

TRAINING ON ELECTORAL SYSTEM AND
ELECTORAL BOUNDARIES
DELIMITATION
FOR SOMALIA.

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ELECTORAL BOUNDARY DELIMITATION -CASE STUDY OF KENYA

Background Information

Boundaries by their nature have political, economic and social/cultural implications.

- Politically, boundaries define geographical areas for kings and their subjects; electors and those elected; and therefore allocate political power.
- Economic ally, boundaries define the access and distribution of economic benefits.
- Social-culturally, boundaries define identities of a people owing to their historical attachments to certain geographical features of significance.

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Therefore, boundaries whether administrative or electoral, have an effect on the incentives of those affected. This explains why boundary delimitation remains one of the most sensitive processes in building of any democratic state.

Kenya's electoral system is based on the *First-Past-The-Post Model* and Single-Member constituencies thus determination of electoral boundaries is based on a constitutional provisions and enabling legislation.

The delimitation of boundaries in Kenya is based on a clear logical procedures, transparent processes that involve wide stakeholder consultations through public hearings, application of a scientific methodology to arrive at the final number of constituencies and wards in each county and involves use of the best technologies and archival systems to enable accountability and traceability of the delimitation and demarcation.

Delimitation follows the ten-year cycle as this also follows a ten year census period where there is clear data on the population dynamics in Kenya, in addition to catering for the rapid rural-urbanization and migration prevalent in the country.

Mandate in Delimitation

The Mandate for delimitation in the Commonwealth is stipulated in the constitution together with the criteria and periods/intervals for delimitation that usually coincides with a census review.

In Kenya delimitation is stipulated in the Constitution of Kenya and in enabling legislations i.e the IEBC act of 2012

The Legal Framework for Delimitation

The review of constituencies in Kenya is guided by the constitution under various articles but grounded in article 89 in its entirety:

- Article 89 states as follows:

(1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).

(2) 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, but any review shall be completed at least twelve months before a general election of members of Parliament.

(3) The Commission shall review the number, names and boundaries of wards periodically.

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

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(5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—

- (a) Geographical features and urban centres;
- (b) community of interest, historical, economic and cultural ties; and
- (c) means of communication.

(6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—

- (a) Forty per cent for cities and sparsely populated areas;
- and
- (b) Thirty per cent for the other areas.

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- (7) In reviewing constituency and ward boundaries the Commission shall—
- (a) Consult all interested parties; and
 - (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.
- (8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.
- (9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.

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(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed 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.

(12) For the purposes of this Article, “population quota” means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Process of Delimitation in Kenya

Procedures and Processes for delimitation

1. Setting of the Governance system
2. Crafting of strategy and workplan
3. Recruitment of required skills and equipment
4. Crafting of a communication strategy
5. Conducting of public hearings and stakeholders consultations
6. Analysis of data from the public hearings and memorandums
7. Calculation of the national population quota as per article 89 (12)
8. Calculation of deviations from the population quata as specified in 89 (6)

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9. Classification of the constituencies to as per the Constitution:

1. Cities
2. Sparsely populated areas
3. Others

10. Determination of the distribution of constituencies per as per the counties and regions based on the districts act 1992

11. Determination of county wards per County

12. Application of the the deviations as per Article 89 (5)

13. Holding of public consultation as per Article 89 (7) on the determinations above

14. Presentation to parliament for comments

15. Publishing of the final gazette

16. Determination of conflicts by the High Court

17. Final Gazettement

RESOURCE INVOLVED IN THE DELIMITATION

- **The Skills:** Cartographers, demographers, sociologist, statisticians, historians, geographers, economists, urban planners, archivist, communication experts, surveyors, GIS experts and lawyers.
Supportive skills: Finance and Human Resources
- **The Data and the Data source**
 - 2009 Kenya National Population and Housing Census
 - Base Geographical details (Shape Files) from the Survey of Kenya and the 1992 districts and provinces act,
 - Kenya Forestry Services shape files,
 - Kenya Wildlife Service shape files,
 - Water Resources Management Authority shapefiles
 - Kenya Roads Board shapefiles,
 - Communication Commission of Kenya and other Government departments databases .
- Financial resources to enable the process

TO DELIMIT THE FOLLOWING STRATEGY IS IMPERATIVE

1. Development of a strategy and work-plan deliver the Delimitation
2. Induction Workshop for Commissioner's and Management
3. Determination of the Governance Structure to deliver the boundaries mandate and the Second Review
4. Staff training on delimitation
5. Acquisition of GIS laboratory and Associated Equipment
6. Acquisition of an Expert Panel and relevant skills for delimitation
7. Addressing the issues arising from the first review
8. Boundaries Harmonization
9. Design of the legal framework, procedures, processes and decision making structures for delimitation
10. Selection of public hearings methodology, acquisition of the Hansards teams and schedule for public hearings
11. Conducting the Public Hearings
12. Public Outreach
13. Stakeholder engagement
14. Data acquisition, collection and collation
15. Analysis, modeling and determination of the methodology and formula for delimitation
16. Preparation of the reports of the Second Review, the gazettelement and maps of the Second Review
17. Legal petitions
18. Evaluation

CHALLENGES IN THE DELIMITATION OF BOUNDARIES OF ELECTORAL UNITS IN KENYA

In the past review the following concerns arose;

- That many Kenyans needed greater awareness and understanding of the constitutional parameters for delimitation and the special circumstances of the First Review.
- **Redistricting:** Members of the public were critical of the alteration of constituency and ward boundaries even where the primary objective was to ensure compliance with constitutional parameters. This explains the trend in public presentations and memorandum that reflect what are largely ethnic and clan ties. In many cases the public were unwilling to accept alteration of boundaries based on constitutional parameters.
- **Implications of electoral boundaries on allocation of resources:** Electoral boundaries are delimited for the primary purpose of ensuring effective representation. However, there is a general perception that delimitation of electoral boundaries is linked to resource allocation.

Key Result Areas in Delimitation Strategy

- These KRAs are broken down into goals, objectives and strategies. The objectives are further broken down into detailed action plans outlining the various activities, resource requirements, timeframes and responsibilities for the delivery of each strategy.
- The KRAs are outlined below;
 - Governance, systems and structure
 - Preparation of the strategic plan and timetable for delimitation
 - Research and documentation
 - Stakeholder engagement for inclusive participation of all in the delimitation process
 - Set up a GIS laboratory with associated equipment and accessories
 - Consultations of Stakeholders
 - Delimitation of the Boundaries
 - Dispute resolution and conflict management

CONCLUSIONS

- During a Boundaries delimitation there is need for an inclusive and extensive consultation of all stakeholders from all arms of government, private sector, citizens, civil society and all interested parties.
- A logical framework and a mathematical formula will enable the delimitation of boundaries that are equitable and assure the equality of the vote and make state craft more responsive to the citizenry.