

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION BILL, 2011**

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**THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION BILL, 2011**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

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

Interpretation.

2. (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;

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

“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;

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

“Fund” means the Independent Electoral Boundaries Commission Fund established by section 17;

“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”.

Object and purpose of the Act.

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

- (a) provide for the operations, powers 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 (12)(b) of the Constitution;
- (c) provide for the manner of the exercise of the powers 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) establish mechanisms for the Commission to address the issues arising out of the first review.

PART II—ADMINISTRATION

Functions of the Commission.

4. As provided for by Article 88(4) of the Constitution, the Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by 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 using appropriate technologies and approaches;
- (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) civic and voter education;
- (h) the facilitation of the observation, monitoring and evaluation of elections;

- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development of a code of conduct for candidates and parties contesting elections;
- (k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties;
- (l) the investigation and prosecution of electoral offences by candidates, political parties or their agents; and
- (m) such other functions as are provided for by the Constitution or any other written law.

Composition and appointment of the Commission.

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

(2) Subject to section 33, the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

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

(4) The chairperson and members of the Commission shall respect the delimitation of duties between the Commission as the policy making organ and its secretariat as the policy implementation and administrative organ.

Qualifications for appointment as chairperson or member of the Commission.

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

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

- (a) is a citizen of Kenya;

- (b) holds a degree from a recognized university;
- (c) has proven relevant experience in any of the following fields—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration;
 - (vi) law; and
- (d) meets the requirements of Chapter Six of the Constitution.

Term of office.

7. (1) Subject to subsection (7), the chairperson, the vice-chairperson and members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

(2) The chairperson and vice-chairperson shall be non-executive and shall serve on a full-time basis.

(3) The seven other members of the Commission shall be non-executive and shall serve on a part-time basis.

(4) The chairperson and four members of the first Commission shall be appointed upon the commencement of this Act.

(5) Four other members of the Commission shall be appointed not more than twelve months from the first appointment under subsection (4).

(6) Subject to Article 250(1) of the Constitution, the Commission shall be properly constituted notwithstanding any vacancies due to the staggered appointments under this section.

(7) The chairperson and members of the Commission shall retire from office on attaining the age of seventy years.

Conduct of business and affairs of the Commission.

7A. 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.

Oath of office.

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

Secretary to the Commission.

9. (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 recognized 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.

(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.

(7) 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.

(8) Before removal under subsection (7), 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.

Employees of the Commission.

10. (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 budget.

(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.

Units of the Commission.

11. (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.

(3) Written directives under this section shall include letters, circulars, emails, faxes, and other forms of inscribed electronic messages.

Legal personality of the Commission.

12. (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.

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Seal of the Commission.

13. (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 authorized in that behalf by a resolution of the Commission.

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

Protection from personal liability.

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

Code of conduct.

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

PART III—FINANCIAL PROVISIONS

Funds of the Commission.

16. (1) 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.

Independent Electoral and Boundaries Commission Fund.

17. (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.

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

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

Remuneration and allowances.

19.(1) Members and employees 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.

Annual estimates.

20.(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.

Financial year of the Commission.

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

Accounts and audit.

22.(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.

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(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 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.

Annual report.

23. (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; and

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

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

PART IV—MISCELLANEOUS PROVISIONS

General principles.

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

- (a) freedom of citizens to exercise their political rights under Article 38 of the Constitution;
- (b) not more than two-thirds of the members of elective public bodies shall be of the same gender;
- (c) fair representation of persons with disabilities and other persons or groups with special needs;
- (d) universal and equal suffrage based on the aspiration for fair representation and equality of votes;
- (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.

Independence of the Commission.

25.(1) 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.

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

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

(3) This section shall be without prejudice to the principle of public participation and requirement for consultation with stakeholders.

Management of information.

26.(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

Publicity.

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

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

Legal advice.

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

Regulations.

29.(1) The Commission shall 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) the progressive registration of Kenyan citizens residing outside Kenya and putting into effect the progressive realisation of their right to vote;
- (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.

PART V—SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation of Part.

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

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

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

“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 August, 2010;

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

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

Transition.

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

Transfer of assets, etc.

32. (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;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

Appointment of the first Commission.

33. (1) For purposes of the appointment of the first Commission under this Act, the Selection Panel shall have regard to the provisions of section 28(2) of the Sixth

Schedule to the Constitution and in accordance with the procedure set out in the First Schedule to this Act.

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

Delimitation during first review.

34. (1) The provisions of the Fifth Schedule shall have effect for the purposes of addressing issues arising from first review.

(2) This section shall lapse upon the gazettment of the final report in accordance with the Fifth Schedule.

FIRST SCHEDULE (s.5(2))

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

Selection Panel.

1. (1) For the purposes of this Act, the President shall, within fourteen days of the commencement of this Act or within twenty one days of a vacancy arising in the Commission, appoint a Selection Panel comprising of a chairperson and eight members drawn from distinguished professionals in private sector or the public service with relevant expertise.

(2) The Selection Panel shall elect a vice- chairperson from amongst its number

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

(4) The Public Service Commission shall provide facilities and any support required by the Selection Panel in the performance of its functions.

Selection of nominees.

2.(1) The Selection Panel shall, within seven days of its convening under paragraph 1, invite applications from qualified persons and publish the names of all applicants and their qualifications in the Gazette, two newspapers of national circulation and on the Public Service Commission's website.

(2) The Selection Panel shall consider the applications, shortlist and interview the applicants.

(3) After carrying out the interviews, the Selection Panel shall select three persons qualified to be appointed as chairperson and thirteen persons qualified to be appointed as members of the Commission and shall forward these names to the President for nomination of one person for appointment as the chairperson and eight persons for appointment as members.

(4) The President shall forward the list of nominees to the National Assembly for vetting and approval.

(5) For the purposes of the appointment of the first selection panel and the first Commission, the President shall act in consultation with the Prime Minister in accordance with the Constitution.

Nomination by
Parliamentary
Committee.

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

Approval by the National
Assembly.

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

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

Rejection by National
Assembly.

5. (1) Where the National Assembly rejects any nomination pursuant to paragraph 4 (1), the Speaker shall, as soon as practically possible, notify the President of the rejection.

(2) The President shall within fourteen days of the rejection, submit to the National Assembly a fresh nomination from amongst the list of nominees received

from the Selection Panel under paragraph 3 (1).

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

Appointment of chairperson and members.

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

Dissolution of Selection Panel.

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

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

SECOND SCHEDULE (s.7A)

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 five members of the Commission.

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

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

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

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

(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.

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

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

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

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

13. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

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

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

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

THIRD SCHEDULE (s.9(3))

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

I,.....
having been appointed (the chairperson/member of/secretary to) the Independent Electoral and Boundaries Commission 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

FOURTH SCHEDULE (s.15)

CODE OF CONDUCT FOR MEMBERS AND EMPLOYEES OF THE COMMISSION

Impartiality and independence of members.

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

- (a) 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 organization.

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

Independence from political or public office.

2. (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.

Disclosure of conflicting interests.

3.(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.

(3) 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;

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

Professionalism.

4. 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.

Improper enrichment.

5. A member or employee of the Commission shall not—

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

(b) accept or request gifts or favours from any person who may have a commercial interest with the

Commission or any other interest that may be affected by the normal business of the Commission; or

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

Integrity in private affairs.

6. A member 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 organization of a fundraising activity.

Sexual harassment.

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

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

Nepotism.

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

Privileged information and security of interests of the State.

9. 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.

Application of the Public Officers Ethics Act.

10. 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.

Breach of code.

11. 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.

FIFTH SCHEDULE

(s.34)

PROVISIONS RELATING TO THE DELIMITATION OF BOUNDARIES OF CONSTITUENCIES AND WARDS

Resolution of issues arising from the work of the former Boundaries Commission.

1.(1) The Commission shall resolve all issues arising from the work of the former Boundaries Commission and the subsequent parliamentary report relating to the delimitation of boundaries of constituencies and wards within a period of five months of the date of its appointment under this Act.

(2) The issues arising are—

(a) redistribution of such wards or administrative units in the affected constituencies as may be appropriate;

(b) addressing issues of new constituencies falling outside the population quota as provided for by Article 89 (6) in reference to the national census data; and

(c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

Reference materials.

2. The Commission shall, in addressing the issues arising take into account Art. 88 and 89 of the Constitution and use;

(a) as primary reference material the report of the former Boundaries Commission as tabled before the National Assembly; as well as

(b) the report of the Parliamentary Committee on the report of the former Boundaries Commission; and

(c) any other relevant material.

Delimitation of electoral units.

3. (1) The Commission shall prepare and submit to the President and the National Assembly 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 publish and publicize the preliminary report for a period of thirty days within which it shall invite representations from all interested parties and hold public forum in each county on the proposals contained in the report during that period.

(3) The Commission in carrying out its responsibilities shall consult with all interested parties including the national assembly.

(4) Upon the expiry of the period provided for in sub paragraph (2), the Commission shall, within twenty one days, review the proposed delimitation of boundaries considering the views received under that subparagraphs (2) and (3) and publish its final report in the Gazette in accordance with Article 89(9) of the Constitution.

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

5. An application for the review of the decision made under subparagraph (4) shall be made within 30 days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.

Sensitization on the proposed boundaries.

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

Maintenance of records.

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

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to provide a comprehensive mechanism, pursuant to Article 88 and Chapter Fifteen of the Constitution, for the appointment and effective operation of the Independent Electoral and Boundaries Commission. A sound framework for the management of elections shall be achieved through:

- (a) enactment of a dedicated Act of Parliament on electoral management;
- (b) establishment of a sound institutional framework for the management of elections and effective discharge of functions set out under Articles 88, 89, 90, 91 and 92;
- (c) ensuring compliance with the one year time-frame set by the Constitution for the appointment of the Independent Electoral and Boundaries Commission established under Article 88(1) of the Constitution;
- (d) ensuring adequate capacity and timely preparations for the 2012 General Elections; and
- (e) providing a sound mechanism for transition from the current interim processes on electoral and boundary delimitation to a permanent institutional framework.

Part I provides for preliminary matters.

Part II contains provisions on the administration of the Commission. These include provisions on the Commission's functions, the appointment and terms of service of its members and staff and the creation of internal structures for the performance of its functions.

Part III provides for the establishment and administration of the Independent Electoral and Boundaries Commission Fund and other financial procedures of the Commission.

Part IV comprises miscellaneous provisions, which include provisions on the principles which will govern the Commission in the fulfilment of its

mandate, the independence of Commission and the management of information by the Commission.

Part V contains transitional and saving provisions.

The **First Schedule** provides for the procedure for appointment of the Commissioners; the **Second Schedule** provides for the conduct of the business and affairs of the Commission; the **Third Schedule** prescribes the oath or affirmation of office for the members and the secretary, while the **Fourth Schedule** contains the code of Conduct for members and staff of the Commission. The **Fifth Schedule** stipulates the procedure for resolving the issues arising from the report of the defunct Interim Independent Boundaries Review Commission in accordance with Article 88 and 89 of the Constitution.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 7th April, 2011.

MUTULA KILONZO,
*Minister for Justice, National Cohesion
and Constitutional Affairs.*