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REPUBLIC OF KENYA

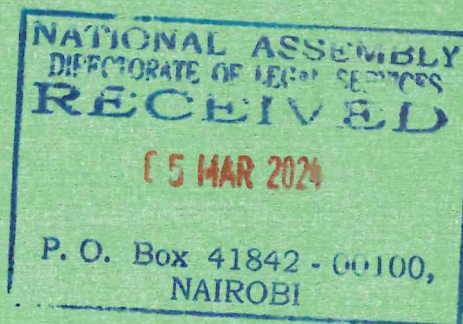
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

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**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 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, 2024 and shall come into force upon publication in the Gazette.

Short title and commencement.

2. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 (hereinafter referred to as “the principal Act”) is amended-

Amendment of section 2 of No.9 of 2011.

- (a) in the definition of the word “chairperson” by deleting the words “or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson” appearing immediately after the word “Constitution”;
- (b) by deleting the definition of the expression “first review”;
- (c) by deleting the definition of the expression “former Boundaries Commission”;
- (d) by deleting the definition of the expression “former Constitution”;
- (e) by deleting the definition of the expression “issues arising”.

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new subparagraphs immediately after sub-paragraph (vi) —

Amendment of section 6 of No. 9 of 2011.

- (vii) information and communication technology;
- (viii) accounting.

4. Section 7A of the principal Act is amended-

Amendment of section 7A of No. 9 of 2011.

- (a) by deleting sub-section (4);
- (b) by deleting sub-section (5);

(c) by deleting sub-section (6).

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section-

Amendment of section 10 of No. 9 of 2011.

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

6. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (2)-

Amendment of section 12 of No. 9 of 2011.

(3) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(4) The review shall be completed within one year after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

7. Section 36 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (11)-

Amendment of section 36 of No. 9 of 2011.

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

8. The First Schedule to the principal Act is amended—

Amendment of the First Schedule to No. 9 of 2011.

(a) in paragraph 1—

(i) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

(2) The selection panel shall consist of—

(a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;

(b) three persons nominated by the Political Parties Liaison Committee of whom-

- (i) one shall be from a party other than a parliamentary party or coalition of parties;
- (ii) one shall be from a parliamentary party or coalition of parties forming the national government;
- (iii) one shall be from a parliamentary party or coalition of parties not forming the national government;
- (c) one person nominated by the Law Society of Kenya;
- (d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
- (e) two persons nominated by the Inter-religious Council of Kenya.
 - (ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.

- (iii) in sub-paragraph (3), by deleting the words “sub-paragraphs (2)(b) and (c)” and substituting therefor the words “sub-paragraphs (2)(b), (c), (d) and (e)”;
- (b) by deleting paragraph 6 and substituting therefor the following new paragraph-

Dissolution of Selection Panel

6. (1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

Amendment of the
Second Schedule
to No. 9 of 2011.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.

9. The Second Schedule to the principal Act is amended-

(a) by deleting paragraph 5 and substituting therefore the following new paragraph-

“5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.”

(b) by deleting paragraph 7 and substituting therefor the following new paragraph-

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

10. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule-

FIFTH SCHEDULE (s.36)

PROCEDURES FOR THE DELIMITATION OF ELECTORAL UNITS

1. Notice of delimitation of electoral units

(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2) and (3) of the Constitution, the Commission shall notify the public of—

- (a) the intended review;
- (b) invite representations from interested parties; and
- (c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

- (a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and
- (b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—
 - (i) the population quota for constituencies and wards;
 - (ii) the number of inhabitants in every constituency and ward;
 - (iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
 - (iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

- (a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and
- (b) the latest official population census report.

(2) The Commission may use as its secondary reference material-

- (a) the reports of County Boundary Review Panels; or
- (b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

- (a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
- (b) invite the public to make representations on the proposals contained in the report; and
- (c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

- (a) for all the electoral units in accordance with the final boundary dissemination delimitation report;
- (b) for the respective constituencies in every county; and
- (c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the Gazette as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. 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.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

11. The selection panel existing immediately at the commencement date of this Act ceases to exist but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed under this Act.

Transitional
provision.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others [2018]eKLR* wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.

The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

The Bill further seeks to replace the current Fifth Schedule with a new and updated Schedule.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section.

Clause 3 of the Bill seeks to amend section 6(2)(c) of the Act to include information and communications technology and accounting as some of the relevant professional qualifications to be taken into account when nominating persons to be appointed as members of the Commission.

Clause 4 of the Bill seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court.

Clause 5 of the Bill seeks to amend section 10 of the principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once.

Clause 6 of the Bill seeks to amend section 12 of the principal Act and provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

Clause 7 of the Bill provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

Clause 8 of the Bill seeks to amend the First Schedule to the Act to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

Clause 9 of the Bill seeks to amend the Second Schedule to the Act and provide for the quorum of the Commission.

Clause 10 of the Bill provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

Clause 11 of the Bill sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission.

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

The Bill does not delegate legislative powers and it does not also contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of a county assembly and a county executive.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 29th February, 2024.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 2 of No. 9 of 2011 which it is proposed to amend—

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 41 B 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".

Section 6 of No. 9 of 2011 which it is proposed to amend—

Qualification for appointments as chairperson or member of the Commission

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

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

- (a) deleted by Act No. 36 of 2016, s. 32;
- (b) holds a degree from a recognized university;
- (c) has proven relevant experience in any 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.

Section 7A of No. 9 of 2011 which it is proposed to amend—

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.]

Section 10 of No. 9 of 2011 which it is proposed to amend—

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 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 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 or Commission's mandate;

(iv) ensuring staff compliance with public ethics and values; and

(v) the performance or 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.

Section 36 of No. 9 of 2011 which it is proposed to amend—

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.

(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]

The First Schedule to No. 9 of 2011 which it is proposed to amend—

FIRST SCHEDULE

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

1. (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) one man and one woman, nominated by the Parliamentary Service Commission;
- (b) one person nominated by the Public Service Commission;
- (c) one person nominated by the Political Parties Liaison Committee;
- (d) one person nominated by the Law Society of Kenya; and
- (e) 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 sub-paragraphs (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.

2. Oath or affirmation of office

The chairperson and members of the selection panel shall, before assuming office, make 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 sub-paragraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act (Cap. 7F).

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.

The Second Schedule to No. 9 of 2011 which it is proposed to amend—

SECOND SCHEDULE[s. 8]

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 or 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 the meeting and the business transacted there at 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.

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 or interest made under subsection (1) shall be recorded in the minutes or the meeting at which it is made.

(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.

The Fifth Schedule to No. 9 of 2011 which it is proposed to replace—

FIFTH SCHEDULE

[s. 2]

PROVISIONS RELATING TO THE FIRST REVIEW

[Act No. 12 of 2012, Sch.]

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 or constituencies and wards and publish its final report within a period of four months or 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 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 falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall -
 - (i) take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
 - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;
 - (iii) be subject to the use of enumerated 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 sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph 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 sub-paragraph (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 sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under sub-paragraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the *Gazette*.

(7) Where the National Assembly fails to make a resolution within the period specified in sub-paragraph (5), the Commission shall proceed to publish its report in accordance with sub-paragraph (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. Sensitization on the proposed boundaries

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.

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.

