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**INDEPENDENT ELECTORAL AND  
BOUNDARIES COMMISSION ACT**

NO. 9 OF 2011

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**NO. 9 OF 2011**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT**

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**NO. 9 OF 2011**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT**

[Date of assent: 5th July, 2011.]

[Date of commencement: 5th July, 2011.]

**An Act of Parliament to make provision for the appointment and effective operation of the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution, and for connected purposes**

[Act No. 9 of 2011, Act No. 12 of 2012, Act No. 36 of 2016, Act No. 1 of 2017, Act No. 34 of 2017, Act No. 24 of 2019, Act No. 18 of 2020.]

**PART 1 — PRELIMINARY**

**1. Short title**

This Act may be cited as the Independent Electoral and Boundaries Commission Act, 2011.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**Cabinet Secretary**” means the Cabinet Secretary appointed under Article 152 of the Constitution;

“**chairperson**” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson;

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

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

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

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

“**Fund**” means the Independent Electoral and Boundaries Commission Fund established by section 18;

“**issues arising**” means the issues specified in paragraph 1 of the Fifth Schedule;

“**member**” means a member of the Commission and includes the chairperson;

“**Parliamentary Committee**” means the relevant Departmental Committee of the National Assembly responsible for matters relating to the Commission;

“**principal office**” means the headquarters of the Commission;

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

“**Salaries and Remuneration Commission**” means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

“**secretary**” means the secretary to the Commission appointed under Article 250(12) of the Constitution;

“**vice-chairperson**” means the vice-chairperson of the Commission elected under Article 250(10) of the Constitution.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

[Act No. 34 of 2017, s. 2.]

### **3. Object and purpose of the Act**

The object and purpose of this Act is to—

- (a) provide for the operations, powers, responsibilities and functions of the Commission to supervise elections and referenda at County and National government levels;
- (b) provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 88(1), (2) and (3) and 250(2) of the Constitution;
- (c) provide for the manner of the exercise of the powers, responsibilities and functions of the Commission pursuant to Article 88(5) of the Constitution;
- (d) establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89(7) of the Constitution; and
- (e) *deleted by Act No. 1 of 2017, s. 27.*

[Act No. 36 of 2016, s. 29, Act No. 1 of 2017, s. 27.]

## **PART II – ADMINISTRATION**

### **4. Functions of the Commission**

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

- (a) the continuous registration of citizens as voters;
- (b) the regular revision of the voters’ roll;
- (c) the delimitation of constituencies and wards in accordance with the Constitution;
- (d) the regulation of the process by which parties nominate candidates for elections;
- (e) the settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding election petitions and disputes subsequent to the declaration of election results;
- (f) the registration of candidates for election;
- (g) voter education;

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- (h) the facilitation of the observation, monitoring and evaluation of elections;
- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development and enforcement of a code of conduct for candidates and parties contesting elections;
- (k) the monitoring of compliance with the legislation required by Article 82(1)(b) of the Constitution relating to nomination of candidates by parties;
- (l) *deleted by Act No. 36 of 2016, s. 30;*
- (m) the use of appropriate technology and approaches in the performance of its functions; and
- (n) such other functions as are provided for by the Constitution or any other written law.

[Act No. 36 of 2016, s. 30.]

### **5. Composition and appointment of the Commission**

(1) The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.

(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.

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

[Act No. 36 of 2016, s. 31.]

### **6. Qualifications for appointment as chairperson or member of the Commission**

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

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

- (a) *deleted by Act No. 36 of 2016, s. 32;*
- (b) holds a degree from a recognised university;
- (c) has proven relevant experience in any of the following fields—
  - (i) electoral matters;
  - (ii) management;
  - (iii) finance;
  - (iv) governance;
  - (v) public administration;
  - (vi) law; and
- (d) meets the requirements of Chapter Six of the Constitution.

[Act No. 36 of 2016, s. 32.]

**7. Term of office**

(1) The members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

(2) The members of the Commission shall serve on a full-time basis.

(3) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

**7A. Vacancy in the office of chairperson and members**

(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President; or
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

(4) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.

[Act No. 36 of 2016, s. 33, Act No. 34 of 2017, s. 3.]

**7B. Absence of chairperson**

(1) Whenever the chairperson is absent, the vice-chairperson shall assume the duties of the chairperson and exercise the powers and responsibilities of the chairperson.

(2) Whenever the chairperson and the vice-chairperson are absent, members of the Commission shall elect from amongst themselves a member to act as the chairperson and exercise the powers and responsibilities of the chairperson.

(3) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.

[Act No. 34 of 2017, s. 3A.]

**8. Conduct of business and affairs of the Commission**

The conduct and regulation of the business and affairs of the Commission shall be as provided for in the Second Schedule but subject thereto, the Commission may regulate its own procedure.



**9. Oath of office**

The chairperson and members shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Second Schedule.

**10. Secretary to the Commission**

(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the secretary to the Commission.

(2) A person shall be qualified for appointment as the secretary if the person—

- (a) is a citizen of Kenya;
- (b) possesses a degree from a recognised university;
- (c) has had at least five years' proven experience at management level;
- (d) has proven relevant experience in either—
  - (i) electoral matters;
  - (ii) management;
  - (iii) finance;
  - (iv) governance;
  - (v) public administration;
  - (vi) law; or
  - (vii) political science; and

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

(3) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

(4) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(5) Where the Commission does not intend to reappoint the secretary, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

(6) The secretary shall, in the performance of the functions and duties of office, be responsible, answerable and report to the Commission.

(7) The secretary shall be—

- (a) the chief executive officer of the Commission;
- (b) head of the secretariat;
- (c) the accounting officer of the Commission;
- (d) custodian of all commission's records;
- (e) responsible for—
  - (i) executing decisions of the Commission;
  - (ii) assignment of duties and supervision of all employees of the Commission;
  - (iii) facilitating, co-ordinating and ensuring execution of Commission's mandate;
  - (iv) ensuring staff compliance with public ethics and values; and
  - (v) the performance of such other duties as may be assigned by the law and Commission.

(8) The secretary may only be removed from office by the Commission on grounds of—

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

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

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

#### **10A. Vacancy of office of secretary**

The office of the secretary shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission; or
- (c) is removed from office under any of the circumstances set out under section 10.

[Act No. 36 of 2016, s. 34.]

#### **11. Employees of the Commission**

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

(2) The secretariat shall comprise of—

- (a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and
- (b) such public officers as may be seconded to the Commission upon its request.

(3) The employees of the Commission may be appointed, subject to its approved establishment.

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

(5) The Commission shall ensure that in the appointment of employees, not more than two-thirds of the employees of the Commission shall be of the same gender and that the following are also taken into account—

- (a) persons with disabilities; and
- (b) regional and other diversity of the people of Kenya.

#### **11A. Relationship between the Commissioners and Secretariat**

For the effective performance of the functions of the Commission—

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- (a) the chairperson and members of the Commission shall perform their functions in accordance with the Constitution and in particular, shall be responsible for the formulation of policy and strategy of the Commission and oversight; and
- (b) the secretariat shall perform the day-to-day administrative functions of the Commission and implement the policies and strategies formulated by the Commission.

[Act No. 36 of 2016, s. 35.]

## **12. Units of the Commission**

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

(2) Every directorate, field office, unit, division or committee created by the Commission shall act in accordance with the mandate approved by the Commission and directives given in writing by the secretary.

## **13. Legal personality of the Commission**

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

- (a) acquiring, holding and disposing of movable and immovable property;
- (b) suing and being sued; and
- (c) doing or performing all such acts and things as a body corporate may by law do or perform.

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

## **14. Seal of the Commission**

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

(2) The affixing of the seal shall be authenticated by the chairperson and the secretary or any other person authorised in that behalf by a resolution of the Commission.

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

## **15. Protection from personal liability**

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

## **16. Code of conduct**

Members and the employees of the Commission shall subscribe to the code of conduct prescribed under the Fourth Schedule.

## PART III – FINANCIAL PROVISIONS

**17. Funds of the Commission**

The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

**18. Independent Electoral and Boundaries Commission Fund**

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

(2) There shall be paid from the Fund—

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

(3) The secretary shall manage the Fund subject to the provisions of all laws and regulations relating to public financial management.

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

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

**20. Remuneration and allowances**

(1) Members of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

(2) Pending the establishment of the Salaries and Remuneration Commission, the remuneration and allowances under subsection (1) shall be determined by the Public Service Commission in consultation with the Treasury.

[Act No. 12 of 2012, Sch.]

**21. Annual estimates**

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

(2) The Cabinet Secretary responsible for finance shall present the estimates approved by the Commission for consideration and approval by the National Assembly.

**22. Financial year of the Commission**

The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

**23. Accounts and audit**

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

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

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

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

(4) The Commission shall be entitled, upon application to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by or on behalf of, or in favour of the Commission which, but for this section, the Commission would be liable to pay.

(5) The Commission may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the members and employees of the Commission and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Commission or, as the case may be, to the dependants of any such officer upon such officer's death.

**24. Annual report**

(1) Within three months after the end of each financial year, the Commission shall present its annual report to the President and submit the same to Parliament.

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

- (a) the financial statements of the Commission;
- (b) the activities the Commission has undertaken;
- (ba) progress made in the continuous registration of citizens as voters and the progressive realisation of the right to vote of citizens residing outside Kenya and prisoners; and
- (c) any other information, the Commission may consider relevant.

(3) The Commission shall publish and publicize the annual report.

[Act No. 36 of 2016, s. 36, Act No. 1 of 2017, s. 28.]

**PART IV – MISCELLANEOUS PROVISIONS****25. General principles**

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

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

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- (b) not more than two-thirds of the members of elective public bodies shall be of the same gender;
- (c) fair representation of persons with disabilities and other persons or groups with special needs;
- (d) universal and equal suffrage based on the aspiration for fair representation and equality of votes;
- (e) free and fair elections, which are—
  - (i) by secret ballot;
  - (ii) free from violence, intimidation, improper influence or corruption;
  - (iii) conducted independently;
  - (iv) transparent; and
  - (v) administered in an impartial, neutral, efficient, accurate and accountable manner;
- (f) undertake elections on a regular basis in accordance with the Constitution;
- (g) ethical conduct; and
- (h) fairness;
- (i) the principles of personal data protection set out in the Data Protection Act shall apply to the processing of personal data of voters under this Act.

[Act. No. 24 of 2019, 2nd Sch.]

## **26. Independence of the Commission**

Except as provided in the Constitution, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority but shall observe the principle of public participation and the requirement for consultation with stakeholders.

## **27. Management of information**

- (1) The Commission shall publish and publicise all important information within its mandate affecting the nation.
- (2) A request for information in the public interest by a citizen—
  - (a) shall be addressed to the secretary or such other person as the Commission may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Commission incurs an expense in providing the information; and
  - (b) may be subject to confidentiality requirements of the Commission.
- (3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant where—
  - (a) the request is unreasonable in the circumstances;
  - (b) the information requested is at a deliberative stage by the Commission;
  - (c) failure of payment of the prescribed fee; or
  - (d) the applicant fails to satisfy any confidentiality requirements by the Commission.

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

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

(6) The Commission shall ensure the management of personal data is in accordance with the principles of personal data protection as set out in the Data Protection Act.

[Act No. 24 of 2019, 2nd Sch.]

## **28. Publicity**

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

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

## **29. Legal advice**

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

## **30. Offences**

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

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

## **31. Regulations**

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

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

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which the Commission is responsible under this Act;
- (b) the disciplinary control of persons holding or acting in any office in respect of which the Commission is responsible under this Act;
- (c) the termination of appointments and the removal of persons from any office, in respect of which the Commission is responsible under this Act;
- (d) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (e) *deleted by Act No. 36 of 2016, s. 37;*
- (f) the delegation of the Commission's functions or powers; and
- (g) any other matter required under the Constitution, this Act or any other written law.

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

[Act No. 36 of 2016, s. 37.]

## PART V — SAVINGS AND TRANSITIONAL PROVISIONS

### 32. Interpretation of Part

In this Act, unless the context otherwise requires—

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

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

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

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

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

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

### 33. Transition

(1) The former Electoral Commission shall continue in office in terms of section 28(1) and (2) of the Sixth Schedule to the Constitution.

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

(3) A person who served as an officer of the former Boundaries Commission may be eligible, subject to the staff establishment of the Commission, for employment by the Commission.

### 34. Transfer of assets, etc

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

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

- (a) make such entries in the appropriate register as shall give effect to the transfer;



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

**35.** Deleted by Act No. 1 of 2017, s. 29.

**36. Procedure for delimitation of electoral boundaries**

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

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

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

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

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

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

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

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

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(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

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

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the *Gazette* of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

[Act No. 1 of 2017, s. 30.]

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## FIRST SCHEDULE

[Section 5, Act No. 12 of 2012, Sch., Act No. 36 of 2016, 38, Act No. 18 of 2020, s.2.]

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON  
AND MEMBERS OF THE COMMISSION**1. Selection Panel**

(1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the Constitution or this Act, the President shall appoint a selection panel consisting of seven persons for the purposes of appointment of the chairperson or member of the Commission.

(2) The selection panel shall consist of —

- (a) two men and two women nominated by the Parliamentary Service Commission;
- (b) one person nominated by the Law Society of Kenya; and
- (c) two persons nominated by the Inter-religious Council of Kenya.

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

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and
- (c) holds a degree from a university recognized in Kenya.

(3) The respective nominating bodies under subparagraph (2)(b) and (c) shall, within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission, submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.

(4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.

(5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.

(6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.

[Act No. 18 of 2020, s.2.]

**2. Oath or affirmation of office**

The chairperson and members of the selection panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

**3. Selection of nominees**

(1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.

(2) The selection panel shall consider the applications, shortlist and interview the applicants.

(3) The interviews under subparagraph (2) shall be conducted in public.

(4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

(5) The President shall, within seven days of receipt of the names under subparagraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act.

#### **4. Appointment by the President**

The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

#### **5. Gender equity and regional balance**

In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

#### **6. Dissolution of Selection Panel**

The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

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SECOND SCHEDULE

[Section 8, Act No. 1 of 2017, s. 31, Act No. 34 of 2017, s. 4.]

PROVISIONS AS TO THE CONDUCT OF THE  
BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the Commission, provided that the quorum shall not be less than three members.
6. The chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. (1) The secretary shall be the secretary at all meetings of the Commission.  
(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.  
(3) *Deleted by Act No. 1 of 2017, s. 31.*
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
11. Except as provided by this Schedule, the Commission may regulate its own procedure.
12. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.  
(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

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

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

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THIRD SCHEDULE

[Section 10(3).]

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

I, ..... having been appointed (the chairperson/member of/secretary to) the Independent Electoral and Boundaries Commission/Selection Panel do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice.

(So Help me God).

Sworn/declared by the said .....

Before me this ..... day of .....

.....  
*Chief Justice*

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## FOURTH SCHEDULE

[Section 16.]

CODE OF CONDUCT FOR MEMBERS  
AND EMPLOYEES OF THE COMMISSION**1. Impartiality and independence of members**

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

- (a) any arm of the Government;
- (b) any State officer;
- (c) any public officer;
- (d) any political party;
- (e) candidate participating in an election; or
- (f) any other person, authority or organisation.

(2) The provisions of subparagraph (1) shall apply without prejudice to the principle of public participation and requirement for consultation with all stakeholders.

**2. Independence from political or public office**

(1) A member or employee of the Commission shall not, during tenure of office be eligible for—

- (a) appointment or nomination to a political office; or
- (b) appointment to another public office.

(2) A member of the Commission may not—

- (a) whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating in a referendum, or any of the issues in contention between parties, candidates or sides;
- (b) make private use of or profit from any confidential information gained as a result of being a member of the Commission; or
- (c) divulge any information to any third party, save in the course of official duty.

**3. Disclosure of conflicting interests**

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

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

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



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

#### **4. Professionalism**

A member or employee of the Commission shall—

- (a) perform their duties in a manner that maintains public confidence in the Commission;
- (b) treat the public and colleagues with courtesy and respect;
- (c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and
- (d) respect the rights and freedom of all persons that he may interact with.

#### **5. Improper enrichment**

A member or employee of the Commission shall not—

- (a) use their office or organisation to improperly enrich themselves or others;
- (b) accept or request gifts or favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business of the Commission; or
- (c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others.

#### **6. Integrity in private affairs**

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

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

#### **7. Sexual harassment**

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

- (a) making a request or exerting pressure for sexual activity or favours;

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- (b) making intentional or careless physical contact that is sexual in nature; or
- (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality.

**8. Nepotism**

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

**9. Privileged information and security of interests of the State**

A member or employee shall—

- (a) not act for foreigners in a manner detrimental to the security interest of Kenya; and
- (b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure.

**10. Application of the Public Officers Ethics Act**

This Code is in addition to the provisions of the Public Officers Ethics Act and where there is a conflict between the Code and the Act, the provisions of the Act shall prevail.

**11. Breach of code**

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

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FIFTH SCHEDULE

[Section 36, Act No. 12 of 2012, Sch.]

PROVISIONS RELATING TO THE FIRST REVIEW

**1. Resolution of issues arising from the first review**

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

**2. Reference materials**

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

- (a) use as its primary reference material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and
- (b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.

(2) The issues arising out of the first review are—

- (a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;
- (b) subject to the Constitution, addressing issues of new constituencies

- (i) take into account the provisions of Article 89 (7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
  - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;
  - (iii) be subject to the use of enumerated national census figures and not projected figures.
- (c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

### **3. Delimitation of electoral units**

- (1) The Commission shall prepare and publish a preliminary report outlining—
- (a) the proposed delimitation of boundaries for constituencies and wards; and
  - (b) the specific geographical and demographical details relating to such delimitation.

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

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

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

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

(6) Within fourteen days of the expiry of the period provided for in subparagraph (5), the Commission shall, taking into account the resolutions of the National Assembly under subparagraph (5), prepare and submit its final report outlining the matters set out in subparagraph (1)(a) for publication in the *Gazette*.

(7) Where the National Assembly fails to make a resolution within the period specified in subparagraph (5), the Commission shall proceed to publish its report in accordance with subparagraph (6).

(8) Any person who, being responsible for the publication in the *Gazette* of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall,

within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

#### **4. Review of decision of Commission**

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

#### **5. Application for review**

An application for the review of the decision made under paragraph 4 shall be made within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

#### **6. Sensitisation on the proposed boundaries**

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

#### **7. Maintenance of records**

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

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