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NATIONAL ASSEMBLY BILLS, 2023

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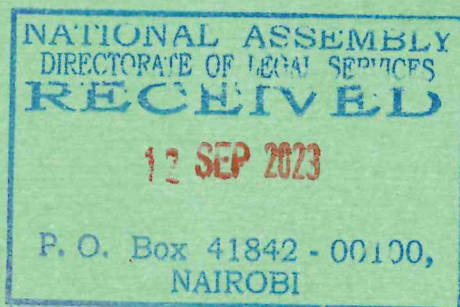
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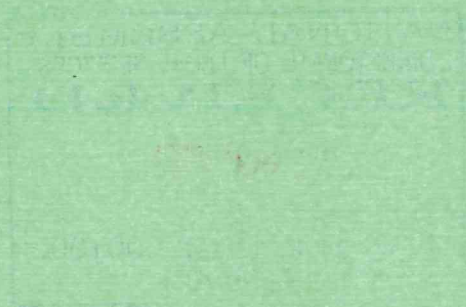
Bill for Introduction into the National Assembly—

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

1459





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

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

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

Short title.

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

Amendment of section 2 of No. 9 of 2011.

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

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

Amendment of section 3 of No. 9 of 2011.

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

4. Section 36 of the principal Act is amended—

Amendment of section 36 of No.9 of 2011.

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

(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process —

(i) allows for variation of margin of not more than forty per cent for cities and sparsely populated areas and thirty per cent for others areas as provided under Article 89 (6) of the Constitution;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that

provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures most recent to the review; and

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

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

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

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

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

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

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

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

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

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

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

MEMORANDUM OF OBJECTS AND REASONS

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

Clause 1 of the Bill is the short title.

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

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

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

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

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

Indication of whether the Bill concerns county governments

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

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

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

Dated the 10th August, 2023.

HON. MWANGI KIUNJURI,
Member of Parliament.

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

Object and purpose of the Act

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

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

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

Procedure for delimitation of electoral boundaries

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

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

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

the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

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

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

(b) the specific geographical; and

(c) demographical details relating to such delimitation.

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

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

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

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

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

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

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

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the

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

