Petitioner, Mr. Tom Macharia appeared before the Committee and submitted as follows: -

1. Article 89(2) of the Constitution of Kenya states that: "The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years."
2. On 9th January 2012, the IEBC published its *Preliminary Report on the First Review Relating to the Delimitation of Boundaries of Constituencies and Wards* ("the Preliminary Report").
3. On 9th February 2012, the IEBC published the *Revised Preliminary Report relating to the Delimitation of Boundaries and Wards* ("the Revised Preliminary Report") which was presented to the Justice and Legal Affairs Committee of Parliament on the same date.
4. On 2nd March 2012, the IEBC received the *Recommendations of Parliament on the Revised Preliminary Report*.
5. After considering the recommendations of Parliament on its *Revised Preliminary Report*, the IEBC published the *National Assembly Constituencies and County Assembly Wards Order, 2012* dated 6th March 2012 published in the Kenya Gazette as *Legal Notice No. 14 of 2012*. The said gazette notice informs the present constituencies and wards in place today.

6. By virtue of the provisions of Section 27(4) of the Sixth Schedule to the Constitution of Kenya, 27 constituencies that did not qualify to be retained as constituencies as they were below the constitutional population quota threshold were saved. Particulars of the said constituencies are as follows:

	Name of Constituency	Current Member of Parliament	Party
1.	Lamu East	Hon. Captain Ruweida Mohammed	Jubilee
2.	Lamu west	Hon. Stanley Muiruri Muthama	Jubilee
3.	Mvita	Hon. Mohamed Soud Machale	ODM
4.	Mwatate	Hon. Peter Shake	Jubilee
5.	Wundanyi	Hon. Danson Mwakuwona	Wiper
6.	Voi	Hon. Khamis Abdi	Wiper
7.	Bura	Hon. Yakub Adow	UPIA
8.	Galole	Hon Said Buya Hirabae	ODM
9.	Isiolo South	Hon. Mohamed Tubi Bidu	Jubilee
10.	Kilome	Hon. Thuddeus Kithua Nzambia	Wiper
11.	Laisamis	Hon. Joseph Lekuton	UDM
12.	North Horr	Hon. Wario Guyo	KANU
13.	Saku	Hon. Dido Ali	UDA
14.	Mbeere North (formerly Siakago)	Hon. Geoffrey Ruku	DP
15.	Ndaragwa	Hon. George Gachagua	UDA
16.	Tetu	Hon. Geoffrey Mwangi Wandeto	UDA
17.	Murkurweini	Hon. Kaguchia Gichohi	UDA
18.	Othaya	Hon. Wambugu Wainaina	UDA

19.	Kangema	Hon. Peter Irungu	UDA
20.	Mathioya	Hon. Edwin Mugo	UDA
21.	Samburu East	Hon. Lentoijoni Lekumontare	KANU
22.	Marakwet East	Hon. David Bowen	UDA
23.	Keiyo North	Hon. Adams Korir	UDA
24.	Mogotio	Hon. Reuben Kiborek	UDA
25.	Vihiga	Hon. Kivai Kagesi	ANC
26.	Budalangi	Hon. Raphael Wanjala	ODM
27.	Samburu West	Hon. Josephine Lesuuda	KANU

7. In accord with the provisions of Article 89(2) of the Constitution, the next review must be undertaken and concluded no later than March 2024.
8. Following publication of the final report and the *National Assembly Constituencies and County Assembly Wards Order, 2012*, complaints were raised regarding the manner in which the 80 constituencies and 1450 County Assembly Wards were created, their distribution, their names, boundaries and areas of allocation. The complaints were resolved in a High Court decision reported as *Republic v Independent Electoral and Boundaries Commission & another Ex-Parte Councillor Eliot Lidubwi Kihusa & 5 others [2012] eKLR*.
9. In its decision, the high court made the following recommendations, reproduced verbatim, for implementation prior to the second boundaries review process:
 - a) The delimitation process is based on sub-locations. We heard several complaints about the manner in which these units were delimited. Sub-locations constrained the manner in which the IEBC could meet the constitutional criteria particularly that of population parity. For example, Kaptembwo sub-location in Nakuru Town West with a population of 70,352 was delimited into a ward of its own. The other wards in the constituency have populations ranging from 6,781 to 24,596 meaning that in such a place population parity cannot be achieved as long as the unit of delimitation is the sub-location.
 - b) There is therefore a need to develop a legal framework for the creation and determination of sub-locations. Failure to deal with this issue would open a door for indirect gerrymandering by those who have influence to create sub-

locations to suit their own tastes. The process adopted to determine sub-locations must take into account the obligation of the IEBC to progressively achieve population parity.

- c) Parliament must also address the issue of County boundaries. In some instances, we had conflicting or inaccurate information as to the counties where certain sub-locations were located. The Constitution lists the names of 47 counties but does not define the boundaries of each county. The definition of these boundaries in the Constitution is an imperative and will of necessity address the various disputes as to county boundaries including those, we encountered in the cases we considered.

10. The Senate ^{had} ~~has~~ recently published a bill, **The County Boundaries Bill, 2023**, to address the issue of County boundaries and has further published a notice in the daily newspapers on 24th March 2023 inviting views and memorandum from the public regarding the said bill which, among other issues:

- a) Sets out the boundaries of all 47 counties which the Constitution does not do as the High court noted in its 2012 decision regarding the boundaries delimitation process.
- b) Proposes, at Section 23, the **creation of the Independent County Boundaries Commission** as contemplated by Article 188 of COK. Composition of the Commission is at Section 24.
- c) Proposes mechanisms for resolving county boundary disputes including mediation committees. (There are currently over 15 county boundary disputes or issues that ought to be resolved prior to or concurrently with the constituency and ward boundaries delimitation process)
- d) Creates a process for petitioning for county boundary changes.

11. Parliament ^{had} ~~has not however~~ developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity as directed by the high court. This legal framework is an integral aspect of the boundaries delimitation process since both the constituency and ward boundary delimitation and county boundary delimitation processes (as framed in the County Boundaries Bill, 2003) use locations and sub-locations as the basis for identifying boundaries.

12. On 14th February 2020, the IEBC issued a press statement announcing that it

had developed a Boundaries Review Operations Plan (BROP) and had commenced implementation of the plan. The said plan is however not readily available to the public on IEBC's website like other documents prepared by the commission.

13. As part of the said implementation, the IEBC undertook a pilot study for the review and update of boundaries Geo-database. In its pilot study report released in February 2020, the IEBC stated that the pilot study on update of electoral boundaries geo-database revealed outstanding issues on electoral boundary

delimitation that need to be addressed before embarking on the second review including:

- a) The Sub-location remains the smallest administrative unit used in the delimitation of electoral areas.
- b) While new administrative units have been created and operationalized since the last delimitation in 2012, these changes have not been reflected in the administrative maps from Survey of Kenya which are the base maps for boundary delimitation.
- c) there are overlaps in electoral and administrative boundaries that affect service delivery.
- d) The pilot exercise was carried out by the commission and Ministry of Interior but excluded the County Government officials, yet the political wing of the County Government (County Assembly) is a major stakeholder in the boundary delimitation.

14. The commission therefore made the following recommendations as part of the pilot study report:

- a) It was necessary for the commission to collaborate with Survey of Kenya and Ministry of Interior to regularly update the administrative maps to capture the current status since gazettment of new administrative units is also done frequently.
- b) The commission ought to include other stakeholders in the boundaries review process such as ward administrators and village elders.
- c) Inter- governmental agency collaboration involving Ministry of Interior, Survey of Kenya and KNBS was necessary to update the administrative maps to capture the status on the ground and have a common base data.
- d) Sensitization of the citizens on the county boundaries as stipulated in the constitution and relevant Acts was necessary.
- e) There was need for the availing of electoral maps and personnel to both national and county government agencies to assist in resolving disputes.
- f) It was necessary for field visits to be organized to complete the process of the actual updating of maps.

15. The IEBC has however been in a dysfunctional state since the August 2022 election and is presently in limbo pending the recruitment of new commissioners. No substantive constitutional functions can therefore be discharged by the commission until the new commissioners are appointed

16. There is therefore need for all other stakeholders in the process to take a morepro-active role to ensure the process is carried out in a constitutionally compliant manner including meeting the deadline established by Article 89(2). Firm constitutional timelines cannot be extended.

17. Feedback from Kenyans indicates that the aforesaid interventions are necessary but have not been adequately attended to.

18. THAT:

- a) Some of the interventions required in this petition were specifically directed at parliament by the High court following the 2012 boundaries review and delimitation process.
- b) IEBC, the constitutional body mandated to oversee the boundaries delimitation process has no commissioners in place and has previously stated a collaborative approach is required for the boundaries review and delimitation process to succeed.
- c) There are ongoing efforts to enact the County Boundaries Bil, but the proposed bill cannot and will not address all the issues raised by this petition.

19. THAT:

- a) The issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.

WHEREFORE your humnble petitioner Prays that the National Assembly-

- a) Do develop a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity.
- b) Deliberate on and enact an appropriate mechanism to save, during the second review process, the 27 constituencies that were saved by Section 27(4) of the Sixth Schedule to the Constitution of Kenya during the first review.
- c) Call for the Boundaries Review Operations Plan (BROP) from the IEBC for purposes of preparing an integrated operations plan that takes into account:
 - i. The County Boundaries Bill, 2023
 - ii. The impact of the proposed Independent County Boundaries Commission in the process
 - iii. Inter- governmental agency collaboration involving Ministry of Interior, Survey of Kenya, Kenya National Bureau of Statistics, the judiciary and County Governments
 - iv. The principle that there should be **no taxation without representation as contemplated in Article 89(7)(b).**
 - v. The role and logistical plans for involving other stakeholders in the boundaries review process such as ward administrators and village elders as recommended by IEBC.
 - vi. The provisions of Section 36 of the Independent Electoral and Boundaries Commission Act.
 - vii. Municipal areas conferred with the status of cities under the the Urban Areas and Cities Act, 2011 since 2012.

- viii. The following Kenya gazette notices by which administrative units have been established as service delivery co-ordination units:
- a. Gazette notice no. 1236 published in February 2022
 - b. Gazette notice no. 4571 published in July 2020
 - c. Gazette notice no. 1042 published in January 2022
 - d. Gazette notice no. 2969 published in March 2022
 - e. Gazette notice no. 6809 published in June 2022
 - f. Gazette notice no. 5853 published in July 2017
- d) Consider and propose such further or other measures as the National Assembly deems proper, necessary or appropriate for purposes of ensuring that the second boundaries review and delimitation exercise is constitutionally compliant and thus avoid a constitutional crisis including but not limited to:
- i. Dissolution of a significant number of the 27 constituencies saved by Section 27(4) of the Sixth Schedule to the Constitution of Kenya during the first review.
 - ii. Unchartered territory resulting from violation of the timelines set by Article 89(2) of the Constitution
 - iii. Resource deprivation and the entrenchment of poverty in dense constituencies arising from violating Article 89(5) which requires, during the second and subsequent boundary reviews, that the boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

And your PETITIONER(S) will ever pray.

Committee concerns

1. The Committee observed that in accordance with the provisions of Article 89(2) of the Constitution, the next review should have been concluded no later than March 2024. The Committee was concerned with the fate of petitioner's prayers given that the review period had lapsed. The Petitioner explained that certain processes in the Petition could be undertaken sequentially and others simultaneously.
2. The Committee enquired on what processes could take place being that the IEBC had not been constituted. The petitioners explained that the following processes did not require action from the Commission itself:
 - a. Provision of criteria and guidance for how sublocations are determined including involvement of ward administrators and village elders as recommended by a pilot study conducted by IEBC;
 - b. Streamlining of administrative and political maps that the Department of survey may not be equipped to draw without guidance from IEBC;

- c. Coordination and integration of relevant govt bodies to hasten implementation of the delimitation process;
 - d. The process ought to factor in risk of delays occasioned by court processes to address disputes relating to hiring of IEBC Commissioners, the public participation process and the delimitation of boundaries process itself.
3. **The Committee asked for precision of the prayers by the Petitioner.** The Petitioner explained that there was need for Parliament to:
- i. create uniform standards for creation of administrative boundaries;
 - ii. come up with an act to determine the delimitation of electoral units; and
 - iii. establish an integrated operations plan for how the process will be undertaken taking into account all the process.
- * 4. **The Committee asked the Petitioners whether they had a draft proposal for the legal framework.** The Petitioners responded that they would submit a draft legislative proposal to the Committee within two weeks.

Committee Resolutions

- a) In considering the Petition, the Committee should engage and seeks views of—
 - i. National Assembly Departmental Committee on Justice and Legal Affairs;
 - ii. Secretariat of the Independent Electoral and Boundaries Commission;
 - iii. the Parliamentary Service Commission/ Selection Panel;
 - iv. Attorney General; and
 - v. Law Society of Kenya
- b) The secretariat should prepare a brief on the developments made in regard to proposed amendments to the IEBC Cap. 7C in the past one year.

MIN./PPETC/2024/157:

ANY OTHER BUSINESS

Site visit to the Coastal Region

The Committee discussed the upcoming site visits scheduled for the weekend of 27th April 2024 in Taveta Constituency and Mombasa and Kwale Counties respectively in consideration of four (4) Petitions, and advised the Secretariat to ensure that:

- i. All petitions that geographically touch on Mombasa and require site visits are slotted; and
- ii. the entire Committee conduct all site visits instead of as subcommittees

MIN./PPETC/2024/158:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 04:40 p.m. The next meeting will be held on Wednesday, 17th April 2024 at 12:00 p.m.

Sign: 

(CHAIRPERSON)

Date: 5/06/2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 64TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, NOVEMBER 28, 2024, IN COMMITTEE ROOM 20 ON 3RD FLOOR, BUNGE TOWER AT 11.00. A.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, MP | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

- | | | |
|------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Ernest Ogesi Kivai, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Bidu Mohamed Tubi, M.P. | | |
| 5. Hon. Caleb Mutiso Mule, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |
| 7. Hon. John Bwire Okano, M.P. | | |
| 8. Hon. Sloya Clement Logova, M.P. | | |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Ahmad Kadhi | Principal Clerk Assistant II |
| 2. Ms. Anne Shibuko | Clerk Assistant I |
| 3. Ms. Patricia Gichane | Legal Counsel II |
| 4. Mr. Willis Obiero | Clerk Assistant III |
| 5. Ms. Nancy Akinyi | Research Officer III |
| 6. Mr. Calvin Karungo | Media Relations Officer III |
| 7. Mr. Peter Mutethia | Audio Officer |
| 8. Ms. Wahu Mwirikia | Audio Officer Intern |

IN ATTENDANCE

TEACHERS SERVICE COMMISSION (TSC)

- | | |
|----------------------------|--------------------------|
| 1. Ms. Nancy Macharia | Chief Executive Officer |
| 2. Mr. Cavin Anyuor | Director, Legal Services |
| 3. Ms. Antonina Lentoijoni | Director, Staffing |
| 4. Mr. Gabriel Mathenge | Director, Operations |

5. Mr. Edwin Musindi Legal Officer

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

1. Mr. Marjan Hussein Marjan	CEO
2. Mr. Chrispine Owiye	Director, Legal Services
3. Ms. Linda Mworio	Communications Officer
4. Ms. Agatha Wahome	Ag. Director, Electoral Boundaries and Risk Manager
5. Ms. Irene Kyatu	Ag. Manager Electoral Boundaries
6. Mr. Tioko Nkieny	Manager, CEO's office

MIN./PPETC/2024/406: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and proceedings began with prayers by Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2024/407: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Meeting with Teachers Service Commission (TSC) regarding—
 - *P/No. 46 of 2023 on Payment of retirement dues and pension for retired teacher;*
 - *P/No. 47 of 2023 on Deployment of Classroom Teachers as Head Teachers in Schools across the Country;*
 - *P/No. 54 of 2023 on Unlawful Deductions by TSC in Favor of Kenya Union of Special Needs Education Teachers (KUSNET);*
 - *P/No. 62 of 2023 on Stagnation of Teachers' Progression; and*
 - *P/No. 76 of 2023 on Discrimination by the Teachers Service Commission on Career Progression Guidelines for Special Needs Education Teachers in Kenya.*
6. Consideration of P/No. 40 of 2023 regarding Delimitation of Electoral Units
 - *Meeting with the IEBC*
7. Any Other Business
8. Adjournment

MIN./PPETC/2024/408: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/409: MEETING WITH TEACHERS SERVICE COMMISSION (TSC)

The CEO TSC, Ms. Nancy Macharia appeared before the Committee and submitted as follows:

Background (Pension Regime in the teaching sector)

1. Pursuant to **Article 237(2)(f)** of the Constitution, upon exit from service the Commission processes the pension dues of teachers in line with either Defined Benefits (DB) Pension Scheme or Defined Contributory (DC) Pension Scheme.
2. The DB Scheme is regulated by the Pensions Act and fully financed by the exchequer. The membership to the DB scheme includes:
 - a) All teachers who exited service either through retirement or death on or before 1st January 2021.
 - b) All teachers under the permanent and pensionable terms of service who were in service as of 1st January 2021 and had attained the age of 45 years and above.
3. On the other hand, the government introduced the DC Scheme vide the Public Service Superannuation Scheme Act, 2012 that established the Public Service Superannuation Scheme (PSSS). Membership to PSSS is as follows:
 - a) All teachers under the permanent and pensionable terms of service as of 1st January 2021 and had not attained the age of 45 years.
 - b) All teachers employed on or after 1st January 2021 under the permanent and pensionable terms of service.
 - c) Teachers above 45 years who opted to join PSSS as of 31st March 2021.

Specific Responses to the Petition

TSC to establish the that have occasioned the delay payment of retirement benefits of the retired teachers in Mwatate the circumstances Constituency and the entire country.

4. The Commission has no mandate to pay pensions claims. Under the provisions of the Pensions Act, payment of Pension to employees in the public service including teachers is the mandate of the Cabinet Secretary, National Treasury.
5. The Commission's role in this regard is to prepare the Pension claim and forward them to the Director of Pensions, National Treasury for processing and payment.
6. Notably, the Commission has prepared and submitted to the Director of Pensions the Pension Claims of all the twenty-one (21) Petitioners on various dates.

TSC to provide data and statistics of all unpaid retired teachers in the entire country and indicate when they will pay all the retirement dues of the said teachers:

7. In line with the Pension Act, the Commission has no mandate to pay Pension Claims. Payment of Pension Claims is a mandate of the National Treasury, specifically, the Director of Pensions.
8. The role of the Commission is to submit Pension Claims to the Director of Pensions. To this end, as at 1st July, 2024, the Commission has prepared and submitted to the

Director of Pensions a total of **35,254** Pension between 2019 and 2023 for 10,270 retired teachers.

9. There was a balance of **5016** cases at various stages of claim preparation. Notably, majority of the unprocessed claims are death gratuity claims pending for various reasons amongst them being:
 - a) Incomplete or lack of statutory documents to support the pension claims.
 - b) Succession related disputes between beneficiaries in cases of deceased teacher.
 - c) Injunctive orders from the courts of law stopping the pension process pending hearing and final determination of the related succession cases.
10. Notwithstanding these challenges, the Commission has put in place elaborate mechanisms to reach the affected teachers or their representatives to provide all the relevant documents to support their respective claims.
11. In this regard, the Commission relies on its field officers to trace the affected teachers/beneficiaries with a view to ensure that accurate and complete claim documents are submitted to hasten the processing of the pension claims for onward transmission to the National Treasury.
12. Additionally, the Commission has automated/digitalized processes in its pension division under the Human Resource Management Information System platform where teachers or beneficiaries can easily upload the required documents.
13. To further hasten the pension process, the Commission in liaison with the National Treasury, has a desk of representatives of the Director of Pensions in its Pension Division who vets the claims before they are forwarded to the National Treasury for payment. This has reduced the back and forth between the Commission and the office of the Director of Pensions.
14. The Commission has no mandate to paying pension benefits. Its role in pension processing is restricted to submitting the Pension Claims to Treasury, Director of Pensions for payment of the benefits.
15. Accordingly, the Commission has submitted the Pension Claims of all the 21 Petitioners to the Director of Pensions. To this end, it is our humble submission that the Commission has discharged its mandate as required by law.

Committee Concerns

Regarding the difference between the teaching service and other public service pension schemes, TSC stated that most pensions in the public service were paid by the National Treasury hence the need for amendments to the Pensions Act.

P/No. 47 of 2023 on Deployment of Classroom Teachers as Head Teachers in Schools across the Country

Background

1. In 2015/2016, the Commission in consultation with the Salaries and Remuneration Commission (SRC) conducted a Job Evaluation (JE) for the teaching service. Based on the findings of the JE Report, SRC rendered a formal advisory proposing a new grading and remuneration structure for teachers in the public service.
2. The main objective of the JE exercise was to determine the relative worth of the jobs/assignments within the teaching service with a view to link teacher remuneration and benefits to the respective responsibility assigned to them. The JE introduced among others:
 - a) The position of Senior Master in post primary institutions.
 - b) Responsibility-Based Grading System and remuneration structure replacing the Qualification-Based System.
 - c) Removal of Responsibility Allowance.
 - d) Substantive appointment to administrative positions in teaching service.
3. After the JE, the Commission signed the 2017-2021 Collective Bargaining Agreement (CBA) with the teacher unions including Kenya National Union of Teachers (KNUT). This transition necessitated the development and implementation of the teachers' **Career Progression Guidelines (CPG)** and **Policy on Appointment & Deployment of Institutional Administrators** in 2017 to align the New Grading Structure with the career progression of teachers.
4. The Policy of Appointment & Deployment of Institutional Administrators (2017) provides standards ensuring that institutional administrative positions are competitively filled.

Conversion from the previous grading structure

5. Prior to the JE, teachers job groups were not in sync with their responsibilities. For example, a Head teacher would be at Job Group M" and a classroom teacher at "Job group G"
6. The JE addressed this disparity by categorising the teaching service into two (2) groups, administrators and non-administrators.
7. The administrators in primary schools comprised of **Head teachers, Deputy headteachers** and **Senior teachers**. Non-administrators comprised of classroom teachers in job-groups "H", "J", and "G".
8. Conversion of teachers at the primary school level were done based on the role of teacher at the time of their substantive job group.

Specified response to the Petition

9. Conversions to D1 and C5 were done as follows:

- a) Head teachers in Job Groups **M** and **N** were converted to grade D1 as **Senior Head teacher**.
- b) Teachers in Job Group **N** were converted to **grade D1 as Senior Head teacher**.
- c) Deputy Head teachers in Job Group **N** were converted as **Senior Head teachers to grade D1**.
- d) Head teachers in Job Groups G, H, J, K and L converted to **grade C5**.
- e) Deputy Headteachers in Job Group **M** were converted to grade C5, as **Deputy Headteacher I**.
- f) Teachers in Job group **M** were converted to grade **C5 as Deputy Headteacher I**.

- 10. The list submitted by the Petitioners has 10 members. However, Petitioner number 10 cannot be verified by the records held by the Commission as the details provided do not appear on the list of teachers employed by the Commission.
- 11. In 2017, before JE and signing of the 2017-2021 CBA, the Commission advertised for promotions of teachers to Job Group **M**.
- 12. Consequently, all the nine (9) Petitioners, successfully applied for the promotion and accordingly were competitively promoted to Senior Graduate Teachers, at Job Group 'M' with effect from May 2017.
- 13. Thereafter, in July 2017 in accordance with the recommendations of the JE and the terms of 2017-2021 CBA, the Commission converted teachers into the new Job Grades.
- 14. To this end, all the nine (9) petitioners who were then in Job Group **M** and not holding administrative positions were converted into **Grade C5** like all other classroom teachers who were in Job **M** at the time.
- 15. Admittedly, at the time of implementation of the JE report, teachers were converted to different grades based on various factors including their job groups at the time and the position they held at the time.
- 16. Pursuant to the records held by the Commission, the nine (9) Petitioners were in Job Group **M** and were not holding any administrative position. Accordingly, they were correctly converted to grade C5. However, teachers in job group **M** and were holding administrative positions were converted to D1.
- 17. Even though these teachers were in the same Job Group before 1st July 2017 (job group **M**), they were not holding the same responsibilities and thus the conversion to different grades, in that those who were classroom teachers, Senior teachers, or deputy Head teachers were converted to C5 while Head teachers were converted to D1.

18. To this end, the averment by the Petitioners that they should or ought to be in grade D1 is misconceived and without merit as they were not holding any administrative position at the time of conversions.
19. The JE implemented adopted the Peterson structure that provides for more payment for administrative duties. Consequently, remuneration of teachers is done in accordance with the substantive teachers' Job Grade and the responsibilities linked to the grade. To this end, the Petitioners are remunerated as per the salary attached to their respective job grades.
20. It then follows that teachers at Job Grade D1 rightfully earn more than those in Job Grade C5 as they are in higher Job Grade with higher responsibilities.
21. Further, promotions to administrative positions after implementation of the recommendations of the JE are done competitively in accordance with the Policy on Appointment & Deployment of Institutional Administrators.
22. The promotions are based on several factors, key among them being availability of vacancies in authorized establishments and budgetary provision. Due to lack of vacancies, the Commission did not advertise for promotions in grade D1.
23. The Petitioners having been correctly converted to job grade C5, will progress to D1 when vacancies become available, and interviews done in accordance with the Code of Regulation for Teachers and relevant promotion policies.
24. Only two (2) petitioners wrote to the Commission on diverse dates requesting for promotion to Grade D1. The Commission duly responded to their requests. The Commission has not received any letter(s) from the other petitioners or Secretary General KNUT on behalf of the petitioners as alleged.

Committee Concerns

- (i) **On the utilization of resources for non-responsive advertised positions**, the CEO clarified that the Commission would re-advertise these positions with more vigorous campaigns. This approach is necessary because the National Treasury does not permit the reallocation of funds earmarked for promotions in a particular cadre to other cadres.
- (ii) **Regarding concerns about teachers remaining in the same position despite participating in multiple interviews for headship roles**, the CEO explained that TSC applies specific criteria during the promotion process. These parameters include prior acting capacity, length of service, age, involvement in co-curricular activities, and academic performance. Each of these factors is assigned a score and considered during the evaluation for headship promotions.

P/No. 54 of 2023 on Unlawful Deductions by TSC in Favor of Kenya Union of Special Needs Education Teachers (KUSNET)

Background

1. The Commission in embracing the spirit of the Constitution under Article 41 of the Constitution, has signed recognition agreements with three Teacher Unions namely including, Kenya Union of Post-Primary Education Teachers (KUPPET), Kenya National Union of Teachers (KNUT) and Kenya Union of Special Needs Education Teachers (KUSNET).
2. Pursuant to the Recognition Agreements each union in the teaching service has a distinct constituency. For example, KUPPET membership is derived from Post Primary school teachers; KNUT members are primary school teachers; and KUSNET Constituency comprises of teachers deployed to teach In Special Needs Education institutions and/or teachers duly registered as persons with disabilities under the Persons with Disabilities Act.
3. To foster the freedom of association and the right of every employee to join or leave a trade union at will as provided under Article 41(2) (c) of the Constitution and Section 4(1) of the Labour Relations Act, the Commission has developed and operationalized an online platform namely Teachers' Pay (T-Pay) to enable teachers to manage third-parties deductions in their pay slips.
4. The T-Pay system allows teachers to manage transactions in their pay slips by approving any third-party (such as unions, banks, insurances, associations, etc.) deductions that they wish to be effected on their pay slips. Similarly, a teacher who desires to exit a union is only required to log into T-Pay system and stop the deduction.

Specific Responses to the Petition

5. The Commission has over the years recognized the right of employees to join and participate in trade unionism. Further, the need for bipartisan approach to labour relations begins with the recognition of teacher unions pursuant to Section 54 of the Labour Relations Act, this cannot be understated.
6. In line with section 4(1) of the Labour Relations Act, teachers are allowed to voluntarily join teacher unions of their choice by approving deductions to the union through the Commission's T-Pay platform. Similarly, where a teacher opts to leave membership of the union, he/she stops the deductions on the same platform.
7. Accordingly, teachers join unions voluntarily by approving deduction of membership fees in their pay slips.
8. KUSNET was registered by the Register of Trade Unions as a trade union on 30th August 2011 and issued with a Certificate of Registration Number TU/160.
9. The union's leadership is as follows **James Torome, Secretary General, Amos Karanja, National Chairman** and **Monica Gathu**. Other details with respect to the union may be obtained from the Registrar of Trade Unions who is the Regulator.

10. Pursuant to **section 54** of the Labour Relations Act, the Commission signed a Recognition Agreement with KUSNET on **3rd March 2021** allowing the Commission to engage KUSNET in negotiation of teachers' terms of service.
11. To this end, KUSNET negotiated the terms of service for its members and signed a Collective Bargaining Agreement with the Commission dated **13th July 2021**.
12. Following the signing of the Collective Bargaining Agreement, KUSNET pursuant to section 49 of the Labour Relations Act requested the Minister for Labour and Social Protection to issue an order requiring the Commission to deduct Agency Fee from the wages of each unionisable teacher under the constituency of KUSNET who is not a member of the trade union.
13. Accordingly, the Minister issued an order vide **Legal Notice No. 10 of 2022** directing the Commission to deduct agency fee from unionisable teachers under the constituency of KUSNET who have not subscribed as members of the union.
14. To this end, the Commission deducts union dues from teachers who have duly registered as members of KUSNET and Agency Fees from members who are under the constituency of KUSNET and have not registered as members of KUSNET.
15. All teachers who are members of KUSNET or any other union recognized by the Commission joined the union(s) voluntarily by approving deduction of union dues fees in their pay slips. It is, therefore, not true that some KUSNET members joined the Union without consent, and they have been deducted union dues.
16. With regards to the Petitioners, fourteen (14) of them are deducted agency fee as they fall within the constituency of KUSNET while one (1) Petitioner, Ms. Stella Mageto is deducted membership fee as she is member of KUSNET.

Committee Concerns

- (i) **Regarding how the Commission remitted the deductions**, the CEO clarified that the deductions on behalf of the unions including KUSNET or other third-party subscriptions were made by 25th of every month and the money was in IFMIS.
- (ii) **Regarding the autonomy of TSC in managing payroll of teachers**, the CEO indicated that the Commission had fought for the autonomy to run and manage the payroll of teachers. This has caused several administrative bottlenecks and the Commission had to conduct a retreat with several State Departments to actualize certain policies.

Background

1. Pursuant to the provisions of **Article 237(2)(d)** of the Constitution, the Commission has the mandate to promote teachers under its employment.
2. In discharging this mandate to promote teachers, the Commission observes the values and principles of public service under Article 232 of the Constitution. To this end the Commission has endeavoured to apply the principle of fair competition and merit, integrity, transparency and accountability, equity, fairness and impartiality, inclusiveness, non-discrimination and gender equity in the selection and appointment process.
3. Further, the promotion of teachers in public service is premised on CORT, Career Progression Guidelines (CPG) for teachers and the Policy on Selection and Appointment of Institutional Administrators.
4. Specifically, **Regulation 73 of the CORT** provides for general guidelines in promotion of teachers including: **merit and ability as reflected in the teacher's work, performance and results; seniority and experience as set out in the scheme of service; existence of a vacancy; and academic and professional qualifications.**
5. On the other hand, the Career Progression Guidelines (CPG) and the policy on Selection and Appointment of Institutional Administrators outlines the skills and competencies necessary for advancement in the profession by providing for minimum requirements for selection, appointment and promotion of teachers at different grades.
6. To this end, all promotion vacancies are filled competitively with the objective for recognize or reward effort or align teachers for succession management/career progression and to motivate employees to perform better in their duties and responsibilities with the aim of improving quality teaching and learning.

Specific Response to the Petition

7. Promotions in the teaching sector are done under two limbs as follows:

Common Cadre Promotions:

8. Promotions under the Common cadre is considered based on the following categories:
 - a) *Primary school teachers*: Employed with a P1 qualification and are placed in grade B5. Upon completion of three years of satisfactory service, they are automatically promoted to grade C1 in the common cadre establishment.
 - b) *Secondary school teachers*: Employed with a Diploma qualification and placed in grade C1. Upon completion of three years of satisfactory service, they are

automatically promoted to grade C2 in the common cadre establishment. Additionally, for Secondary school teachers who are employed with a degree qualification, they are placed in grade C2. Upon completion of three years of satisfactory service, they are automatically promoted to grade C3 in the common cadre establishment.

9. Accordingly, the Commission has promoted a total of **168,389 teachers** on Common cadre promotions between Financial Years 2017/2018 and 2023/2024.

Competitive Promotions

10. Promotions from the common cadre establishments are competitively filled with the objective to promote national values, fairness, non-discrimination, and equity. The promotions are premised on inter alia availability of funds and existence of vacancies in authorized establishments.
11. Promotion of institutional administrators is guided by the Policy on Appointment and Deployment of Institutional Administrators. The policy provides for clear career progression structures to ensure systematic progression, growth and professional development for all teachers. It outlines the experience, academic and professional requirements necessary for appointment and deployment of institutional administrators and further sets the process for career advancement and succession management in institutions.
12. A teacher must meet all the requirements set out in the Policy on Appointment and Deployment of Institutional Administrators to qualify for appointed as an administrator. Additionally, the teachers must show interest by applying when the Commission advertises for the said posts.
13. A summary of teachers promoted between Financial Years 2019/2020 and 2023/2024 on competitive basis were **73,902**.
14. Pursuant to the implementation of the 2017-2021 CBA and the Career Progression Guidelines, all teachers were promoted in 2017 and thereafter, automatically promoted after 3 years for common cadre promotions.
15. Accordingly, it is not true that teachers have stagnated for 15 years. While some teachers may have stayed in one job group more than three years, the delay in promotion is majorly caused by budget constraints to undertake competitive promotions.
16. Further, the Commission has severally engaged KUPPET on issue of promotions with the most recent engagement being from 9th to 12th April, 2024 at a workshop in Naivasha where the Commission extensively elaborated to the union the challenges causing delay in promotion of teachers.

Committee Concerns

- (i) **Regarding communication with teachers regarding vacancies and requirement for promotions**, the CEO noted that the Job Evaluation (JE) was conducted in consultation with union representatives and associations, including the Kenya

Secondary Schools Heads Association (KESSHA) and the Kenya Primary Schools Headteachers Association (KEPSHA). This ensured that teachers were represented through their respective cohorts. Following the JE-based Collective Bargaining Agreement (CBA), the TSC issued a circular to every school and disseminated it via its website, newspapers, television, and field officers who represent the Commission at the zonal level.

- (ii) **Addressing concerns about whether the Schemes of Service constituted a "moving target" during promotions**, the CEO clarified that a standardized policy exists under the Career Progression Guidelines (CPG). Other criteria, such as performance in curriculum delivery and years of experience, are only applied in exceptional cases to determine promotion eligibility.
- (iii) **On the issue of funding required to prevent career stagnation among teachers**, the CEO emphasized the need for an annual budget dedicated to promotions. The last budget allocation for promotions was ten years ago, which has led to significant stagnation and demotivation among teachers. While TSC had proposed an annual budget of Kshs 2 billion, the current administration provided only Kshs1 billion. This is insufficient to meet the needs of the 400,000 teachers, some of whom have stagnated for over a decade. Moreover, with 46,000 additional teachers recently employed on permanent and pensionable terms, the proposed budget may need further revision to accommodate their eventual promotions.
- (iv) **Regarding the estimated number of advertised positions for the Financial Year 2024/2025**, the CEO stated that the most recent advertisement sought to fill 5,690 positions, mainly to support the new Competency-Based Curriculum (CBC). Among these were 2,911 deputy headteacher roles. However, the advert attracted only 2,566 applications, as many qualified teachers were reluctant to apply for promotions due to concerns over potential transfers.
- (v) **Addressing allegations of corruption in teacher recruitment**, the CEO reported that investigations conducted in collaboration with relevant stakeholders found no evidence of malpractice. Nonetheless, the Commission remains open to new evidence to improve the process. The recruitment portal was established to minimize human interference, ensuring only applicants who met the qualifications were considered. Out of approximately 150,000 qualified applicants, only 36,000 vacancies were available, with unqualified candidates automatically filtered out by the system.
- (vi) **On the frequency of TSC policy reviews**, the CEO mentioned that the last review of the Career Progression Guidelines (CPG) took place in 2018. The next review is scheduled for July 2025 to align with the upcoming CBA for 2025-2029.

Background

1. Prior to the JE, teachers job groups were not in sync with their responsibilities. For example, a Head teacher would be **Job Group G** and a classroom teacher at **Job Group M**.
2. The JE addressed this disparity by categorising the teaching service into two (2) groups, Institutional administrators and non-administrators. The administrators in primary schools comprised of Head teachers, Deputy headteachers and Senior headteachers.
3. Conversion of teachers at the primary school level were done based on the role of the teacher at the time and their substantive job group.
4. Noting that special schools and units are categorised as either primary or secondary, SNE teachers were converted using the same formula and thus they acquired the grades associated with primary or secondary teachers whichever was applicable.
5. Pursuant to the conversion and in line with the new grading structures, SNE teachers retained similar title as teachers in regular schools in the payroll, for example, SNE teacher converted to C2 retained the name **Senior Teacher II** instead of **Primary Teacher II (SNE)**.
6. Admittedly, the Job titles in the Commission's payroll and those in the CPG 2018 are yet to be aligned with respect to SNE teachers.
7. This has been occasioned by the fact that the Government's payroll system which is managed by the State Department of Public Service has been undergoing re-configuration to facilitate migration to a new payroll system.
8. Despite the lack of change in the job title of SNE Teachers in the payroll, the Commission has ensured that the teachers are paid salaries that are commensurate to their designation. Accordingly, there has not been any discrimination on the salary structure of the SNE Teachers.
9. Noting the confusion created by the lack of change in the job title of SNE Teachers in the payroll, the Commission is working closely with the State Department of Public Service to align the grades for the Job Titles in the payroll to reflect those in the CPG.

General Committee Concerns

- (i) **Regarding effective communication with teachers during recruitment and promotion processes**, the TSC clarified that every teacher is eligible for automatic promotion to the next grade after three years. However, due to limited vacancies and the need to ensure equity and fairness, not all eligible teachers can be promoted simultaneously, necessitating a competitive selection process. The

TSC emphasized that unsuccessful candidates are considered for subsequent opportunities and are issued regret letters to acknowledge their applications.

- (ii) **On whether a classroom teacher could be promoted to the highest grade without holding a headship or management position**, the TSC explained that while this was possible in the past, the current structure under the Job Evaluation (JE) framework assigns higher ranks to administrators. The JE framework was developed through consultations with multiple stakeholders, including teachers. Notably, institutional heads continue to fulfil their roles as classroom teachers.
- (iii) **Regarding the balance between teacher demand and supply**, the TSC CEO noted that while budget constraints remain a significant challenge, the Commission regularly engages the Ministry of Education through advisory proposals. For example, the Ministry paused the training of P1 teachers for two years to facilitate the transition from P1 certification to diploma-level qualifications. The CEO underscored the importance of aligning teacher training projections with periodic advisory updates.
- (iv) **On the gradual implementation of the delocalization policy**, the TSC clarified that the process ensures seamless replacements for transferred teachers to avoid disruptions to learning.

Committee Resolutions

After deliberations, the Committee resolved to proceed with report writing for the petitions except **P/No. 46 of 2023 on Payment of Retirement Dues and Pension for Retired Teachers** which was pending engagement with the National Treasury and the Retirements Benefits Authority (RBA).

MIN./PPETC/2024/410:

**CONSIDERATION OF P/NO. 40 OF 2023 REGARDING
DELIMITATION OF ELECTORAL UNITS**

Meeting with the IEBC

The CEO IEBC, Mr. Marjan Hussein Marjan appeared before the Committee and submitted as follows—

Introduction

1. The Independent Electoral and Boundaries Commission (IEBC) is a Constitutional Commission established under Article 88 of the Constitution.
2. Article 88 (4) outlines its mandate to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other election as prescribed by an Act of Parliament.
3. Specifically, Article 88(4)(c) of the Constitution provides that the IEBC is responsible for "the delimitation of constituencies and wards". Further, Article 82(1)(a), requires Parliament to enact legislation to provide for "the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and County Assemblies."

4. Pursuant to the aforesaid requirement, Parliament enacted the Independent Electoral and Boundaries Commission Act, 2011 (the IEBC Act) effectively granting a lifeline to the provisions of Article 82(1)(a) as read together with the provisions of Articles 88 and 89.
5. In addition, under Sections 2, 4(c), 36 and the Fifth Schedule of the IEBC Act, CAP 7C, the IEBC was required to resolve all issues arising from the first review and therefore, complete the first review. Following the review, the Commission was required to publish its final report within a period of four (4) months of the date of appointment of its Chairperson and Members as provided under the IEBC Act.
6. By dint of Sections 2, 4(c), 36 and the Fifth Schedule of the IEBC Act, the IEBC resolved all issues, completed the first review of electoral boundaries and published the final report of the National Assembly Constituencies and County Assembly Order, 2012 dated 6th March, 2012 in the Kenya Gazette as Legal Notice No. 14 of 2012.

Response to the issues raised in the Petition

The IEBC noted the concerns raised in the Petition and responded as follows—

Complaints were raised after the last boundary delimitation exercise regarding the way 80 extra constituencies and 1450 county assembly wards were created.

7. The Interim Independent Boundaries Review Commission (IBRC) was established pursuant to the Constitution of Kenya (Amendment) Act, No. 10 of 2008 as part of the four (4) main reform agendas towards electoral transformation. This was as a result of the aftermath of the disbandment of the Electoral Commission of Kenya (ECK), whose functions were subsequently spread between the IBRC and the Interim Independent Electoral Commission (IIEC).
8. The IIBRC Chairperson and 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 inter alia—
 - (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; and

- (c) And any other functions as may be prescribed by parliament.
9. This mandate was further modified by the new Constitution promulgated on 27th August, 2010 under paragraph 27 of the Sixth Schedule which charged the IIBRC with the mandate to determine the boundaries of constituencies and wards using the criteria mentioned in the Constitution.
 10. It was pursuant to this constitutional imperative that the IIBRC completed its work, determined eighty new constituencies in addition to the existing two hundred and ten and published the list in the print media on 17th November, 2010.
 11. Following this publication and determination of the disputes that ensued thereafter, the TEBC was required, pursuant to the provisions of paragraph 2 (1) (a) and (b) of the Fifth Schedule to the IEBC Act, to address the issues arising out of the first review by:
 - (a) Using as its primary reference material the report of the former Boundaries Commission (IIBRC) on the first review as adopted by the National Assembly; and
 - (b) Using as its secondary reference material, the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.
 12. In carrying out the exercise, the IEBC sought to resolve issues arising from the first review as stated in paragraph 2(2) (a). (b) as follows:
 - (a) Re-distribution of such wards or administrative units in the affected constituencies as may be appropriate; and
 - (b) Subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution.
 13. Pursuant to this, the IEBC conducted public participation to resolve all issues arising from the first review conducted by IBRC while sensitizing the publics on the proposed boundaries of constituencies and wards before the preparation of the final report.
 14. Any resultant disputes were handled through the appropriate dispute resolution fora, that is, the Courts. In strict adherence to the rule of law, the Commission implemented the decisions of the Courts.
 15. The next review of boundaries should have been undertaken and concluded not later than March 2024 but since the recruitment of Commissioners is pending no substantive constitutional functions can be discharged by the Commission.
 16. Articles 82(1) (a) and 89 confer upon the IEBC the mandate to review the names and boundaries of constituencies and the number, names and boundaries of wards. The criteria to consider in delimitation of electoral boundaries is espoused under Article 89.

17. The stipulated constitutional timelines for review of the names and boundaries of Constituencies is not less than eight (8) years and not more than twelve (12) years while the timelines for review of the number, names and boundaries of Wards is periodic.
18. The import of this, is that the eight-year period took effect in 2020 with the twelve-year outer limit terminating in March, 2024. The IEBC has not undertaken the delimitation of boundaries owing to vacancies in the membership of the IEBC.
19. It is imperative to point out that during the intervening period, the legislative framework on review of electoral boundaries morphed through various amendments to Acts of Parliament including but not limited to:
 - i. Section 36 of the IEBC Act, 2011;
 - ii. The Fifth Schedule to the IEBC Act (now spent) and
 - iii. Section 26 of the County Governments Act, 2012,
20. In the review of electoral boundaries, the IEBC has and continues to rely on the following legislative framework for purposes of compliance:
 - i. The Constitution of Kenya, 2010;
 - ii. The IEBC Act, 2011;
 - iii. The County Governments Act, 2012;
 - iv. The Urban Areas and Cities Act, 2011;
 - v. The Survey Act, 1961 (Rev 2020) and
 - vi. Statistics Act, 2006.
21. The term of the Commissioners lapsed on 17th January, 2023. Prior to that, IEBC had prepared a Boundaries Review Operation Plan (BROP) to provide a road map for the delimitation exercise. It used a phased approach as follows:

Phase I: Pre-Delimitation-Preparatory: Activities such as planning, development of documents, legal framework, capacity building, collection, and validation.

Phase II: Delimitation: Gazettement of intent to conduct delimitation, Conduct of stakeholder engagement and education, collection and analysis of memoranda, public hearing and gazette of descriptions of new electoral units and generation of new electoral maps.

Phase III: Post-Delimitation: Post-delimitation report, petitions and implementation of high court decisions.

22. The IEBC has not completed phase one while phases two and three are yet to commence. The pending work in phase one encompasses geo-data validation and capacity enhancement of all necessary staff.
23. It is worth noting that while vacancies exist within the membership of the Commission, the IEBC remains legally and constitutionally obligated to undertake the delimitation of boundaries. It is not clear whether the Constitution permits the timelines under Article 89 to be extended.

24. The IEBC invoked Section 29 of the IEBC Act and sought the guidance of the Attorney General whose office advised that the IEBC Secretariat cannot conduct functions under Article 88 (4) of the Constitution. The Attorney General also laid emphasis that the failure to conduct boundary delimitation would likely result in legal challenges as well as compromising the right to fair representation, political stability, social cohesion and electoral integrity.
25. In this regard, the IEBC in July, 2024, filed a Reference requesting an Advisory Opinion from the Supreme Court on how to proceed taking into account the lapsed constitutional timelines and absence of Commissioners necessary for the electoral process. The matter is pending before the Supreme Court.
26. As a matter of information and owing to the lacunae in the membership of Commissioners, the Commission has sought an advisory from the Supreme Court with regard to the lapsed timelines for delimitation of boundaries in order to get guidance on the next steps given the current legal crisis.
27. The IEBC craves for the Supreme Court's advisory opinion of the following issues—
 - i. Whether the applicant can undertake the process of delimitation of electoral boundaries and other electoral processes in the absence of Commissioners or the requisite quorum of Commissioners;
 - ii. Whether the applicant can conduct a review of the names and boundaries of constituencies and wards when the timelines envisage under Articles 89(2) and (3) as read together with Section 26 of the of the County Governments Act have lapsed; and
 - iii. Whether the constitutional timelines envisaged under the provisions of Articles 89(2) and 89(3) as read together with Section 26 of the of the County Governments Act can be extended, if so, by whom and under what circumstances.

Parliament has not developed a legal framework for the creation and determination of sub-locations that takes into account the obligation of the IEBC to progressively achieve population parity

28. The IEBC is guided by an elaborate legal framework streaming from the Constitution and operationalized by the IEBC Act and the Procedures for Delimitation of Electoral Units enacted by Parliament on 15th July, 2024.
29. Notably, during delimitation of electoral boundaries, the IEBC utilizes data resident in other state agencies. In addition, the respective agencies would be required to submit the necessary data to the IEBC to facilitate its process of delimitation of electoral boundaries.
30. Specifically, Kenya National Bureau of Statistics (KNBS) will submit population data which is in Geodata format.
31. As a matter of information, sub-locations are administration structures of the National Government. The sub-location population data is drawn from collating

enumerated population of contagious enumeration blocks. It is neither a basic unit of population census nor elections.

The National Assembly to engage the relevant authorities and stakeholders to ensure the review of electoral units is carried out in a constitutionally compliant manner.

32. In pursuit of its electoral legal reform agenda, the IEBC ensures robust engagements and public participation with relevant stakeholders. Parliament enacted the IEBC (Amendment) Act, 2024 on 15th July, 2024, that provides the mechanisms for the IEBC to engage stakeholders on the delimitation of boundaries under the Fifth Schedule.
33. As such, the process of boundary delimitation would be able to be sufficiently undertaken under the current legal framework once the Commissioners are appointed. This is of course dependent on the advisory opinion that the supreme Court will render on the constitutional timelines for delimitation of electoral units.

Conclusion

34. The Commission notes with appreciation the intention of the Petition to ensure the delimitation of boundaries as provided under Article 89 is undertaken. However, for the reasons discussed above, the Commission submits that it cannot currently undertake delimitation and awaits further direction on the matter.
35. The Commission recommends that the process of recruitment of Commissioners be fast tracked to enable the Commission to discharge its constitutional mandate which includes delimitation of constituency and ward boundaries.

Committee Concerns

(i) Possible outcomes from the Supreme Court's determination

The Commission outlined potential outcomes from the Supreme Court's decision. If the Court allows the Secretariat to proceed with delimitation, the process can continue. However, a critical question remains about who has the authority to extend the guidelines. If the Commission's constitution is expedited, they can fulfill their mandate accordingly. The Supreme Court's involvement became necessary due to lapsed timelines. A bench has since been constituted to address the issues presented by the IEBC Secretariat.

(ii) Supreme Court's role vs. the Commission's independence

The CEO explained that the Supreme Court's role is to interpret the Constitution. The Court will likely consider the elapsed timelines, the rationale behind these timelines, and the circumstances following the departure of the Commissioners a year prior. It may examine which institution is responsible for ensuring a quorum within the Commission and whether external factors contributed to the delays. A purposive interpretation of the timeline provisions is needed. For instance, as the 2027 General Election approaches, a second review of boundaries is essential to avoid conducting

the election without updated delimitations. The Supreme Court may extend timelines, as delimitation must not exceed one year before the 2027 elections. Parliament may also need to amend the timelines legislatively.

(iii) Fate of wards and constituencies without representatives

The Commission clarified that byelection matters require intervention from the Commission itself. The Secretariat handles administrative tasks and implements the Commission's policy resolutions.

(iv) Establishment of additional polling stations

Citing Article 88, the Secretariat emphasized that establishing additional polling stations requires voter registration, which necessitates the presence of the Commission.

(v) Livestreaming of presidential results

Regarding efforts to bar the livestreaming of presidential results, the Commission explained that the proposal stemmed from the Election Amendment Bill 2024, which underwent public participation in the Senate. Section 39G of the Elections Act, enacted in 2017 during the period between the nullification of the 2017 presidential election and the fresh election on October 26, 2017, allowed livestreaming for public information only, excluding such results from official declarations.

After Parliament approved the Bill, the President declined to assent, and the Bill became law. However, the Katiba Institute and other civic organizations challenged this provision in court, which declared it unconstitutional. During public participation, it was suggested that the Elections Act be amended to reflect the court's ruling. As it stands, the transmission of election results in the 2027 General Election will proceed.

Committee Resolutions

After deliberations, the Committee resolved to proceed to write the report on the Petition with a view of responding to the Petitioner's prayers.

MIN./PPETC/2024/411:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:30 p.m. The next meeting will be held on Tuesday 3rd December, 2024.

Sign:

 (CHAIRPERSON)

Date.....28/11/2024.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

**MINUTES OF THE 6TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON
FRIDAY, APRIL 11, 2025, IN ACACIA A CONFERENCE ROOM, SAWELA LODGE,
NAIVASHA AT 10.00. AM**

PRESENT

1. Hon. Ernest Ogesi Kivai, M.P.	Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.	Member
3. Hon. Maisori Marwa Kitayama, M.P.	Member
4. Hon. Edith Vethi Nyenze, M.P.	Member
5. Hon. Bidu Mohamed Tubi, M.P.	Member
6. Hon. (Eng.) Bernard Nebart Muriuki, M.P.	Member
7. Hon. Peter Irungu Kihungi, M.P.	Member

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, CBS, M.P.	Vice-Chairperson
2. Hon. Patrick Makau King'ola, M.P.	Member
3. Hon. Nimrod Mbithuka Mbai, M.P.	Member
4. Hon. Beatrice Kadeveresia Elachi, CBS, M.P.	Member
5. Hon. Peter Mbogho Shake, M.P.	Member
6. Hon. Suzanne Ndunge Kiamba, M.P.	Member
7. Hon. John Bwire Okano, M.P.	Member
8. Hon. Sloya Clement Logova, M.P.	Member

SECRETARIAT

1. Mr. Ahmed Kadhi	Principal Clerk Assistant II
2. Ms. Roselyne Ndegi	Senior Serjeant-At-Arms
3. Ms. Patricia Gichane	Legal Counsel II
4. Mr. Willis Obiero	Clerk Assistant III
5. Mr. Calvin Karungo	Media Relations Officer
6. Ms. Nancy Akinyi	Research Officer III
7. Mr. Peter Mutethia	Audio Officer

MIN./PPETC/2025/026: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 am. and proceedings began with prayers by Hon. Peter Irungu Kihungi, M.P.

MIN./PPETC/2025/027: ADOPTION OF AGENDA
AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No.40 of 2023 regarding Delimitation of Electoral Units;
6. Consideration of Public Petition No.46 of 2023 regarding Payment of Retirement Dues and Pension for Retired Teachers; and
7. Consideration of Public Petition No. 47 of 2023 regarding Deployment of Classroom Teachers as Headteachers in Schools Across the Country
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business of the Meeting having been proposed by Hon. Peter Irungu Kihungi, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2025/028: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2025/029: CONSIDERATION OF PUBLIC PETITION NO.40 OF 2023 REGARDING DELIMITATION OF ELECTORAL UNITS

The Committee considered the draft report and made the following observations—

- (i) That pursuant to Article 89 (2) of the Constitution the timeline for the delimitation of boundaries and review of names and boundaries lapsed in March 2024.
- (ii) That at the time of considering this report the recruitment process of the IEBC Commissioners was ongoing consequently there was no Commission to discharge the mandate under Article 89 of the Constitution.
- (iii) Pursuant to Article 82 (1)(a) the Independent Electoral and Boundaries Commission Act was amended in July 2024 to provide a framework for the delimitation process in part IIIA of the Act and the Fifth Schedule of the Act.
- (iv) That the issue of sublocations as raised by the Petitioner was distinct from the issue of delimitation as they do not equate to electoral units but are administrative units.
- (v) Wards and sublocations may overlap however the process of creation of these two units are distinct. The IEBC has the mandate for the creation or review of new electoral units while the Cabinet Secretary Ministry of Interior has the power to gazette sublocations for service delivery pursuant to Section 14 of the National Government Co-ordination Act 2013.

(vi) On the issue of the twenty-seven (27) constituencies in section 27(4) of the Sixth Schedule of the Constitution that were saved during the first review, the committee observed that pursuant to Article 89 (2) the Commission has the mandate of review of boundaries for Constituencies and therefore Parliament cannot dictate over the process of review.

(vii) On the issue of the Boundaries Review Operations Plan (BROP) by IEBC, the committee observed that the Plan was not in the public domain.

Committee Resolutions

After deliberations, the Committee resolved to adopt the report with the following recommendations—

(i) On the prayer that the National Assembly through the Public Petitions Committee engages the relevant authorities and stakeholders to take a more proactive role to ensure the review of the electoral units is carried out in a constitutionally compliant manner including meeting the deadline established under Article 89(2) of the Constitution, the Committee recommends that—

(a) Upon reconstitution of the Independent Electoral and Boundaries Commission, the Commission should commence the delimitation process expeditiously with a view to concluding the process in compliance with Article 89 (4);

(b) Upon reconstitution, the IEBC appraises the National Assembly Departmental Committee on Justice and Legal Affairs on the Boundaries Review Operations Plan (BROP) within three months from the date of reconstitution;

(ii) On the issue of provision of a framework for the creation and determination of sub-locations, the Committee recommends the amendment of section 14 of National Government Coordination Act to provide criteria for determination of sub-locations.

MIN./PPETC/2025/030:

CONSIDERATION OF PUBLIC PETITION NO.46 OF 2023 REGARDING PAYMENT OF RETIREMENT DUES AND PENSION FOR RETIRED TEACHERS

The Committee considered the draft report and made the following observations—

(i) There was a significant delay in the processing and payment of pension benefits to retired teachers attributed to among others incomplete documentation required to support pension dues, succession disputes, and court cases stopping processing of pension claims pending determination among others.

(ii) Lack of coordinated effort between the Teachers Service Commission (TSC) and the National Treasury due to delays and challenges experienced from the time of

submission of the pension claims by the TSC to payment of the same by the National Treasury.

- (iii) The Teachers Service Commission as of 1st July, 2024 had submitted to the Director of Pensions a total of 35,254 pension claims for the period between 2019 and 2023 for all teachers across the country out of which 5,016 claims were still pending due to incomplete documents, court injunctions and succession related disputes.
- (iv) The mandate to pay pensions claims falls under the ambits of the National Treasury pursuant to the provisions of the Pension Act and not the Teachers Service Commission
- (v) The TSC had committed to submit all the pending cases to the National Treasury by 31st December, 2024 ensuring that no claim remained outstanding beyond that date. It therefore followed that, all the affected twenty-one (21) retired teachers from Mwatate Constituency had been paid their pension benefits in full and enrolled on the Treasury's monthly payroll on diverse dates between the years 2022 to 2024 as highlighted in paragraph 42.
- (vi) The National Treasury in collaboration with the Teachers Service Commission (TSC) had undertaken various measures to expedite the processing of retirement benefits to teachers including data verification and clean-up exercise, coordination with the courts to fast track determination of matters halting processing of pensions claims and enhancement of communication channels to keep retirees and beneficiaries informed on the status of their claims among other initiatives.
- (vii) The National Treasury was engaged in modernizing pension administration to improve service delivery aimed at fast tracking processing and payment of pension benefits to retirees across the country.
- (viii) The delays had been occasioned among others by submission of incomplete documents by the retired teachers or their beneficiaries, court cases and succession disputes.
- (ix) In light of the affected petitioners, the Commission had prepared and submitted to the Director of Pensions, pension claims of all the twenty-one (21) petitioners on various dates as indicated in Table 1 in the Report and the same were processed and paid to the affected teachers between the periods 2022 and 2024.
- (x) The the affected teachers had already been paid their retirement benefits and enrolled with the National Treasury's monthly payroll.
- (xi) The National Treasury had deployed officers to all Huduma Centres across the Country to manage pension benefits for retired civil servants.

Committee Resolutions

After deliberations, the Committee resolved to adopt the report with the following response to the petitioners—

- (i) On the prayer that the Committee engages the TSC to establish the circumstances that have occasioned the delayed payment of retirement benefits to the retired teachers in Mwatate Constituency, the Committee engaged TSC and notes that TSC's only prepares pension claims and forwards them to the Director of Pensions at the National Treasury for processing and payment.
- (ii) On the prayer that the Committee engages the TSC to provide data and statistics of all unpaid retired teachers in the entire country and indicate when they will pay all the retirement dues of the said teachers, the Committee engaged TSC and notes that as of 1st July, 2024, the Teachers Service Commission had prepared and submitted 35,254 Pension Claims to the Director of Pensions at the National Treasury for all retired teachers across the country, out of which 5,016 were pending due to incomplete or lack of statutory documents to support pension claims, succession related disputes between beneficiaries and injunctive orders from the courts stopping processing of some of the claims pending court's determination

The Committee therefore recommends that the Teachers Service Commission in liaison with the National Treasury—

- (i) Streamline processes which are essential in expediting pension claims for teachers and improves accountability through digital verification systems for all claims.
- (ii) Develop an up-to-date database that tracks unpaid retirement claims for teachers across the country and fast-track payment of the claims.
- (iii) Establish a communication framework on delay in payment of pension claims to the affected teachers on time through designated offices in the forty-seven (47) counties.
- (iv) Establish designated complains contact centers in every County where teachers can report fraudulent activities and seek guidance regarding the processing of claims in order to mitigate fraud targeted at the vulnerable retirees;
- (v) Sensitize teachers on the pension process, specifically, on the GP178 Form with a view of simplifying the pension process and enhancing efficiency and user friendliness.
- (vi) The National Treasury develops a National Retirement Benefits Policy aimed at improving governance within retirement schemes to ensure sufficient income security and allow for dignified post-retirement lives for retirees.
- (vii) The Ministry of Public Service and Human Capital Development in liaison with the National Treasury to deploy more Pension Officers to all Huduma Centres to

enhance accessibility and efficiency in the management of pension benefits for public servants and ensure all retirees.

MIN./PPETC/2025/031:

CONSIDERATION OF PUBLIC PETITION NO. 47 OF 2023
REGARDING DEPLOYMENT OF CLASSROOM TEACHERS
AS HEADTEACHERS IN SCHOOLS ACROSS THE
COUNTRY

The Committee considered the draft report and made the following observations—

- (i) In 2015/2016, the Commission in consultation with the Salaries and Remuneration Commission (SRC) conducted a Job Evaluation (JE) for the Teaching Service that proposed a new grading and remuneration structure for teachers in the Public Service. The main objective of the JE exercise was to determine the relative worth of the jobs/assignments within the teaching service with a view to link teacher remuneration and benefits to the respective responsibility assigned to them.
- (ii) The Job Evaluation exercise introduced among others the position of Senior Master in post primary institutions, Responsibility-Based Grading System, remuneration structure replacing the Qualification-Based System, removal of Responsibility Allowance and substantive appointment to administrative positions in teaching service.
- (iii) Prior to the JE exercise, teachers' job groups were not in sync with their responsibilities and the 2017-2021 CBA between the Commission and teacher unions was meant to address disparities by categorizing the teaching service into two groups namely the Administrators comprising of Head teachers, Deputy Head Teachers and Senior Teachers in Primary Schools and Non-Administrators comprising of classroom teachers in Job Groups H, J and G.
- (iv) In 2017, before the Job Evaluation and signing of the 2017-2021 CBA, the Commission advertised for promotions of teachers to Job Group M and consequently, all the 9 Petitioners, successfully applied for the promotion and accordingly were competitively promoted to Senior Graduate Teachers, at Job Group 'M' with effect from May, 2017. Thereafter, in July 2017 in accordance with the recommendations of the JE and the terms of 2017-2021 CBA, the Commission converted teachers into the new Job Grades and all the nine (9) Petitioners who were then in Job Group M were converted to Grade C5 under the category of non-administrators in the new grading system.
- (v) Teachers who were holding administrative grades and were in Job Group M and N were converted to Job Group D1 while teachers not holding any administrative positions but in similar job groups were converted to C5. Conversions were based on two factors namely; position a teacher was holding at the time of conversion and the job group they were in. Accordingly, the teachers were correctly converted in line with the existing policy.

After deliberations, the Committee resolved to adopt the following recommendations—

- (i) On the prayer that the Committee engages the TSC to review the salaries and allowances of the deployed teachers and place them at par with their colleagues who had undergone the same interview and became headteachers before the 2017 July CBA, the Committee recommends that Teachers Service Commission sensitizes all teachers on the outcome of the job evaluation of 2015/2016, and the conversion process in 2017 and any other future job evaluation outcomes.
- (ii) On the prayer that the Committee engages the TSC to pay the teachers their arrears from the period between their deployment as headteachers till now, the Committee recommends rejects the prayers the prayer on the premise that the outcome of the job evaluation in 2015/2016 and the subsequent conversion process in 2017 from the previous grading structure.

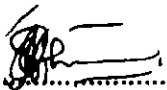
The Committee further recommends that—

- (i) The Teachers Service Commission continuously appraises the National Assembly on its periodic reviews of career progression policies including Career Progression Guidelines to enhance transparency in its processes;
- (ii) The Teachers Service Commission continuously sensitizes all teachers on job evaluation and conversion processing; and
- (iii) The National Assembly considers appropriating funds in subsequent financial years 2025/2026 for promotion of teachers to address the concerns raised in the petition.

MIN./PPETC/2025/025:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 11:45 a.m. The date of the next meeting will be Friday, 11th April 2025.

Sign: 

(CHAIRPERSON)

Date: 23/04/2025