

## **Department of Political Affairs**

### **Capacity Building Training on Electoral Boundary Delimitation for Somalia 23-25 April 2018**

#### **1. Introduction**

The Department of Political Affairs (DPA) of the African Union Commission (AUC) in collaboration with the African Union Mission in Somalia (AMISOM) organised a training workshop on electoral boundaries delimitation from 23-25 April 2018 in Nairobi, Kenya. The training was conducted for the National Independent Electoral Commission of Somalia (NIEC), the Independent Boundaries Review Commission (IBRC) as well as other key relevant State and Non State election stakeholders such as the Ministry of Constitutional Affairs, Ministry of Interior and Federal Affairs and Reconciliation, Prime Minister's office, and representatives from various states of Somalia. The training was conducted for 24 participants and followed the successful capacity building workshop on electoral systems design which was carried out by the DPA in 2017 for the NIEC and relevant stakeholders. This training is part of the electoral-cycle support to Somalia in preparation for the future universal suffrage elections scheduled to take place in 2020-2021. Broadly, AUC support to Somalia stakeholders is expected to enable them to develop an appropriate electoral architecture for the democratic and participatory electoral processes. Delimitation of electoral boundaries is a complex process with far reaching technical, political, economic and operational implications in electoral democracy. Therefore, developing an appropriate legal and institutional framework for delimitation of constituencies is critical for sustainable electoral processes.

The DPA of the AUC provides electoral assistance to Election Management Bodies (EMBs) pursuant to Chapter Seven of the African Charter on Democracy, Elections and Governance (ACDEG), based on request from member states. Electoral support to Somalia was based on request from the NIEC. Through an electoral governance approach, the DPA not only provides electoral assistance to EMBs but also to a gamut of institutional actors involved in rule making, application and adjudication as pertains to elections.

#### **2. Objectives of the Training Workshop**

The main objective of the workshop was to enhance the capacity of relevant Somali election stakeholders, through an inclusive approach, to delimit electoral boundaries. The specific objectives of the training are to:

- i. Equip participants with knowledge on comparative legal and institutional contexts and processes in electoral boundary delimitation
- ii. Share lessons and comparative experiences on electoral boundary delimitation in Africa

#### **3. Theoretical Presentations**

##### **3.1 Definition, Importance and Principles of Boundary Delimitation**

Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province. Delineation and redistricting is also used to mean the same thing as delimitation. Redistricting is the process of drawing electoral district boundaries in the USA.

Delimitation of electoral boundaries therefore can be described as the way in which countries adjust their electoral areas to determine the voters who will elect their representatives. In Africa, the politics of boundary delimitation can be said to have started with the scramble for Africa in the mid-19<sup>th</sup> century leading to the 1884 Berlin Conference for the partition of Africa by the European countries of France, Britain, Belgium, Germany, Spain and Portugal. The Berlin Conference commenced the partition and delimitation of the continent into assigned politico-geographical zones. This later gave way to colonization in which the different colonial powers determined how the people they colonized were to be represented.

The importance of the process of drawing electoral district boundaries, voting areas (polling areas, districts or election precinct) and demarcating administrative boundaries such as state/province, county or municipality lines is linked to the population census, consideration for population numbers and the geographical distribution of people across the country in most countries. This affects the allocation of polling stations in different constituencies. Thus, where the delimitation exercise is carried out late, this will mean the late publication of the list of polling stations. Late delimitation can result in the disenfranchisement of voters who discover on polling day that they are wrongly registered in different wards or constituencies. Timeliness therefore, allows interested parties to scrutinize the maps and, or the boundaries.

### **3.1.1 Principles of Boundary Delimitation**

Delimitation or redistricting practices vary greatly around the world; therefore, there are few universal principles guiding the delimitation process. Although countries disagree on fundamental issues such as how impartial and independent, the process of delimitation can and should be, this varies across legislative and political considerations and concerns. Nevertheless, there are several generally accepted principles across countries. Key principles include:

#### **Representativeness**

When drawing electoral constituencies, cohesive communities should be taken into account, defined by such factors as administrative boundaries, geographic features, and communities of interest. The following features are required.

- a) Ensure the electorate/constituents have an opportunity to elect candidates they feel truly represent them.
- b) District boundaries should coincide with communities of interest as much as possible.<sup>1</sup>
- c) If districts are not composed of communities of interest, however defined, it may be difficult for representatives to serve the constituency well.

#### **Equality of voting strength**

The population of constituencies should be as equal as possible to provide voters with equality of voting strength. It is important to ensure that electoral district boundaries are relatively equal in population. Equally, populous districts allows voters to have an equally weighted vote in the election of representatives. If, for example, a representative is elected from a district that has twice as many voters as another district, voters in the larger district will have half the influence of voters in the smaller district. Therefore, the following features should be avoided:

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<sup>1</sup> Communities of interest can be defined in a variety of ways e.g., they can be geographically defined communities delineated by administrative boundaries or physical features such as mountains or islands, or they can be "communities" that share a common race, ethnic or tribal background, or the same religion or language

- a) Electoral districts that vary greatly in population - a condition referred to as "malapportionment", violate a central tenet of democracy, namely, that all voters should be able to cast a vote of equal weight.
- b) Malapportioned constituencies have a danger in that they can be frequently used to ensure constituency boundaries favors one group (such as ruling party) over others. This is accomplished through active, passive or systematic malapportionment.<sup>2</sup>

### **Independent, impartial boundary authority (or, at a minimum, reciprocity)**

The boundary authority should be a nonpartisan, independent, and professional body. The legal framework for boundary delimitation should provide that the persons or institution responsible for drawing electoral boundaries are independent and impartial and that recommendations of the boundary authority should not be subject to modification or veto by the government or by the legislature. Further, the procedure for delimiting electoral districts should be clearly spelled out in legislation so that the rules regulating the process are the same, regardless of who is drawing the district boundaries, that is, the process should offer reciprocity. If political concerns are permitted to play an overt role in the drawing of the electoral district boundaries, it is vital to give access to the process to all political parties. On the other hand, it is possible for the legislature or executive to influence the process if the boundary authority and its product are not independent from legislative and executive control. For example, after delimiting constituencies, the Zimbabwe Electoral Commission must submit to the President a preliminary report containing the following:

- (a) List of the wards and constituencies, with the names assigned to each and a description of their boundaries
- (b) A map or maps showing the wards and constituencies and
- (c) Any further information or particulars that the Commission considers necessary

The President must cause the preliminary delimitation report to be laid before parliament within seven (7) days. Within 14 days after a preliminary delimitation report has been laid before parliament, it must be gazetted.

### **Transparency**

The delimitation process should be as transparent and accessible to the public as possible. Because **electoral systems** that feature districts often produce disproportional election outcomes, it is essential that the delimitation process be considered fair if the result is to be deemed legitimate by stakeholders and voters. This means that the delimitation process should be as transparent as possible, with the methodology and guidelines clearly established and publicized in advance of conducting the exercise. Incorporating public hearings into the process to allow stakeholders to offer comments for the boundary authority to consider is also important.

### **Non-discrimination.**

The delimitation process should be devoid of electoral boundary manipulation that discriminates against voters because of race, language, religion, or related status. Articles 2 and 25(b) of the

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<sup>2</sup> Active malapportionment – Boundary authority makes conscious decision to draw constituencies that vary dramatically in population.

Passive malapportionment – simply avoiding the periodic redrawing of boundaries

Systematic malapportionment - exists when administrative boundaries are used as single member constituencies despite large differences in population.

International Covenant on Civil and Political Rights (ICCPR), provides that suffrage be non-discriminatory. Electoral district boundary configurations can be discriminatory by fragmenting geographically concentrated minority groups across constituencies to dilute or discount their vote. Electoral boundaries therefore, should not be drawn in a manner that discriminates against any particular minority group. For example, dividing a geographically concentrated minority group among several electoral districts so that the group constitutes a minority of the voters in every single electoral district should be prohibited.

Electoral systems that rely exclusively on single-member districts cannot guarantee even some minimal percentage of seats for minority groups or minority political parties in the population. However, this fact should not open the door to active discrimination against a given minority group.

### **3.2 Criteria for Design for Electoral Boundary Delimitation**

There are various criteria for designing different institutions and processes. For instance, there is a criterion for designing an Election Management Body (EMB) or an electoral system of a country. In the same regard, there is criteria that guides the design of electoral boundaries. These criteria are informed by the principles guiding good boundary delimitation. Different countries often set formal rules or criteria in the election laws or constitution for their boundary authorities to consider when drawing electoral districts. While some countries employ boundary commissions or election commissions to draw districts, many countries allow the legislature or a government agency to redistrict. Often times, the rules specify the following:

- a) Demographic considerations
- b) Geographic considerations
- c) Special provisions for minority groups
- d) Communities of Interest

Broadly, these criteria relate either directly to the process of boundary delimitation or indirectly to the outcome of the redistricting process itself.

#### **Demographic considerations (equality of the voting strength)**

Population considerations is the most widely accepted rule or criteria given the importance of representation in democracy. It translates to the principle of equal populations across districts especially in Single Member Districts (SMDs). Populous districts to have equally weighted voice in electing its representatives as with districts with less population to create balance of fairness. Population figure used to determine equality differs across countries. These include:

- Total population- used as base for determining equality across electoral districts
- Registered voters- the register of voters used as a base for determining equality
- Citizen population- Most countries use this as relevant base for determining population equality
- Voting age population for example in Lesotho

In the past decades, representation of voters has taken precedence over the representation of communities as evidenced by the number of countries that require districts to be as equal in population as possible over other criteria such as administrative and geographic features or

considerations. Thus, the need to establish a tolerance limit or population quota became necessary in translating the principle of equal population across districts.<sup>3</sup>

The demand for population equality also varies among countries, some countries have tolerance limit established that would guide the extent to which constituencies are allowed to deviate from the population quota – This ranges from 0 – 30 percent tolerance limit (minimal, medium and large). For example, Zimbabwe has a 20% limit. So therefore, countries attach different level of significance to the strict equality of population as related to individual country's political equality.

It is important to determine how much variation from the ideal of exact population equality can be tolerated to accommodate other redistricting goals. While some countries such as the US have, the strictest derivation standards because of value placed on population equality and individual rights, other countries such as the UK choose to balance population equality against other criteria. For example, the U.K administrative boundaries is a vital criterion in redistricting. More so, most African countries keep individual tribes in a single district over population equality.

### **Geographic considerations**

Two categories guide geographic considerations of boundary delimitation. Electoral laws in most countries requires these considerations to be taken to account when delimiting electoral districts. They are:

- a) Geographic boundaries: This include administrative boundaries such as country lines and municipality line. Usually, common *features listed are*:
  - Respect for clearly established boundary lines
  - Consideration for local administrative boundaries, for example, in countries such as Cameroun, Kenya, Tanzania, Uganda and Botswana, the Constitution specifies consideration for tribal territories in addition to stated population density or sparseness of population as in Kenya and Papua New Guinea
  - Higher priority for criteria such as respect for administrative boundaries and physically defined natural communities in most countries. For example, in some African countries such as Nigeria and Kenya, where administrative boundaries turn to constituencies.

As a result, large population disparities are tolerated when geographic considerations are taken.

- b) Geographic size and/or shape- This include natural boundaries such as mountain ranges, rivers and islands. *Factors for consideration are*:
  - Contiguity- districts should not be oddly shaped, and
  - Compactness- All pieces of a district should be inter-connected

Both relate to specifically the geometric shape of a district such as in the U.S in the early 90s.

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<sup>3</sup> Tolerance limits are usually specified or allowable deviations from the population or electoral quota.

The population quota is simply the population of the territory to be redistricted divided by the number of legislative seats (or districts) to be allocated to that territory.

## **Non-discrimination of minorities (Representation)**

Countries that delimit districts usually do not adopt criteria relating to the fairness of the outcome. Criteria specifying fairness for minority groups within a country focuses on the electoral outcome rather than the process of redistricting. Example of such criteria consists in requiring that district plan be drawn so that political parties are fairly represented or that racial, ethnic, religious or linguistic minorities have an equitable chance of representation.

Procedures if spelled out in the legal framework, irrespective of who is drawing electoral districts (be it the Boundary Delimitation body), demonstrate certain standards of neutrality, transparency, accuracy, non-partisanship and service to voters. This is because countries with Electoral systems that rely on single-member districts (SMDs) can rarely meet these standards. If fairness of outcome is defined as proportional or near proportional representation for political parties and minority groups because they cannot guarantee Proportional Representation or even minimal percentage of seats for ethnic, racial, religious or other minority groups in the population. For example, some countries make special provisions for minority groups such as the US where the voting rights Act guarantees racial and ethnic fairness, or for communal and open constituencies as in the case of Fiji. List PR and Mixed systems (Parallel and MMP systems) can accommodate requirements for minority representation within the context of the party lists if so desired.

Polarized majority-minority lines exposes the difficulty for electing minority representatives to legislative office except seats are reserved or special electoral districts created for the group. It is therefore, important for countries with deep racial, ethnic or religious divisions to opt for some form of proportional representation as recorded in the failure of deeply divided societies or countries unable to foster representation, which may lead to instability rather than fostering strong and stable governments. It is important for countries with deep racial, ethnic or religious divisions to opt for some form of PR to achieve minority representation.

## **Respect for community of interest**

By definition, community of interest is generally conceived as a group of individuals united by shared interests or values. It is rarely defined by statute. Criteria related to communities of interest are:

- a) Administrative or geographic boundaries as stated earlier above
- b) Common interest or common characteristics as result of common culture, ethnic or tribal, religious background or a variety of other ties that create distinct interests such as socio-economic status
- c) Patterns of interaction – Transportation patterns, economic ties and communication networks

Lack of elaborate electoral laws on what and how specific communities of interest are relevant to delimitation are usually not taken in to account. Only few countries offer explicit instructions as to what are particularly pertinent when delimiting constituencies. Most countries continue to emphasize importance of creating districts that are relatively equal in population that also corresponds as closely as possible to pre-existing communities usually defined by administrative divisions or community of interest. For example, a river may form a boundary between two administrative divisions, but the entire river valley may comprise a unified community of interest. In this instance, an electoral district that follows the administrative boundary would divide a community of interest. This is usually difficulty for SMDs to reflect distinct geographic communities.

Rationale for recognising communities in redistricting should be more than conglomerations of random groups of individuals but rather politically cohesive and common interest groups as related

to representation. This is to enable a representative easily carry out responsibilities in articulating the interest of his or her constituency.

### **Redistricting Conflicts**

Redistricting criteria can conflict with one another. Therefore, countries that establish redistricting criteria must in one way or the other allow for trade-offs for prioritizing the criteria for consideration. It is important to note the following:

- a) Most countries list population equality yet few countries actually have districts that are very close to equal in population, or other criteria are deemed more important than strict adherence to population equality
- b) Build public consensus, as public hearings are essential to the process. For example, the public's choice of ethnic community boundaries over administrative boundaries should accept certain inconsistencies in district configurations<sup>4</sup>

There are approval and challenging mechanisms that over the years or centuries have evolved thereby ensuring recent reforms reduces the influence of politics and powers of the legislature to approve redistricting plans as in the practice in Ghana. This is in contrast to where countries delimit districts and legislative approval is required before implementation such as in Nigeria. Today, only limited role for legislature or no role at all is required in redistricting process. However, in some countries, executive approval is still required and the process is still open for political influence.

In order to avoid partisanship, the involvement of courts into the process to give additional mechanisms that could give the judiciary a role in adjudicating appeals against districting plans or providing final confirmation of a particular plan can decrease the possible malapportionment or gerrymandering. Imposing a constitutional or statutory requirement for new boundaries to take effect without any further legislative process could be the best solution to avoid partisanship. It is important to note that majority of countries have no role of courts at all in delimitation process such as in Nigeria. While in some countries, there is a bar against court involvement in the process, other countries grant the court some function in the delimitation process but in a very limited capacity.

Delimitation plan can be challenged, although it is limited in most countries or even non-existent, for example, the only court challenge filed to date in the UK was unsuccessful, which could discourage subsequent litigation on the issue of fairness on the plan or even process in the country. This is because there is either no right to appeal the redistricting plan to the Courts or grounds for such an appeal are very limited, as recorded in the 1996 delimitation exercise in Nigeria where over 500 litigations were unsuccessful. This is however, with the exemption of only the US.

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<sup>4</sup> Administrative and or natural boundaries – considerations for Ex would require districts to be smaller or larger than the electoral quota. Countries choose to specify the most important criteria or place limits (tolerance) on the boundary authority or as well as allow redistricters some level of discretion in balancing these criteria

Geographic considerations such as sparsely populated or isolated territory and means of transportation and or communication may also be prioritized.

### **3.3 Legal and Institutional Framework for Election Boundary Delimitation**

After independence, different countries undertook boundary delimitation of electoral areas, in accordance with their newly adopted independence constitutions. Some adopted the methods of their colonial masters, with modifications to correct the wrongs by the colonial masters. For example at independence, Kenya had a parliament of not more than 130 constituencies. This number thereafter revised from time to time until 2007, when the country had 210 Members of Parliament elected from 210 constituencies.

#### **3.3.1 Legal and Institutional Framework**

The legal framework for boundary delimitation varies from country to country. Traditionally, parliaments have been responsible for drawing their own electoral districts like in the USA. However abuses of the process by parliaments or parties in power, who were seen to be pursuing partisan and self-interest resulting in gerrymandering and disproportionate electoral districts, resulted in some jurisdictions adopting a legal framework that was impartial and responsive.

There are guiding principles in settling on the legal framework for boundary delimitation for electoral areas that are universally accepted. They include the following:

- a) Representativeness – Voters should have an opportunity to elect those they feel truly represent them.
- b) Equality of Vote – Electoral boundaries should be drawn so that there is equality in the vote and those elected should represent equal number of people. This will ensure that all the voters should be able to cast a vote of equal strength.
- c) Non-discrimination of and respect for the right of minorities and marginalized groups.
- d) Public participation and transparency in the way the process is undertaken. The public is given an opportunity to give their views.

The independence of the Authority or person responsible for boundary delimitation is by the constitution or by a special law enacted by parliament. Majority of countries now give this mandate to an Independent Boundaries Commission or to the Electoral Commission. In some countries the legislature serves as the boundary authority while in some few, government agencies are charged with the task of delimitation of boundaries. The composition of a boundary commission can be persons recruited through a merit based process or nominated by political parties or other interest groups.

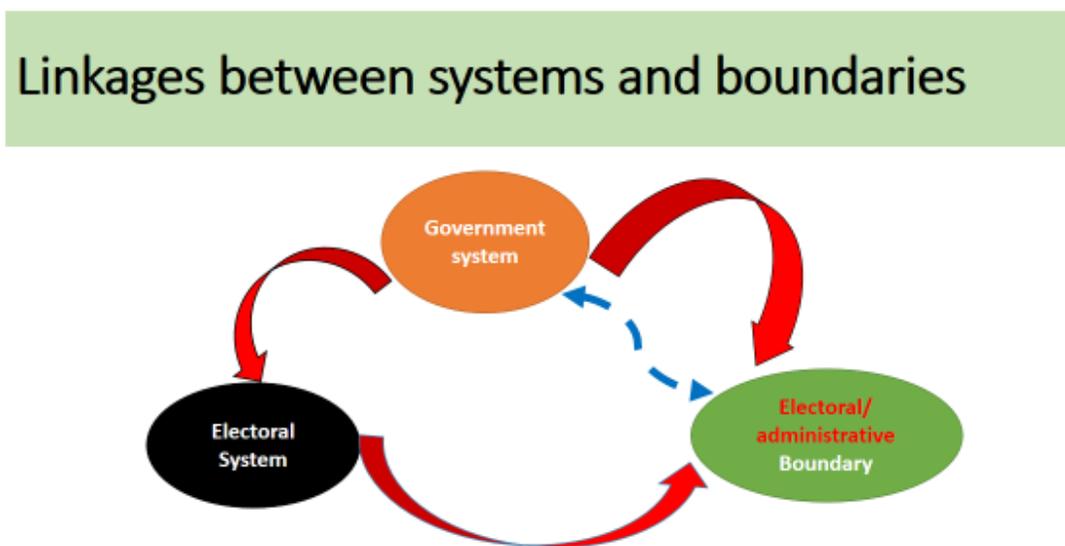
The system of governance in a country also determine whether the boundary commission is centralized or decentralized. In federal countries, the boundaries commission may be limited to delimiting electoral boundaries for the federal level while the state level is left to a decentralized commission or one appointed by the states to deal with the electoral boundaries of state level elections. The legal framework will also provide for the authority of the Boundary Commission. Whether its report is final or is subject to parliamentary or executive oversight. In most cases, the decision of the Boundary commission is final with limited right of appeal to courts. The periodic review of the delimitation exercise is usually provided in the legal framework and can be reviewed every election cycle or population census.

Public participation is provided for in the law and the procedure is given on how the public can have their input into the delimitation process. The criteria to be applied in the delimitation process is often set in the legal framework. Some of these are:

- a) Equal population of voting districts with allowed variation of between 15 to 40%.
- b) Recognition of administrative boundaries.
- c) Natural boundaries or features such as rivers, lakes, mountains, islands, etc
- d) Respect for community of interest such as shared racial or ethnic background, common history or culture, common religion or language and shared socio-economic ties such as transportation and communication networks; and
- e) Dense or sparsely populated areas.

Finally the role of the courts in the boundary delimitation exercise is sometimes explicitly set out in the legal framework either in barring the courts totally or allowing a limited role in judicial review of any decision that can be shown to have been made either without jurisdiction or in excess of such authority. Following the successful conclusion of a boundary delimitation exercise, voting areas may need to be redrawn to take account of changes to the electoral boundaries.

### 3.3.2 Impact of government and electoral systems on electoral boundary delimitation



*Figure 1: Linkages between electoral/government systems and electoral boundaries*

#### Types of systems of Government

- **Unitary systems (Kenya, Uganda, South Africa, Rwanda).** The central feature of unitary system is centralized government where authority is located at the national level, with a degree of decentralization at the subnational levels. In some instances such as in Kenya, unitary system of government may also have devolved governments in sub national levels such as the counties. In such cases, authority is delegated into the sub-national structures such as the counties.

- **Federal systems (Ethiopia, Somalia, Nigeria, U.S.A).** Federal systems of government have shared authority between the central and federal governments. Certain policy decisions are made at central level while others are made at regional levels.
- **Confederate systems (Switzerland).** This system presents the extreme end of unitary systems where more power is situated at the local than at central level. In certain cases, local political units portray features of independence of

The structures of government determine the nature of elective posts depending on the different tiers of government. Some systems of government have three tiers while others have four tiers of structures of government. This is regardless of the type of system of government. For instance, Kenya has 2 tiers of government (central and county governments, south Africa has 3 tiers of government (central, provincial and local) while Mozambique has 4 tiers of government ( central, provincial, district and local structures). These structures are administratively defined through creation of geographical borders, through delimitation of administrative boundaries. Filling posts in these structures can either be through election or appointment as determined by the legal framework including the type of electoral system. Thus, some administrative boundaries may become electoral constituencies for purposes of elections, depending on the type of an electoral system adopted by the country.

### Typologies of Electoral Systems

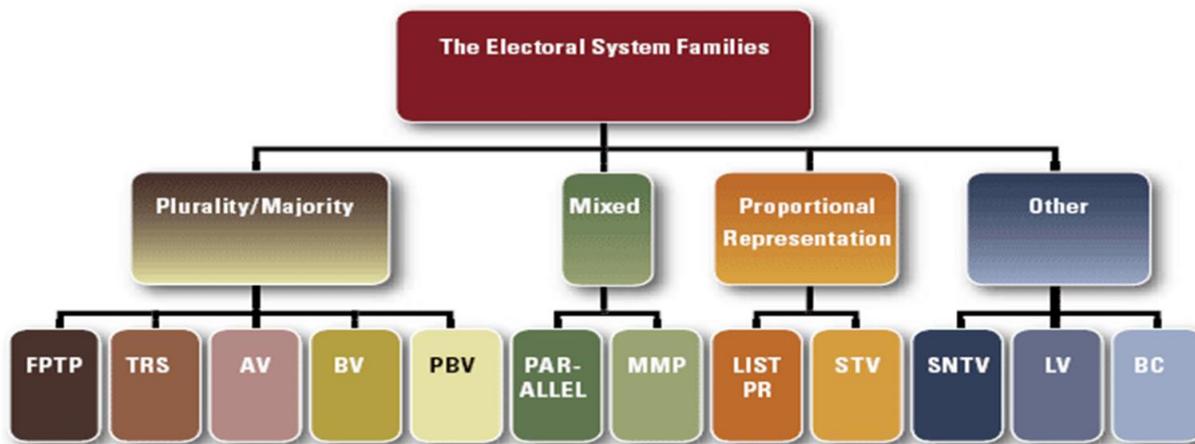


Figure 2: Types of Electoral System

## Summary of electoral systems and boundaries delimitation

Type of electoral system	Multi-member constituency	Administrative boundary can be used as electoral constituencies?	Periodical delimitation of constituencies required?
Closed List PR ( SA, Angola, Mozambique )	YES	YES	NO
Open List PR ( DRC)	YES	YES	NO
FPTP ( Uganda, Kenya)	NO	YES/NO	YES/NO
MMP (Lesotho)	NO	NO	YES

Table 1: Summary of electoral systems and boundary delimitation

### 4. Cross-Cutting Issue: Use of GIS Technology in Electoral Boundary Delimitation

#### 4.1 Overview

The National Independent Electoral commission (NIEC) is considering the use of Geographic Information Systems (GIS) computer technology for constituency delimitation and other Electoral administration prior to the 2020 universal elections. Towards the same, it is in the process of producing the necessary geospatial database for Somalia. Although the delimitation of constituencies falls under the statutory mandate of the commission, a lot yet remains to be clarified as to weather it delimit electoral boundaries or not; which entity has the final authority; what role, if any, the judiciary plays in the process; what initiates the delimitation process and at what intervals; what criteria to adhere to in the delimitation process. Utilizing GIS for delimitation can only be feasible with some clarity from the constitutional review process and electoral legal framework. This discussion will thus inform on what GIS technology is? what data, capacity and other considerations are and to account if it is to be employed for delimiting constituency boundaries before 2020 in Somalia.

However, the use of GIS has begun for the voter registration/polling center identification and electoral catchment mapping at the commission. It is also to give highlight ongoing GIS activities at the commission which undoubtedly compliments constituency delimitation process.

#### What is GIS

Geographical Information system (GIS) is a system of hardware, software, personnel and procedures to capture, store, manipulate analyze, manage and present all types of geographical data. The keyword to this technology is Geography – which means that some portion of the data is spatial.

### **4.3 Boundary Delimitation and Demarcation**

These two are interrelated but not the same unlike the popular belief interchangeable use. There is a marked difference between the two terminologies and processes. Delimitation simply describes the boundary in documents and maps whereas, demarcation refers to actually marking the ground. Boundary Delimitation is when two parties (sharing the boundary) agree on a common boundary in principle. Boundary Demarcation is when the agreed upon boundary from the delimitation process is physically established by means of surveying and marking by use of stones, pillars, roads, rivers, etc.

### **4.4 GIS application areas in the electoral cycle**

Geographic factors in general are now becoming more recognized as major factors in election cycles. GIS can be used at all the stages of an election: *Redrawing boundaries, reviewing location of polling stations with supportive data and public participation*: thereby enabling the electoral body to effectively communicate with stakeholders, collaborate and make the most informed decisions on the boundaries delineation. Placement of polling stations is also another important decision that can be made using GIS, as slight changes to the placement and distance of polling stations can have a major influence on voter turnout. Usually, factors like the already existing polling stations, changes in the population of the area, the accessibility factor, the elevation of the areas, the GSM coverage etc. enable decisions based on crucial data as opposed to approximations.

### **4.5 Delimitation of Electoral Boundaries**

Refers to the task of dividing the country into manageable units for the purpose of electing legislative representatives into office. Other terms which are widely used include redistricting and redistribution in the US and UK election lexicons respectively. If GIS technology is to be used for drawing district lines, a geospatial database must be created. This database must include, at a minimum, population data (i.e., census enumeration data or voter registration data) and the maps associated with the geographic units for which the population is reported.

### **4.6 GIS in the Delimitation process**

GIS provides technical procedures to follow from the guidelines for delimitation which are stipulated in the constitution. Furthermore, it makes it easier to produce digital maps and statistical reports. GIS technology also permits the overlay of maps displaying administrative division boundaries and physical features such as mountain ranges and rivers on the map of the constituency boundaries. These reports and maps could serve as tools for the NIEC to evaluate any proposed constituency plans. Furthermore, if the NIEC released these reports and maps, interested stakeholders could also evaluate proposed constituency plans.

If GIS technology is to be used for drawing constituency lines, an electronic database must be created. This database must include, at a minimum, population data (i.e., census enumeration data or voter registration data) and the maps associated with the geographic units for which the population is reported.

Depending on the constitution and subsequent electoral law, issues related to the equality and tolerance, if any, of the population among constituencies will need to be addressed to be evaluated in the GIS database. In addition which population base to use (example, the number of voters or registered voters), census data and maps of the census enumeration areas will have to be included in the geospatial database.

The most common obstacle to using GIS for delimitation purposes is the lack of digital data for the relevant geographic units. This will pose a problem in Somalia as there is no census geography. The available population data is an estimate which apart from not being aggregated to down to the smallest geographic unit, remains contentious. This will have a huge implication on which criteria to employ for delimitation.

Other data that would prove useful in delimiting constituencies in Somalia include: administrative boundaries (such as state boundaries, administrative division and subdivision boundaries), major physical features such as mountain ranges and rivers).

#### Why GIS?

- The software will facilitate the production of maps and reports, which can then be used to determine compliance with such criteria as population equality, geographic and geometric considerations as well as respect for existing governmental units such as administrative divisions.
- Could generate a more efficient, accurate, and cost-effective (at least in the long term) delimitation process.
- Could foster greater transparency in the delimitation process by permitting the easy production of maps and reports that can be used by interested stakeholders to evaluate and comment on proposed constituency plans.
- Have additional uses in election administration: for example, GIS can be used to assign eligible voters to the correct voting center or station.

#### Disadvantages

There are drawbacks to using GIS – and it is important to consider both the advantages and the disadvantages of GIS when contemplating using GIS for delimitation.

- The financial cost associated with acquiring GIS capabilities for delimitation may be prohibitively high.
- It may be difficult to find, train and retain qualified personnel to operate the GIS software – which has important implications not only for setting up the system but for sustaining it as well.
- Poorly managed GIS could result in a delimitation process that is actually *less* efficient, *less* effective and *less* timely than a process employing manual techniques (at least in the short run).
- Improperly used, GIS could allow users to manipulate the delimitation process, and ultimately, the outcome of elections -Gerrymandering

#### Current Initiatives at NIEC

The NIEC has started deploying the GIS for the identification and verification of voter registration/polling center as well as subsequent electoral administration. Although ongoing activities will compliment boundary delimitation, detailed GIS plan for delimitation is required if the commission is to delimit constituency boundaries.

Key activities in the GIS domain include:

- **Establishment of the NIEC GIS:** Setting up hardware and software and procedures to form the basis for the NIEC’s mapping unit; The unit is comprised of a stand-alone GIS set with a workstation, plotter, printer and latest ArcGIS Desktop with a plan to build into enterprise GIS.
- **GIS Data Acquisition:** Obtaining appropriate GIS data and imagery to support the NIEC’s election planning and operations; So far, data from different data producers and users has been collated into projects at regional, district and municipality levels.
- **Capacity Development in GIS:** Building GIS and mapping capacity development within the NIEC and developing a Standard Operating Procedures (SOP) manual; for the *Logical placement of PC in population centres* (Easiest access to the greatest number of potential voters), Verification of Settlement using satellite images.

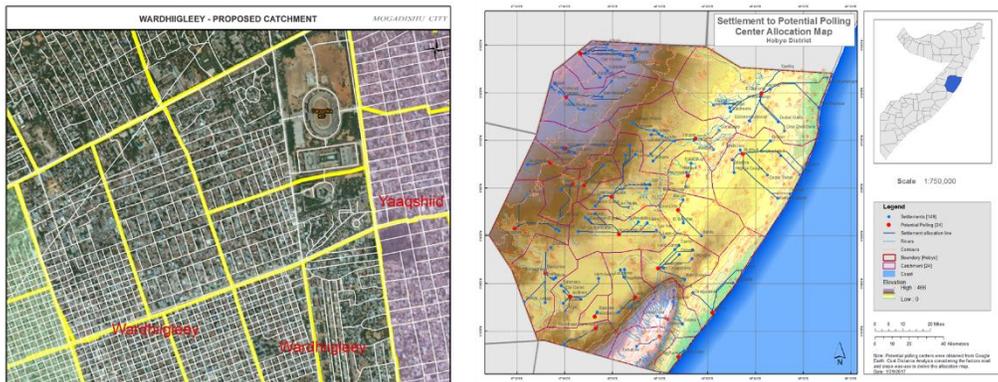


Figure 3: Sample products (voter registration catchments in population centre (left) and logical placement of VR/PC and allocation of village to VR sites (right)).

Geographical distance considerations to voter registration/polling center. *Allocation of Villages to VR-PC Catchment Areas:* Advising on the allocation of villages and other population areas to each potential VR/PC; *VR-PC Verification:* to confirm coordinates of the registration/polling centres in Somalia.

**Coordination with Other Agencies:** Assisting the NIEC to coordinate with the Boundaries and Federalism Commission (BFC), Ministry of Interior, Federalism and Reconciliation (MOIFAR), Ministry of Constitutional Affairs (MOCA) and Ministry of Planning and Economic Development (MoPEC) for obtaining up-to-date boundary, constitutional, legal and population information that directly impact upon NIEC-GIS operations

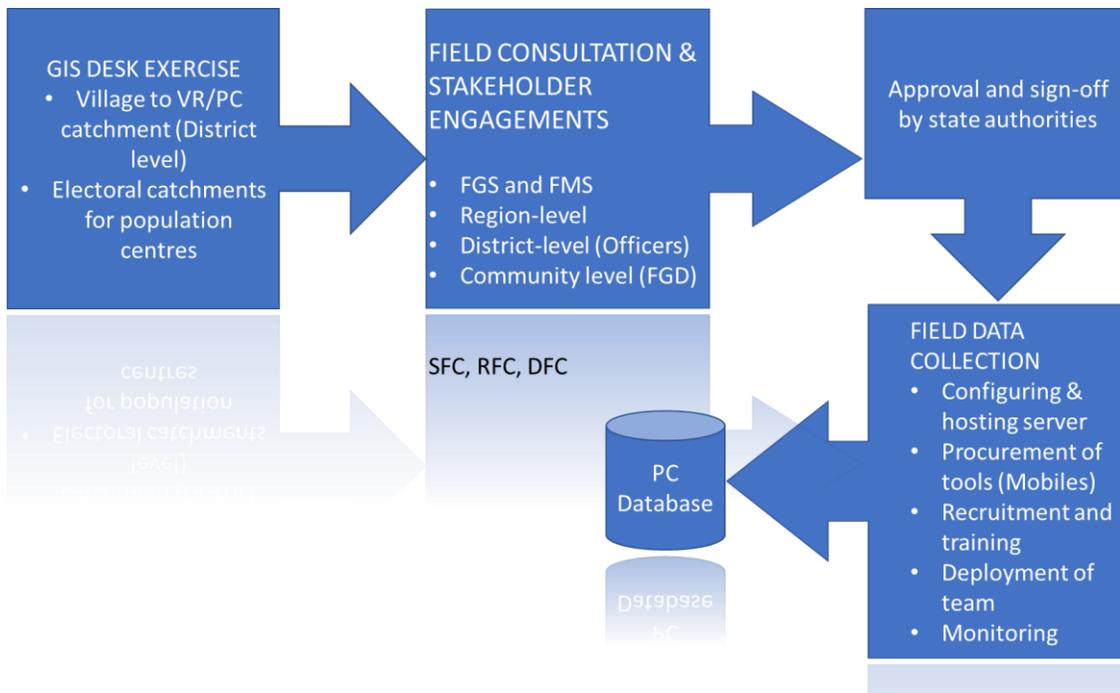


Figure 4: Workflow beyond GIS deployment

#### 4.7 Consideration for delimitation

- The cost of using GIS for delimitation varies dramatically depending on the availability of digital data and maps and the associated population data. If electronic data and digitized maps of the entire country are available. Purchase the necessary hardware and software, and training of qualified staff to use the GIS system, however – and this will not be inexpensive. Thus, NIEC should consider building on existing datasets (i.e. administrative units, population estimates if delimitation is to occur before VR)
- GIS-produced constituency maps and statistical reports associated with provisional constituency plans should be readily available;
- A public hearing (consultation) process is indispensable to allow interested stakeholders to comment on provisional plans.
- Stakeholders' comments should be considered when modifying provisional plans to produce a final constituency plan and publish its reasons for modifying the provisional plans.

#### 4.8 Recommendations

- The NIEC should be supported and strongly encouraged to use GIS technology to its constituency delimitation, VR/polling center identification and electoral administration.
- A public hearing (Consultation) should be instituted to allow interested stakeholders to comment.
- A collaboration mechanism should be established among NIEC, BFC, MoIFAR, MoPEC and other stakeholders. This should be linked to task force on Electoral boundary delimitation

- NIEC needs to closely follow or get involved in population estimation and boundary formalization efforts in the country.

## 5. Case Studies

### 5.1 Kenya

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.
- Economically, 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. 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 circle 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 urbanization and migration prevalent in the country.

#### 5.1.1 Status at Independence

At independence, Kenya adopted a constitution which created two Houses of parliament. These comprised the House of Representatives and the Senate. The House of Representatives had 117 elected members, each representing a parliamentary Constituency. The Senate consisted of 41 elected members to represent the 40 administrative districts plus Nairobi Area.

The 117 constituencies were created by colonial authorities following recommendations by the Royal Commission established in 1962. The Commission toured Kenya and at various venues including influential tribal leaders and chiefs. However, ordinary Wananchi were not consulted. The delimitation was for 1963 independence elections. (The list of the original 117 Parliamentary Constituencies was gazette vide Legal Notice No.208 of 9<sup>th</sup> April 1963).

#### 1964 and 1966 Period

Between 1964 and 1966, the Independence Constitution was amended and the Senate was abolished. This is when the 41 new parliamentary constituencies in the House of Representatives were added to accommodate Senators who had been affected by the abolition. In other words,

Senators were rewarded with these new constituencies, one from each district plus one covering Nairobi Area without subjecting them to an election until 1969.

Thus by 1966, the House of Representatives, which was then renamed “The National Assembly” had 158 parliamentary constituencies. This consisted of the original 117 parliamentary constituencies plus the 41 newly created constituencies with the abolition of the senate. That number was decided upon by parliament alone.

At the same time, Parliament granted to the Electoral Commission of Kenya (ECK) the power to determine the boundaries of these constituencies. (The new National Assembly of 158 Parliamentary Constituencies was gazetted vide Legal Notice No. 344 of 19<sup>th</sup> December, 1966).

### **1986 to 1996 period**

In 1986, Parliament fixed the maximum number of Constituencies at 188. ECK retained the powers to divide the county into the stipulated number of constituencies with such boundaries and names as Parliament may order. Since the maximum number of constituencies was fixed at 188, all that the ECK could do was to draw the boundaries and give names to the constituencies. That is what the ECK did in 1987. It identified the 188 constituencies and declared their names. The boundaries were reviewed for purposes of the election of 1988. (The 188 constituencies were gazette vide Legal Notice No. 370 of 24<sup>th</sup> December 1986).

The procedure which the ECK adopted was to consult senior political leaders and the provincial administration. From these consultative meetings, it made its decisions. It published in the Kenya Gazette an Order containing this decision. Records show that further consultations resulted into another Order in the Kenya Gazette containing different constituencies from the order first published. The latter order carried the day. Like in the past, ordinary Wananchi were not consulted or involved in the exercise. This status remained until 1996.

### **1996 to 2012 Period**

In 1996, Parliament increased the maximum number of Parliamentary Constituencies from 188 to 210, thus creating an additional 22 constituencies. The power of the ECK remained unaltered. The ECK exercised these powers with a view of creating the 22 additional constituencies or a part of them. In the process, the ECK distributed the 22 additional constituencies in proportion to the population of each Province.

To arrive at that decision, the ECK firstly consulted political party leaders and relevant Government Ministries, for example, the Office of the President, Local Government, Survey of Kenya and Central Bureau of Statistics. But most importantly, the ECK held meetings in every district at which ordinary Wanainchi were given opportunity to contribute to the exercise.

It is on the basis of these consultations and written submissions/memoranda that ECK determined the new constituencies, adjusted constituency boundaries and replaced names of some constituencies. The review was for the purpose of the election of 1997. (Legal Notice No. 298 of 23<sup>rd</sup> September 1996).

### **2012 to Present**

The Constitution of Kenya under Article 97(1)(a) determines the composition of the National Assembly at 290 constituencies. The IEBC reviewed the names and the boundaries of the

constituencies in accordance with Article 89 of the Constitution of Kenya. The Commission was further mandated to review the number and names of County Assembly Wards.

Section 36 of IEBC Act provided a detailed procedure on how to proceed with the exercises. This was for the 2013 elections and any future elections. (Legal Notice No. 14 of 6<sup>th</sup> March 2012).

The 1962 Regional Boundaries Commission, established by Colonial Government, was mandated to divide Kenya into six (6) regions and the Nairobi area. The six regions were related to the then existing boundaries but not entirely as the determining factor. There was opportunity to allow people who wished to be associated with one region to do so. The work of the Regional Commission formed the regions referred in the Kenyan Independence Constitution of 1963. The Independence Constitution of Kenya divided the country into 40 districts and Nairobi area. The districts were clustered to form each of the seven regions and the boundaries of Nairobi area. This in effect defined Kenya's territorial area.

That Constitution provided that, any two regions that had a common boundary would by agreement in writing between the presidents of the respective regional assemblies alter their boundary. The alteration of the boundary required the approval by the respective regional assemblies, by way of a legislation passed for that purpose. The Constitution had elaborate provisions on the consequences of altering a regional boundary or District boundaries, which required approval from both Houses of Representatives and Regional Assemblies.

Following constitutional amendments, it was provided that the boundaries of Nairobi area and the Districts shall continue to be in force as part of the Constitution and would only be changed by an Act of Parliament. However in the constitutional amendment Act No. 16 of 1968, all references to provincial and districts boundaries were removed but later saved by an Act of Parliament in 1992. Thus, the former Constitution of Kenya, which was replaced on 27<sup>th</sup> August 2010, provided that a "District" meant one of the Districts into which Kenya is divided in the manner prescribed by an Act of Parliament.

It is therefore notable that in line with the constitutional provisions, the Districts and Provinces Act No. 5 of 1992 is the only Act currently in force and providing for the names and boundaries of the Districts and Provinces into which Kenya is divided. The Act provides for forty-six Districts plus Nairobi area. The districts are the same that formed the basis of the current counties in Schedule I of the 2010 Constitution.

Article 89 of the Constitution caps the number of constituencies in Kenya at 290 and stipulates the frequency, the manner and the criteria for the delimitation of boundaries of constituencies and wards.

Article 89(5) specifically states that 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 less 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

Article 89(6) provides variations around this quota and states that the number of inhabitants of a constituency or ward may be greater or lesser than:

- (a) forty per cent (40%) in the case of cities and sparsely populated areas; and
- (b) thirty per cent (30%) for other areas.

In reviewing constituencies and wards boundaries, the Commission is required to consult all interested parties and

Work towards progressively ensuring that the number of inhabitants in each constituency and ward is as nearly as possible equal to the population quota.

Article 89(9) of the Constitution provides that the Commission shall publish the names and details of such boundaries in the Kenya Gazette.

Article 89 (9)&(10) Once published, any person aggrieved by the decision of the Commission in terms of the names and details of such boundaries, may apply to the High Court within thirty days for review of such decision. The High Court will have to determine the matter within three months of such application.

Article 89 (12) defines the population quota as the number of inhabitants of Kenya by the number of constituencies and wards.

## **5.2 Nigeria**

### **5.2.1 Brief Historical Context and Introduction**

History of constituency delimitation dates back to 1922 when colonialists created the first boundaries in 1922. Nigeria attained independence in 1960 as a federal state with regions (North, Western and Eastern regions). The regions were replaced with states in 1967, although they play a crucial role in political configuration of the country (Regional Politics). Six geo-political zones are however used for political purposes and considerations. Subsequently, the country experienced episodes of military rule up to 1999.

Nigeria is a pluralistic society- ethnicity and religion are identified as two most crucial factors that shapes political discourse and outcome. Subsequent boundary delimitation was done by military regimes in 1954, 1964, 1979, 1983, and 1996. The process was not inclusive.

When constitutional order was restored in 1999, the electoral commission (Independent National Electoral Commission- INEC) was given the mandate to create electoral constituencies. The INEC bears the primary responsibility for delineating constituencies, success and or failure of delineating constituencies to provide a conducive environment for voting in Nigeria.

In Nigeria, constituencies are delineated according to elective offices of Local Government Areas (LGAs) - for Chairmanship, State- for Governorship and the entire country – for Presidential elections.

The system of Government practiced in Nigeria is a Federal Presidential Republic comprising 36 states and the FCT. There are two chambers of the Legislature - the National Assembly (NASS) comprising the Senate and House of Representatives (HoR).

The Senate consist of 109 Senators (3 senators from each state) while the HoR consist of 360 members (several representatives that varies across states).

There are 109 senatorial districts, 360 federal constituencies, and several state constituencies in the country.

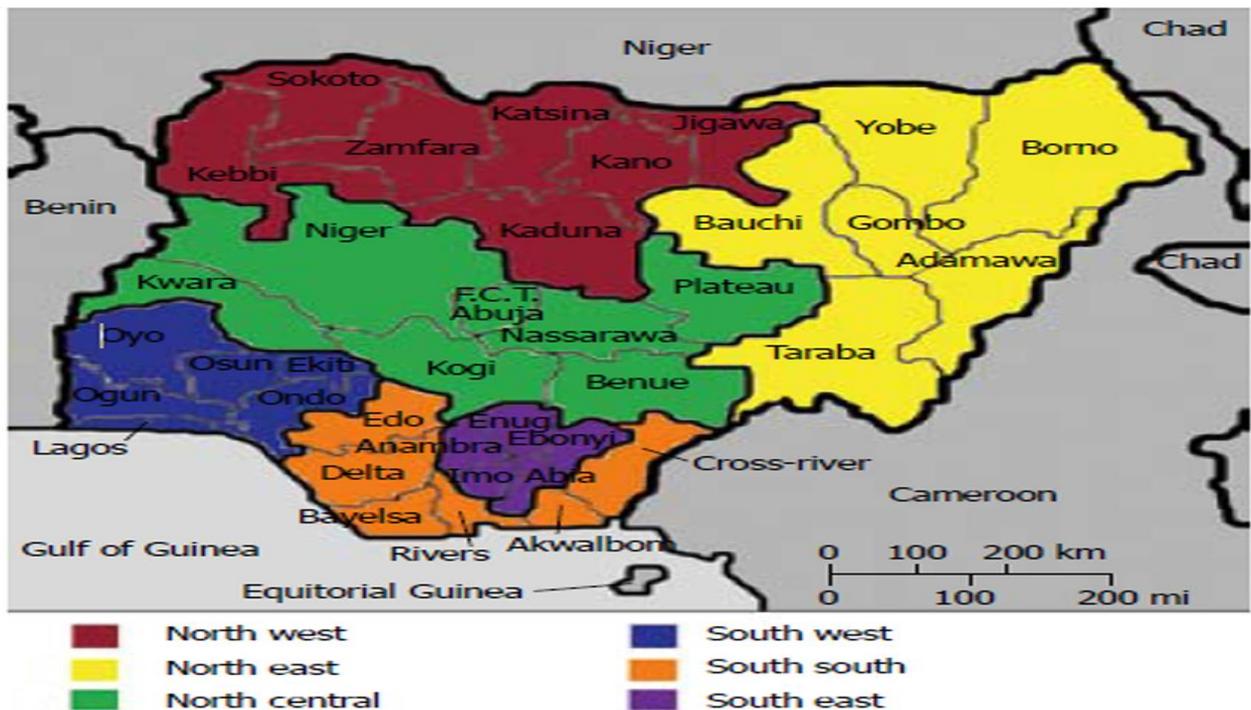


Figure 5: Map of Nigeria showing the six geo-political regions and states

**5.2.2 Legal Framework on Boundary Delimitation**

The 1999 constitution (as amended) empowers INEC to review constituencies after every ten years or after any census conducted by the National Population Commission (NPC). Precisely, Section 48 and 49 of the Constitution provides the composition of the National Assembly- ‘The Senate shall consist of 3 senators from each state and one from the federal capital territory’. The ‘House of Representatives shall consist of 360 members representing constituencies of nearly equal population as far as possible, provided that on constituency shall fall within more than one State.

Section 71 of the Constitution stipulate that for the Senate, each state shall be divided into 3 senatorial districts for purposes of elections to the Senate; and subject to provision of S. 49, divide the federation into 360 federal constituencies for purposes of elections to the HoRs.

Section 72 stipulates the size of the senatorial districts and federal constituencies- None shall fall within more than one state and inhabitants thereof as nearly equal to the population quota as is reasonably practicable.

Section 73 provides that INEC shall conduct periodic review of Senatorial districts and Federal constituencies and should be done at intervals of not less than 10 years. They may also alter the districts or constituencies in accordance with provisions of section. S.74, that is, may carry out this review to such extent as it considers necessary;

- In consequence of any amendment to section 3 of the constitution- 36 states
- Or by reason of holding of a census of the population
- Or pursuant to an Act of the National Assembly

Section 74 provides that any alteration in accordance to provisions stated (S. 71 & 73) shall come into effect after it has been approved by each House of the National Assembly and after the current life of the Senate or HORs in the case of an alteration to the boundaries of either of the two Houses

Section 75 states that for purposes of S. 72 (in relation to size), population of citizens is ascertained by reference to the 1991 census of the population of Nigeria or latest census held in pursuance of an Act of the NASS.

It is important to note that INEC is still depended on the 1996 Constituency Delimitation.

#### State Houses of Assembly (SHoA)

Section 91 outlines provisions on the composition of the SHoA, it shall consist of three to four times the number of seats, which that State has, in the HoRs divided in a way to reflect, as far as possible, nearly equal population. It shall not consist of less than 24 and more than 40 members.

Section 112 provides that on state constituencies, subject to S. 91 and 113, INEC shall divide every state into such number of State constituencies as is equal to three or four times the number of Federal constituencies within that State.

Section 113 makes provision on the size of State constituencies, the boundaries of each State constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.

### **5.2.3 Electoral System and Impact on Boundary Delimitation**

Our presidential system defines the political organization of the country. The Electoral voting system practiced in Nigeria is the First Past the Post (FPTP) for all elective positions (simple majority). Delimitation as in the case of Nigeria's context of plurality-majority system has a profound impact on election outcomes. Dissatisfaction of electoral outcome and representation at the National and State levels has been an Achilles heel in Nigeria's electoral and political process. The quality of fairness of representation at all the level of governance in the country is among the contentious issues that have generated intense arguments continuously in Nigeria's electoral process.

#### **5.2.4 The 1996 Delimitation Exercise**

The defunct National Electoral Commission of Nigeria (NECON) under powers derived from the 1979 Constitution carried out a Delimitation exercise in 1996. The exercise was conducted based on the 1991 population census and under a military regime. Currently, INEC is still using inherited delimitation whereas all fundamentals and dynamics have changed.

Previous constituency delimitation exercises have been marked by conflicts and allegations of manipulation, unfairness and domination by specific segments of the society. Some of the specific pitfalls of the previous constituency delimitation include:

- Unfair demarcation of some constituencies based on land mass rather than population
- Bundling of geographically incompatible groups into one constituency
- Splitting of distinctive ethnic groups into several constituencies, rendering them disadvantaged
- Slow response of the INEC to concerns and complaints about the exercises, leading to loss of confidence in the ability of the INEC to conduct the exercise in an independent and professional manner

- Lack of information on constituencies, making it difficult for aggrieved parties to find a basis to confirm or refute their fears of manipulation/marginalization
- Existence of a few clearly demarcated constituency boundaries
- Tendency of officials of EMBs to collude with politicians to manipulate the exercises

### **5.2.6 Post 1999-Attempts at changing Boundaries**

Since the return to multi-party democracy in 1999, INEC has made several attempts to review constituencies in Nigeria to ensure 'a level playing field for effective participation and representation of the citizenry and elected in the electoral process. Analyzing these attempts will also address a question on why delimiting constituencies is significant in the Nigerian context.

Some of the benefit of delimiting constituencies are decongestion of voters overcrowding at polling locations and the need to produce credible elections. This will address the imbalances or disparities in constituencies which may have been caused by changes in population movements and spatial distributions. For instance, Nigeria's population has continued to grow to its present estimated figure of nearly 170/200 million people. Such increases will have to be reflected in the new realignment. More so, conducting population/census figures would provide useful data for accurate and reliable demarcation projects, but its usefulness would be limited if they are not current.

#### **The 2008 Delimitation Exercise**

A population census was carried out in 2006; it was not without the controversies that trailed previous exercises. INEC in 2008 inaugurated a national advisory committee on delimitation of constituencies (NACDCC), to review the existing constituencies and perceived disproportion of electoral constituencies to make them consistent with relevant laws. The committee developed an Action plan that formed basis for conduct of nationwide delimitation exercise and a comprehensive guideline was also developed to guide stakeholder consultations on salient issues such as:

- Population
- Geographical location-administrative and traditional boundaries
- Equality in registration and Polling Units (PUs)- Gap became more and more wider
- Equity
- Common affinities (socio-cultural affinity)
- Contiguity of constituencies
- Natural frontiers and physical features-mountains, rivers etc
- Respect for existing traditional arrangements
- Conscious of common groups and community interest guided by settlement pattern of communities especially as regards registration and PUs.

Despite having a new census data (2006 population census), INEC still could not review constituency delimitation.

#### **2013/2014 Delimitation Exercise**

INEC developed an Action plan for Delimitation that included the following:

- Internal sensitization of commission staff, experts were brought to review internal
- INEC projected what it needed to do towards 2015 stakeholder engagement, as one of the major flaws identified with previous processes, which was inadequate engagement with major critical stakeholders
- Constitutional ceiling of 360 for HoR must be amended, unlike in Kenya and Liberia
- INEC needed a data set from the NPC up to LGA level. INEC approached NPC and found out it is the work of the National Boundary Commission (NBC) to produce the data set. This

brought about the lack of adequate data since the last exercise was conducted over 16 years ago. Ex. Liberia accepted to use voter registry as data for constituency delimitation

- INEC conducted pilot for 5 states, but needed GIS for a more elaborate work.
- In Nigeria, there has to be an approval at the end of the entire process by the National Assembly, unlike Ghana that did not have to go to the Assembly.
- Broad timeline for consideration of the National Assembly was April 2014
- Timeframe of January 2013 – April 2014 was not met; therefore, constituency delimitation could not be conducted. This was envisaged to take effect before 2019.

### **The 2017/2018 Delimitation Plan: Where we are**

- INEC continued with Stakeholder consultations
- Currently, INEC has set up committees to review electoral constituencies, suppressed constituencies, polling units and registration areas as well as GIS laboratory (including data generated, assets acquired including field assets).
- Ahead of 2019, there are still clamor on the need to conduct the (two) necessary twin exercises of census and delimitation of constituencies given the lack of accurate census figures and consequential inappropriate constituency delimitation. These if unattended to, may spark up the following issues:
  - May spell serious constitutional crisis/logjam in the polity which could possibly derail the 2019 elections
  - It has been prone to conflict in the past (e.g. Warri Crisis), and has a very strong potential to trigger violent conflict in the future
  - Induce conflict in the system
  - Litigations as legal action may be taken by some quarters to challenge the status quo. This would be one of the important constitutional law issues in country's political evolution
  - Underrepresentation of some constituencies at both federal and state levels arising from the electoral system practiced currently
  - Non compliance with the constitutional provision guiding constituency delimitation for the purpose of election into State House of Assembly (HoA) leading to underrepresentation in the HoA of some states. This becomes a constitutional breach because prescribed number of members or representatives has not been met
  - Emphasis on state constituencies as they affect senatorial districts and federal constituencies
- Socio-legal and political implications of non-compliance with the constitutional provisions as they affect the issue
- Inability to adjust electoral boundaries can create an unfair balance of the voting population and greatly affect outcome of elections thereby influencing the number of seats political parties garner, and what controls the legislature which in turn would affect governance and quality of elected representatives
- Constituency delimitation should not only comply with constitutional provisions but must ensure the demarcation of electoral boundaries between states, senatorial districts, federal and state constituencies is efficiently and equitably carried out
- Appropriate and timely intervention is needed to galvanize appropriate authorities in this context (INEC & NASS).
- Constituency delimitation should be seen as part of electoral reforms and interrogate some national questions brought about by undue political gerrymandering in Nigeria, particularly on issue such as restructuring, derivation, resource control, power rotation.

- Recommendations in some quarters and for a on establishing a boundary Commission-come up with model while ensuring INEC and Political Parties as represented in the committee set up by the boundary commission to undertake task.
- Given the wide range of disparities in the various constituencies across Nigeria, INEC signed agreement with surveyor General of the Federation on delimitation of constituencies. The exercise was meant to take into cognizance the environmental, population, and geographical issues for all communities to be effectively represented in the programme. This will address demographic shift in some parts of the country occasioned by religious crisis, natural disasters or population explosion.

**The significance of delimitation in the Nigerian context is the fact that the current** delimitation structure is a product of the defunct NECON, undertaken in 1996 under a military context. The exercise has been severely criticized for manifesting features that are at variance with international best practices, including mal-apportionments and other inequalities that challenge, in a fundamental manner, the principle of equal representation that would correct malapportionment and many imbalances. In addition, exponential growth in population and demographic shifts warrants a review of constituencies.

Further, the exercise has been linked to the struggle for opportunities/access to the political space (and access to more seats), usually connected with the deep sense of ‘territORIZATION’ that exists in Nigeria – ‘indigene’/‘non-indigene’, ‘settler’/‘non-settler’, ‘majority’/‘minority’. It further highlights the capacity of INEC, or otherwise, to address the concerns of the people and discharge its responsibilities in an objective and professional manner. (1996 CD resulted in over 500 litigations), which is crucial in determining the degree to which the electoral process is open, participatory and democratic. It is also a test of the level of public confidence in the independence and credibility of INEC as it provides opportunity for INEC to demonstrate that it has built its credibility and reformed itself by learning from mistakes of the past, and by striving not to repeat those mistakes. The exercise was another opportunity for INEC to ride on support from the civil society to create awareness and educate the people on the delimitation exercise, providing feedback from community members, and pointing INEC to areas that required attention. On the other hand, INEC can reach out to civil society groups and work with them as partners in progress (also political parties).

### **5.2.7 Challenges to overcome:**

- Nigerians have never been part of CD in the colonial era and in past military administrations, hence, the need to delimit constituencies.
- Nigeria is presently deeply divided along regional and religious lines. As such, INEC must work with all stakeholders to obtain a national consensus on the delimitation exercise and ensure that the exercise does not generate more controversy. It is vital not to stir disagreements that would further threaten the peaceful conduct of the 2015 elections.
- Considering past experiences, INEC must develop a clear strategy of dealing with the concerns, complaints and dissent that will arise from the constituency delimitation exercise. ( how do we come up with strategies to deal with such)
- Large numbers of people have been displaced by violent conflicts and urban renewal programmes in various parts of Nigeria since the 2006 census. INEC needs to consider these demographic changes and come up with a detailed plan on how to address the cases of the large number of internally displaced persons. (how to address the interest of displaced persons that resulted in huge demographic shift)

- Special care must be taken in the delimitation process considering that Nigeria's electoral system has the propensity to produce disproportional election result: more seats than votes. Again, in Nigeria, number of seats depends on where votes were cast – parties with geographically concentrated support ('bloc votes') tend to obtain more seats than their proportion of votes would suggest they are entitled. INEC must bear this in mind when delimiting constituencies. (electoral system we run in Nigeria has a way of providing disproportionate results. Moreover, in Nigeria, distribution of votes is very important).
- Restructuring the electoral maps of Nigeria is a gigantic project- not only in terms of the country's large population, but also the enormous resources that will be expended on its execution. There will be logistic problems. Areas with difficult terrains, no access roads and poor communication services will pose problems for INEC's field officers.
- The rising cases of insecurity in some parts of the nation will remain as formidable challenges in conducting an exercise of this nature.

If the exercise is perceived as unfair with perceptions that the electoral boundaries have been manipulated to produce certain political outcome, then it would not only affect the credibility of the CD process but rather question the legitimacy of the electoral outcome itself (Handley, 2007). Thus, the basis of representation is defined to reflect a given population often referred to as the constituency. Hence, the representation by virtue of the election into specific areas or offices.

### **5.2.8 Moving forward: Issues to consider**

There are certain issues around delimitation in Nigeria that must be addressed moving forward.

- The role of the judiciary in constituency delimitation process should be defined. Currently, there is no role of the judiciary in the constitution. Should the constituency boundaries drawn by INEC be subject to challenge in the court?
- Constitutional limitation of state constituencies' seats. For example, states cannot produce less than 20 and more than 40 seats.. The HoR recently proposed a motion challenging INEC on delimitation of constituencies affecting 19 states, stating INEC had denied citizens their constitutionally guaranteed right (in line with section 91 of the Constitution), to adequate representation in the SHoA. This may have effect on federal election outcome
- Seats allocation to the Federal House of Representatives and States HOA differ, due to difference in population size- 120,000/1,300,000. So the exercise must be designed to make adjustments for only electoral districts and constituencies and not to increase legislative seats
- Since constituency delimitation is a technical process, what should be the constitutional mandate of the National Assembly in approving the number of constituencies and whether constituency boundaries produced by INEC should be subject to further revision by the National Assembly as part of its responsibility to approve alterations by INEC. How should the role of the legislature in the constituency delimitation process be defined?
- Issues around legal framework that bothers on methodology- constituencies to be equal to population size
- Possibility of extra legal issues interfering with the constituency delimitation process
- Historical experiences has been superintendent by the military, hence, the need for a people oriented process. Key elements to bear in mind are broad based , inclusive and participatory process especially for a federal state like Nigeria where federating units are not only diverse and complex but to some extent volatile
- Population demography affected size and number of polling units, whether there is a constituency delimitation or not, INEC has constantly engaged in mapping of polling units

delineation to respond to shift in population *without proper demarcation of constituencies for over such a long period.*

- Establishment of a separate Constituency Delimitation Commission given the argument that the task of delimitation is overwhelming for INEC being in charge of voter registration, party registration and conduct of elections
- As part of efforts to build public confidence in the delimitation process, should some formal mechanisms be established for public scrutiny of, and input into the delimitation process? If so, how should these mechanisms be structure?
- S.49 of the 1999 Constitution requires that constituencies shall be of 'nearly equal population as far as possible'. Will it not be wise to specify more directly (in the Constitution, the Electoral Act, or INEC Guideline) what is meant by this requirement? As has been suggested elsewhere, a threshold should be set somewhere between 5 to 15% to curtail the large population deviation that currently exists.
- The Constitution requires the use of census data for delimitation. This should probably be amended to include the use of voter registration data as well, since Nigeria now has a robust and reliable voter registration database. An important advantage of voter registration data is that it will be easily associated with the geographic units likely to be used for delimitation – Polling Units and Registration Areas. This makes the computation of the population of each constituency much easier.
- INEC to collaborate with the National Space, Research and Development Agency (NASDRA), in the use of modern delineation tools in conformity with best international practices to determine population concentrations

## **5.3 Tunisia**

### **5.3.1 Post- Revolution Boundary Delimitation Process in Tunisia**

Before the revolution in 2011, the history of Tunisia was characterized essentially by the use of boundary delimitation to serve the security interest of the then King (Bey), the colonizer, especially after independence. Thereafter, a new approach to the delimitation of electoral constituencies was adopted after the revolution to ensure the adherence of the political currents to the democratic transition and to improve participation in the different elections.

After the revolution, Tunisia went through two phases of delimitation of the electoral constituencies. In a first phase, the new political partners focused on the delimitation of the legislative constituencies in preparation for the elections of the members of the National Constituent Assembly, in charge of elaborating a new Constitution for the country. In a second phase, after the adoption of the Constitution, three new categories of local collectivities were created to serve as constituencies in local elections.

#### **I. Parliamentary Boundaries Delimitation**

To ensure the success of the democratic transition in Tunisia and avoid any conflict, an independent public authority called "the High Authority for the Achievement of the Revolution Objectives, Political Reform and Democratic Transition" was created. It was in charge of studying the legislative texts having link with the political organization and proposing the reforms likely to concretize the revolution objectives relating to the democratic process. The approach adopted was characterized by the search for consensus by bringing together within this body most of the then-existing political currents, and essentially national political personalities, representatives of the different political parties and representatives of the civil society. The authority decisions are made by consensus, failing this by the majority.

The decree-law No. 2011-35 dated 10 May 2011 relating to the election of a National Constituent Assembly, prepared and proposed by this authority, establish **4 criteria** for the parliamentary constituencies delimitation as following:

- Adoption of the administrative division of the national territory, the governorates
- Ensure adequate representation of citizens in parliament
- Ensure a minimum level of representation among electoral Constituencies at the Parliament level.

**a) Adoption of the administrative division of the national territory: the governorates**

Tunisia is composed of 24 governorates and this division is well anchored. It was strengthened gradually after the independence according to developmental considerations and population increase. In this context, Article 33 of the decree-law No. 2011-35 provides that "...Every governorate constitutes one or many constituencies...".

**b) Ensure adequate representation of citizens in parliament**

To ensure adequate representativeness of citizens in Parliament, the decree-law No. 2011-35 has opted for one deputy for every (60,000) inhabitants. The choice of this criterion is well justified. Indeed, each governorate in Tunisia is composed by a certain number of delegations and the average population in each delegation was estimated in 2011 to (60,000) inhabitants.

On the same time, to avoid the disadvantages of applying such criterion, an additional seat shall be granted to constituency if it is proved, after having fixed the number of the granted seats, that the operation of fixing the number of the members leaves over (30.000) inhabitants.

**c) Ensure a minimum level of representation among electoral Constituencies at the Parliament level**

To ensure an adequate balance in representativeness between the different constituencies, article 31 of the decree-law No. 2011-35 provided that the number of seats allocated to each constituency should not exceed 10 seats. That's why, every governorate composed by more than (600,000) inhabitants is divided into several constituencies.

To avoid any manipulation of the division of these large governorates for political reasons, the Higher Independent Electoral Commission, which was empowered to propose the decree fixing the different electoral constituencies and the number of seats, adopted an approach that ensured continuity of the geographical area of the constituency. Indeed, the inhabitants of the constituency shall not be divided on intermittent geographical plots and separated from one another. The division of each of the three large governorates was made on the basis of delegations, another consensual element.

Otherwise, the decree-law No. 2011-35 provided the adoption of positive discrimination measures for some constituencies. In application of its article 33, two additional seats shall be allocated to the governorates which number of inhabitants is less than two hundred and seventy thousand (270,000) inhabitants. An additional seat shall be granted to the governorates which number of inhabitants varies between two hundred and seventy thousand (270,000) and five hundred thousand (500,000) inhabitants. The governorates that benefited from these positive measures are indeed the least developed and have since the independence experienced the migration of their inhabitants to major cities.

## **II. Ensure the representation of Tunisians abroad**

Based on the statistics of Tunisians residing abroad prepared by the Ministry of Foreign Affairs, the Higher Independent Electoral Commission proposed a division of the world on 6 constituencies to ensure the representation of all Tunisians on the National Constituent Assembly.

Finally, the new Constitution adopted on 27 January 2014, confirmed the right of Tunisians abroad to representation in Parliament in its article 55 - Paragraph 2 which provides: "... The electoral law guarantees the right to vote and representativeness of Tunisians residing abroad in the Assembly of People's Representatives". The Constitution emphasizes, on the other side, the fact that the electoral constituencies are regulated by law and published at least one year before the parliamentary elections.

## **III. Local Boundaries Delimitation**

The new Constitution of Tunisia, adopted in 2014, created three categories of local collectivities, each of which represents a category of constituencies which are the municipalities, the regions and the districts. Prior to this date, the country had 264 municipalities covering about 10% of the territory, 24 regions juxtaposed with the governorates. No districts have been planned. This situation caused an imbalance between regions and led to inequalities between citizens who did not enjoy, because of this division of the territory, the same rights and services.

In order to insure the coverage of all the territory with municipalities, a global approach based on demographic, social and economic statistics was adopted in 2015. This approach implemented by the executive power, was also:

- A participatory approach: A coordination with various governmental agencies and civil parties at the national and local levels was assured. A multidisciplinary team was also established in collaboration with the National Institute of Statistics, the National Mapping and Remote Sensing Centre and the National Office of Cartography. Also, 13 national and regional consultations were so organized.
- A prospective approach which focused on the future development dimensions of the Municipalities;
- An analytical approach which aimed to put in place accurate analytical indicators that allow the adoption of an objective and balanced methodology.

Regarding the fixing of the number of seats in each municipal council, a scale by tranche was adopted and based on the:

- classification of municipalities into 6 groups by number of inhabitants,
- graduation of the number of seats in the Municipal Council by population, adding six seats on each tranche.

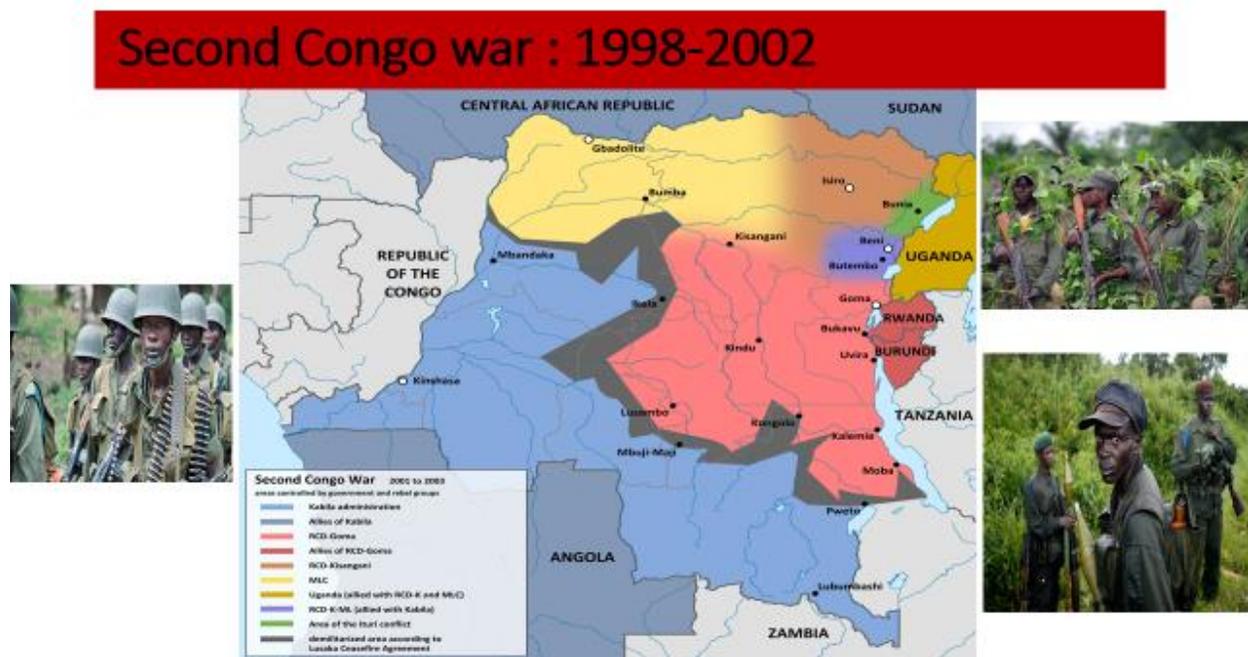
The executive power wanted in the same time to take into account the need to ensure the representativeness of the inhabitants in the Municipal Council and ensure the capacity of each of those Councils to act and decide.

## **5.4 Democratic Republic of Congo**

### **5.4.1 Post-civil war dynamics and impact on system of government, electoral system and electoral boundary delimitation**

Democratic Republic of Congo had two successive civil wars in 1996-1997 and 1998-2002. The compartmentalization of the country by local and foreign combatants particularly during the second civil war impacted significantly on the choices of the future governance and electoral architecture of the country in the post war period. The first post-civil war Presidential and National Assembly elections of 30 July 2006 and the 29 October 2006 Presidential run-off and Provincial Assemblies elections were held amidst a ominous contextual environment. In a country the size of Western Europe where infrastructure was very limited or even absent in most cases, the elections presented one of the most complex electoral operations in Africa.

More so, the elections took place against the background of ongoing security challenges that were facing the country, particularly in the eastern parts of the country which continued to be ravaged by various militia groups. By June 2006, barely a month before the conduct of general elections, besides the local militia groups such as the Mayi-Mayi and its different splinter groups, the total number of foreign combatants was estimated at between 8,000 and 9,000 on Congolese soil (UN, 2006). According to UN (2006), 5,000 foreign combatants were in North Kivu and 3,000 to 3,500 in South Kivu: two provinces endowed with rich mineral resources and with proximity to Rwanda, Uganda and Burundi. Out of these combatants, most belonged to FDLR, 600 Ugandan Allied Democratic Forces/National Army for the Liberation of Uganda (ADF/NALU) and some remnants of the Burundian Forces nationales de libération (FNL) (UN, 2006).



### Choices of system of government and electoral system

The post war predicament was such that, given the country was geographically zoned according to different rebel and government controlled areas, the framers of the new constitution of DRC which was promulgated in early 2006 advocated for a unitary system of government with some level of decentralization rather than federalism. This was to ensure territorial cohesion as opposed to federalism which would have served as fodder for the rebels to pursue a secessionist agenda.

According to the constitution, the government was structured was national, provincial, territorial and collectivities government structures. At all these levels, elections were to be conducted for the president, national and provincial assemblies, and gubernatorial, senatorial and local councils.

With regard to the electoral system, the DRC opted for an absolute majority (50%+1) electoral system for presidential election. The election of national and provincial assemblies was through an open list proportional representation in order to enhance representativeness in governance. Governors and senators were elected directly while local councils had embraced a mix of both direct and indirect elections.

By implication, the DRC had to use existing administrative boundaries to serve as electoral constituencies for purposes of different elections rather than engage in a new process of delimiting constituencies. More so, a context of high insecurity, complex topography and limited lead-time to organize the first post-civil war elections, it was more prudent to rely on existing boundaries rather than engage in a complex and time-consuming exercise of boundary delimitation.

Given that the DRC only had its last census in 1984, the existing data was therefore unreliable and voter registration exercise became imperative in order to identify voters. Voters were therefore registered through biometric system, under a framework of electoral laws which provided that a voter votes only where he is registered unless on official duty on election day ( such as election officials).

# ANNEXURES

## **Annexure 1: Group Activities**

### **Group Activity 1: One vote one value**

Do you believe it is possible for a boundary delimitation to achieve one vote one value for youths, women, Persons with Disabilities (PWDs) and minority groups?

Almost all groups agreed on the possibility for a boundary delimitation exercise to achieve one vote one value (with some preconditions and provisions in the constitution and electoral law), except for minorities as they are found to be well dispersed in which a delimitation exercise cannot cater for such groups.

It was also agreed to include in the electoral law provisions on the number of vote an MP needs for a seat in a parliament. There is a common understanding that parties not individuals are to be elected.

The PR closed list Electoral System, envisaged to be the option chosen synced with a NIEC guideline should provide a means to scrutinize the way political parties submit their candidate list (Zebra system with the 4.5 formula). There is need for a criterion for Political parties in proposing candidates and a comprehensive civic education about political representations was noted to be of paramount importance.

For Youth, Social awareness, youth empowerment and community education, allocation of dedicated seats, increasing the number of seats for federal member states with priorities for youth MP's and isolated party nominations of youth political parties should be given direct nomination slots specifically reserved for youth.

For women, the need for an intensive civic education and public awareness, distance considerations as bringing polling centers ( PC) closer to women, provision for a separate women line during voter registration and election day, women only PC in some places were proposed to encourage women participation. Priority for pregnant and women with children were also highlighted.

For Persons with Disability, the population of PWD in a particular constituency was indicated to be a necessary parameter to determine a threshold which will then be indicated as a PWD dedicated constituency in the electoral law.

### **Group Activity 2: Drafting procedures**

Miscellaneous discussions during the presentation was carried out.

There was a confusion as to who is mandated to conduct electoral boundaries? NIEC, BFC, or it is the role of other entities. NIEC chair argued that it is **clearly stipulated in the constitutional** mandate to delimit constituencies and provide a report to the parliament.

Boundary delimitation steps at a Federal level (HQ):

1. Public consultation following existing legal framework
2. Engaging expertise
3. Drafting a report and present it to parliament
4. Reviewing parliament input

5. Gazettement
6. Delimitation will be done using voter registration data, demographic and geographical distribution throughout the country.
7. Mapping using voter registration population and geographical criteria
8. Guiding principles of representativeness, equity, transparency and non-discrimination.

Boundary delimitation steps at a State level

1. Legal framework
2. Census and demography in the regions
3. Feasibility study on population density, clan, age groups etc...
4. Public consultation
5. Minority and Gender consideration
6. Drafting a report on the outcome

### **Group Activity 3: linking Electoral System with boundary delimitation**

#### **PR Close list**

For presidential and Legislative Election

- 1) Parties to submit their presidential candidate
- 2) The country to be a single constituency
- 3) Parties to submit their list of MP's (NIEC to check the social inclusivity of the list it receives
- 4) Votes received by parties to be apportioned to the 275 seats
- 5) The new parliament will elect the federal president
  - Since the country will be a single constituency, there is no apparent consequence on boundary delimitation.
  - Although the importance of a population census was found important, Registered voters will be used in this system.
  - Voters can only vote from where they have registered

#### **First past the post Electoral System**

##### **For presidential**

- 1) Nationwide constituency with no consequences on boundary delimitation issue
- 2) The president will be elected through a simple majority (FPTP)
- 3) Voters can vote from anywhere

**For MP's**

- 4) District level constituencies
- 5) Voters are restricted to their constituencies

## Annexure 2: Developing a Strategy for Electoral Boundary Delimitation- Facilitated Dialogue

S/N	ISSUES/AREAS OF INTERVENTION	RESOLUTION AND RESPONSIBLE INSTITUTION	TIMELINE
1	<ul style="list-style-type: none"> <li>- Election of President by the people (From Dual to Popular mandate)</li> <li>- Election Road Map / Electoral Law</li> </ul>	<p>This needs a Political Decisions to be announced.</p> <p>Following this decision, the NIEC will try to develop the legal framework</p>	<p>Within the next 2 months, the proclamation is expected to be out.</p>
2	<ul style="list-style-type: none"> <li>- Election of Parliament (From Indirect elections by electoral college to creation of legal framework).</li> <li>- National Leadership Forum (NLF) has formed an Election Committee, which has sat down to establish an Election Framework that was approved by Parliament. The country is currently following this Legal Framework. (This is a temporary legal Framework – because the Committee are not the legal organ to implement this law).</li> </ul>	<p>- NIEC will produce rules and regulations to work as the Legal Framework.</p>	<p>After the government has made the decision on the legal framework to be applied.</p>
3	<p>Legal Framework for Boundary Delimitation.</p> <ul style="list-style-type: none"> <li>- Criteria to be used?</li> <li>- 18 Regions / 275 Seats</li> <li>- 7 Federal Member States (6+1)</li> <li>- 92 Districts</li> <li>- No population Census (no data). They can have estimated population using UNFPA figures</li> </ul>	<ul style="list-style-type: none"> <li>- NIEC has decided to propose the adoption of the PR Electoral System / Closed List. Whole country as one constituency (for the Presidential election).</li> <li>- Another option is to use the political parties or use of 7 the federal member states as the constituencies. HOWEVER, how to divide the seats – there is no need to divide the seats because people are selected from only the parties. After the elections – the seats will then be decided upon.</li> <li>- Since there is no census – they will conduct voter registration, which will be used for the distribution of the seats. (Voter registration data as a basis for data).</li> <li>- How to make sure that the list captures all information? - Political Parties should prepare INCLUSIVE LISTS – then the NIEC should explain what inclusive means and ensure close monitoring of the lists.</li> </ul>	<p>This long process needs the NIEC to await government to proclaim what direction the legal framework will take. (Expecting government to make the proclamation in the next 2 months)</p>

		<ul style="list-style-type: none"> <li>- How to divide the 275 regions? - A proposal to move from 4.5-clan system to one man one vote (Awaiting parliament to pass this law before the NIEC implements this provision).</li> <li>- Issue of Mogadishu, the Capital of Somalia? Mogadishu can be given a Special Status – with own Minister and perhaps own law (just as in the case of Abuja, in Nigeria)</li> </ul>	
<b>4</b>	Identification of the key Stakeholders that have a mandate of election boundary delimitation (Political parties)	<ul style="list-style-type: none"> <li>- Learn from Kenya how the issue of political parties has been handled – (lesson learning).</li> <li>- This will be part of the Political Party Law.</li> </ul>	
<b>5</b>	The process - Public Outreach / civic education	It is important to conduct this	No indication of time lines

### Annexure 3: Evaluation of Training: Feedback from Participants

#### 7.1 Course content evaluation on training on electoral boundaries delimitation for Somalia Total evaluation forms received 24:

Overall usefulness of the training in terms of knowledge learnt	N/A		Good	Excellent	
	11		3	10	
<b>Rate the course content and approach on a scale of 1 being least and 5 being most useful</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1. Definition, importance and principles of boundary delimitation	-	-	2	3	19
2. Criteria for electoral boundary delimitation	-	2	1	11	10
3. Legal and institution framework for boundary delimitation	1	-	3	4	16
4. Group work activities	-	-	1	9	14
5. Relationship between system of government, electoral system and electoral boundary delimitation	1	-	1	9	11
6. Case studies of Nigeria, Kenya, Tunisia, and DRC	-	-	2	7	15
7. Use of technology in boundary delimitation	-	-	4	9	11
8. Intra-Somali dialogue on developing strategy for electoral boundary delimitation	-	1	2	13	8
Workshop was up to your expectation	1	-	-	8	15
Workshop topics added to your knowledge	-	-	2	9	13
Gained experience useful to your work	-	-	3	4	16
Workshop objectives were met	1		3	8	13

#### What is the single most important thing that you have learnt during the course?

1. That Somalia can exercise an election and its piece of cake compared to other post-conflict countries
2. Principles of boundary delimitation

3. Possibility of conducting election in an insecure country
4. African geography, political systems and elections
5. Principles of boundary delimitation and its process
6. The importance of census on boundary delimitations
7. Relationship between electoral system and boundary delimitation
8. The legal framework of Kenya and How government structure is connected to one another in terms of election and delimitation
9. I learned the importance of relating the boundaries delimitation and systems of government
10. The process of boundary limitation needs hardwork, cooperation from political leaders and huge public engagement
11. To get the benefit of the administrations boundaries when electoral boundaries are required to be delaminated
12. A lot of knowledge acquired, elections of CDR, Tunisia etc
13. The importance of the legal framework and the independence of the institution
14. Experiences in similar African countries on boundaries delimitation which can help us in our context
15. I understand for the PR
16. That the electoral case of Somalia is less difficult than many other countries
17. Legal framework and criteria of boundary delimitation
18. Case studies from other countries
19. The case studies of the four countries from Africa and their experiences
20. Boundaries delimitation principle and criteria
21. How we can do electoral systems
22. Somalia currently has a GIS system coverage that can be used as a baseline for delimitation
23. That elections are part of the political process, would be successful if there is a political will to navigate challenges even though these vary from country to country

### **What can be improved on the course?**

1. A huge knowledge of delimitation of boundaries
2. Gain more knowledge of electoral system
3. Sample strategy of electoral boundary delimitation
4. More group discussions and course participation
5. Knowledge and experience on boundary delimitation case studies of other African Countries
6. More group activities, case studies similar to the situation Somalia is in today
7. Training in the context of Somalia and terminology of Somali
8. More example of case work that can show similarities
9. To organize indepth detail about the topics presented
10. The time given was a bit little for the planned content
11. To let participants more participating approach
12. Yes
13. Practical examples
14. Role plays
15. I believe everything was acceptable
16. Share in advance the presentations and activities
17. Could be longer
18. Have more workshops in order to get more knowledge
19. Some presentations were too long

20. Include a comprehensive Somali social clan dynamics as a case study so that we evaluate how to go about the delimitation process

21. More time on case studies and the consequences if certain models are applied to Somali situation

Participants generally found the course facilitation excellent, knowledgeable and very relevant to Somalia and the NIEC. Participants also felt that the presence of other participants improved their learning by increasing useful; experiences learnt from one another and providing diverse opinions, ideas as well as interaction for future engagements. Participants however, thanked the AU for organizing the training workshop and