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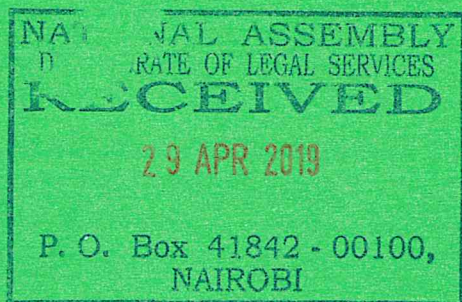
NAIROBI, 15th April, 2019

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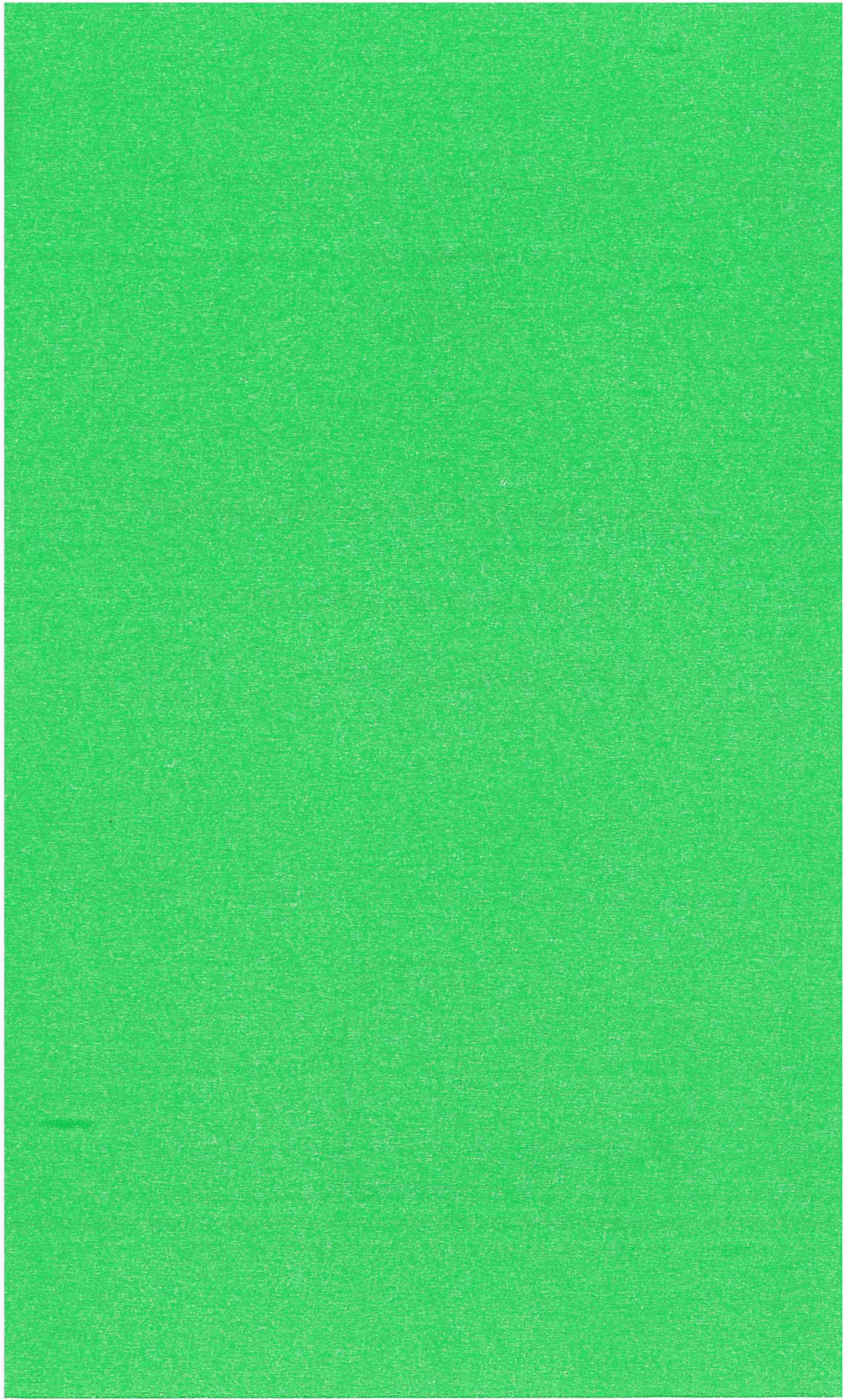
Bill for Introduction into the National Assembly—

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**THE INDEPENDENT ELECTORAL AND BOUNDARIES
(AMENDMENT) (NO. 2) BILL, 2019**

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, 2019.

Short title.

2. Section 5 of the Independent Electoral and Boundaries Commission Act, 2011, (hereinafter referred to as “the principal Act”) is amended in subsection (1) by deleting the word “six” appearing immediately after the words “a Chairperson and” and substituting therefor the word “four”.

Amendment of section 5 of No. 9 of 2011.

3. The First Schedule to the principal Act is amended in subparagraph (2) of paragraph (1) by—

Amendment of the first schedule to No. 9 of 2011.

- (a) deleting the words “the first” appearing immediately after the words “for the purpose of”;
- (b) inserting the words “the Chairperson or” immediately after the words “the first appointment of”.

4. The Fifth Schedule to the principal Act is amended—

Amendment of the fifth schedule to No. 9 of 2011.

- (a) by deleting the title of the schedule and substituting therefor the new title “PROCEDURE AFTER DELIMITATION OF ELECTORAL UNITS”;
- (b) by deleting paragraphs (1), (2) and (3);
- (c) by renumbering paragraphs (4), (5), (6), (7), (8) and (9) as paragraphs (1), (2), (3) and (4);
- (d) in paragraph (5), by deleting the words “paragraph 4” appearing immediately after the words “decision made under” and substituting therefor the words “paragraph (1)”;
- (e) in paragraph (6), by deleting the words “paragraph

3” appearing immediately after the words “boundaries referred to in” and substituting therefor the words “ section 36”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

This Bill seeks to amend the Independent Electoral and Boundaries Commission Act to address two issues. First, in order to address the lacuna in the law in terms of the appointment of commissioners when a vacancy arises since paragraph (2) of the First Schedule to the Independent Electoral and Boundaries Commission Act does not provide for the subsequent appointment of commissioners. Secondly, the Bill seeks to amend the Fifth Schedule that is already spent after the first review relating to the delimitation of boundaries of constituencies and wards. Thus, the Fifth Schedule needs to be aligned to section 36 of the Act.

Article 89(2) of the Constitution provides that the Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years. Thus, the second review of constituencies and wards ought to be completed between the years 2020 and 2024. This Bill seeks therefore to resolve obstacles that may hinder this process.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement as to whether the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will occasion additional expenditure of public funds.

Dated 28th March, 2019.

JEREMIAH KIONI,
*Chairperson, Constitutional
Implementation Oversight Committee.*

Section 5 of the Independent Electoral and Boundaries Commission Act which it is proposed to amend—

Composition and appointment of the Commission

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

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

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

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

First Schedule of the Independent Electoral and Boundaries Commission Act which it is proposed to amend—

FIRST SCHEDULE

**PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND
MEMBERS OF THE COMMISSION**

Selection Panel

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 such persons as Parliament shall determine for the purposes of appointment of the chairperson or member of the Commission.

(2) For the purpose of the first appointment of commissioners upon the commencement of section 5, the selection panel shall consist of —

- (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;
- (b) one person nominated by the Kenya Conference of Catholic Bishops;
- (c) one person nominated by the National Council of Churches of Kenya;

(d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;

(e) one person nominated by the Evangelical Alliance of Kenya; and

(f) one person nominated by the Hindu Council of Kenya.

(3) The respective nominating bodies under sub-paragraphs (2)(b) to (f) shall 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.

Oath or affirmation of office

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

Selection of nominees

3. (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.

Appointment by the President

4. 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.

Gender equity and regional balance

5. 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.

Dissolution of Selection Panel

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

Fifth Schedule of the Independent Electoral and Boundaries Commission which it is proposed to amend—

FIFTH SCHEDULE

PROVISIONS RELATING TO THE FIRST REVIEW

Resolution of issues arising from the first review

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

Reference materials

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

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

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

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

- (b) subject to the Constitution, addressing issues of new constituencies 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.

Delimitation of electoral units

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

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

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

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

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

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

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

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

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

(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.

Review of decision of Commission

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

Application for review

5. 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.

Sensitisation on the proposed boundaries

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

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.

