

PARLIAMENT
OF KENYA
LIBRARY



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - FOURTH SESSION (2012)

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION

ON

1. DRAFT ELECTIONS REGULATIONS 2012.
2. DRAFT ELECTIONS (VOTER EDUCATION) REGULATIONS 2012.

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

September, 2012

1.0 PREFACE

Mr. Speaker Sir,

The Committee on Delegated Legislation is established under Standing Order 197 to, among other functions;

- i) ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure that they are consistent with parent statutes;
- ii) Unless otherwise provided for either expressly or by implication under any written law, all subsidiary legislation shall be tabled before the House upon publication in the Kenya Gazette; and
- iii) The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled.

The Standing Order also requires that all subsidiary legislation be tabled before the House upon publication in the Kenya Gazette.

Committee Membership

The Members of the Committee are as follows:

1. Hon. Amina Abdalla, MP – Chairperson
2. Hon. Olago Aluoch, MP
3. Hon. Njoroge Baiya, MP
4. Hon. (Dr)Julius Kones, MP
5. Hon. Kiema Kilonzo, MP
6. Hon. Barnabas Muturi Mwangi, MP
7. Hon. Fahim Twaha, MP
8. Hon. Gitobu Imanyara, M
9. Hon. Ababu Namwamba, MP- (Appointed Cabinet Minister)

Mr. Speaker Sir

The matter before the committee relates to the scrutiny for the approval by the House of the following draft regulations that were laid on the Table of the House on Thursday 30th August, 2012:-

1. The Draft Elections Regulations 2012;
2. The Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012;

3. The Draft Elections (Registration of Voters) Regulations 2012; and

4. The Draft Elections (Voter Education) Regulations 2012.

Following the tabling of the above Draft Elections Regulations on the Table of the House by the Hon. Minister for Justice and Constitutional Affairs, the Chair directed as follows:-

“.....I direct that the Committee that adjourned its sitting this morning continues with their meeting tomorrow, complete their report and the Leader of Government Business assures the House that this matter will be on the Order Paper on Tuesday in order to beat the statutory deadlines regarding the approval of these rules”

Committee Sitings

The Committee has so far held a total of ten (10) sittings and it received written memorandums from the National Democratic Institute and the Elections Observation Group which is a consortium representing eleven civil society groups all involved in election matters. The Committee has so far tabled its report on the Draft Elections (Registration of Voters) Regulations, 2012 and Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012 and this report is on the final two sets of the regulations viz, Draft Elections Regulations, 2012 and Draft Elections (Voter Education) Regulations 2012.

Summary of Committee's observations

Consistent the mandate of the Committee on Delegated legislations, during the scrutiny of the Draft Elections (General) Regulations 2012 and the Draft Elections (Voter Education) Regulations 2012, the Committee was guided by the following parameters:

1. Compliance with the Constitution:

Article 88 (4) of the Constitution provides that:-

“The Commission is responsible for conducting and supervising referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament and, in particular for :-

a) The continuous registration of citizens as voters

b) The regular revision of the voters' roll

- c)
- d) *the regulation of the process by which parties nominate candidates for elections;*
- e) *the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;*
- f) *the registration of candidates for election;*
- g) *voter education;*
- h) *the facilitation of the observation, monitoring and evaluation of elections;*
- i)

Article 88 (5) of the Constitution provides that:-

“The Commission shall exercise its powers and perform its functions in accordance with this Constitution and National legislation”.

Some of the key provisions of these regulations flagged by the Committee as *ultra vires* the Constitution include:-

- a. Whereas Article 99, 177 and 190 of the Constitution states the qualifications for election of members of Parliament, Governors and members of County Assembly, the Constitution does not impose any requirement for supporters on candidates nominated by political parties as it does for independent candidates. The Committee notes that the Regulations have imposed a requirement that all the candidates must submit names of their respective supporters. It was the committee’s view that the Regulations are asking for more than what the constitution required for political party sponsored candidates.
- b. Article 35 of the Constitution provided that every citizen has right of access to information which implies an obligation both to publish and publicise any important information affecting the nation, there were certain aspects of the Regulations that did not provide adequate provisions for accessibility of the notices published in the Gazette by the Commission.

- c. The Draft Elections (General) Regulations 2012 imposed high nomination fees to candidates. The Committee deliberated on this issue and notes that the requirement for candidates to pay high nomination fees is unconstitutional given that its import is to defeat the very essence of democracy- ability for everyone to contest for any elective or nominative position.

2. Compliance with the Parent Act:

- a. Sections 23, 24, 25 and 33 of the Elections Act, 2011 stipulate the qualification for nomination of as President, Member of Parliament, county assembly and independent candidates. Apart from the President and independent candidates, the Act does not impose a requirement for candidates nominated by political parties to submit to the Commission a list of supporters. The Committee notes that the Regulations have imposed a requirement that all the candidates nominated by political parties must submit names of their respective supporters. It was the Committee's view that this requirement is ultra vires the election Act.
- b. Section 74 of the Election Act mandates the Commission to frame rules for resolution of disputes emanating from the nomination exercise. The Committee noted that the Regulation did not enact adequate provisions for resolution of disputes emanating from the nomination exercise and the Commission only postponed the issue to be addressed at unspecified future time.

3. Gaps in the Regulations:

The Committee further noted that there were many glaring gaps within the Regulations and certain important issues were missing. A case in point was the absence job description for the Returning officers and lack of clear guidance on regulation of campaign activities. The Regulations sought to criminalize all the campaign activities outside the campaign period without making a clear distinction between actual campaign activities which are

undertaken within the campaign period and legitimate promotion of a political party which is undertaken anytime within the year.

4. Inconsistency with the stakeholders wishes:

The Committee received and considered written memorandum from various civil society bodies, which made representation with respect to certain aspects of the regulations. Key among them was the issue of high nomination fees that are not only discriminatory but punitive for those who sponsored by political parties since they also have to pay high nomination fees to their respective parties. The Committee also noted that the amount of fees charged to persons with disability, the youth and women was exorbitant and contrary to the spirit of Article 27 (6) (7) & (8) of the Constitution.

5. Typographical and drafting errors:

Finally, a better part of the Committee time was spent addressing many typographical and drafting errors in the Draft Regulation in order to avoid the poor quality of final version.

Acknowledgements

The committee wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Speaker, Sir,

It is our pleasant duty and privilege, on behalf of the Committee on Delegated Legislation to present and commend this report to the House for adoption pursuant to

Standing Order 181
Signed: 

Hon. Amina Abdalla, MP
Co-Chairperson

Date: 10/10/2012

2.0 DELIBERATIONS ON THE DRAFT ELECTIONS REGULATIONS 2012

1. The Committee deliberated the Draft Elections Regulations 2012 as follows:-

Clause 1-9	Amendment proposed
Clause 10	Agreed to
Clause 11	Amendment proposed
Clause 12	Agreed to
Clause 13-19	Amendment proposed
Clause 20	Agreed to
Clause 21	Amendment proposed
Clause 22	Agreed to
Clause 23-24	Amendment proposed
Clause 25-26	Agreed to
Clause 27-28	Amendment proposed
Clause 29-30	Agreed to
Clause 31-32	Amendment proposed
Clause 33-34	Agreed to
Clause 35-37	Amendment proposed
Clause 38-41	Agreed to
Clause 42	Amendment proposed
Clause 43-44	Agreed to
Clause 45	Amendment proposed
Clause 46-52	Agreed to
Clause 53	Amendment proposed
Clause 54	Agreed to
Clause 55	Amendment proposed
Clause 56-57	Agreed to
Clause 58	Amendment proposed
Clause 59-60	Agreed to
Clause 61-63	Amendment proposed
Clause 64	Agreed to
Clause 65	Amendment proposed
Clause 66	Agreed to
Clause 67	Amendment proposed
Clause 68	Agreed to
Clause 69-70	Amendment proposed
Clause 71-72	Agreed to
Clause 73-74	Amendment proposed
Clause 75	Agreed to
Clause 76-77	Amendment proposed
Clause 78	Agreed to

Clause 79	Amendment proposed
Clause 80-83	Agreed to
Clause 84	Amendment proposed
Clause 85-90	Agreed to
Clause 91	Amendment proposed
Clause 92-99	Agreed to
Clause 100	Amendment proposed
Clause 101-102	Agreed to

3.0 DELIBERATIONS ON THE DRAFT ELECTIONS (VOTER EDUCATION) REGULATIONS 2012

2. The Committee deliberated the Draft Elections (Voter Education) Regulations 2012 as follows:-

Clause 1-3	Amendment proposed
Clause 4-14	Agreed to
Clause 15	Amendment proposed
Clause 16-27	Agreed to

4.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE ELECTIONS (GENERAL) REGULATIONS, 2012:

NOTICE is given that, Hon. Amina Abdalla, the Chair Person of the Committee on Delegated Legislation, intends to move the following amendments to Draft Elections (General) Regulations 2012 —

REGULATION 1

THAT, regulation 1 be amended by-

- (a) inserting the expression “(General)” immediately after the word “Elections”;
- (b) Inserting the words “and shall come into effect upon publication in the Gazette” at the end thereof.

REGULATION 2

THAT, regulation 2 be amended-

- (a) in the definition of the term “copy register” by deleting the expression “regulation 62(4) (b)” and substituting therefor the expression “regulation 62(4) (a) or its electronic version”.
- (b) by inserting the following new definition in its proper alphabetical sequence-

“campaign” means the promotion of a candidate or political party for the purposes of an election during the period referred to in regulation 56.

REGULATION 3

THAT, regulation 3 be amended by inserting the following new paragraphs immediately after paragraph (1)-

“(1A) Prior to appointment under paragraph (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations.

(1B) The returning officer shall be responsible for —

- (a) conducting elections at the constituency level;
- (b) receiving nomination papers in respect of candidates nominated for the post of National Assembly and Ward representative;
- (c) the tallying of results from each polling station in the constituency;
- (d) announcing results from the constituency for purposes of the election of the President, Senator, Governor, woman representative to the National Assembly, member of National Assembly and county representatives;

- (e) declaration of the results tallied under subparagraph (c);
- (f) such other functions as may be assigned by the Commission."

REGULATION 4

THAT, regulation 4 be amended by-

- (a) deleting paragraph (1) and substituting therefor the following new paragraph-

"(1) The Commission shall appoint county returning officers to be responsible for—

- (a) receiving nomination papers in respect of candidates nominated for the post of Governor or county woman representative to the National Assembly and the Senate;
- (b) tallying results from constituencies in the county for purposes of the election of the President, county Governor, Senator and county women representative to the National Assembly;
- (c) declaration and announcement of results tallied under subparagraph (b);
- (d) such other functions as may be assigned by the Commission."

- (b) inserting the following new paragraph immediately after paragraph (1)-

"(1A) Prior to appointment under paragraph (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations."

REGULATION 5

THAT, regulation 5 be amended by inserting the following new paragraph immediately after paragraph (1)-

"(1A) Prior to appointment under paragraph (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations."

NEW REGULATION

THAT the following new regulation be inserted immediately after regulation 5-

Appointment of
polling clerks.

5A. (1) The Commission shall appoint such number of polling clerks for each constituency as it may consider necessary.

(2) The Commission shall share the list of appointees with political parties and independent candidates within fourteen days from the date of appointment to enable them raise any objections.

(3) The list of the appointees shall be displayed prominently at the offices of the Commission within the constituency.

REGULATION 6

THAT regulation 6 (1)(c) be amended by inserting the words “and publicise through electronic and print media of national circulation and other easily accessible medium,” immediately after the word “Gazette”.

REGULATION 8

THAT regulation 8(1) be amended by inserting the words “and through electronic and print media of national circulation and other easily accessible medium” immediately after the word “Gazette”.

REGULATION 9

THAT regulation 9(1) be amended by inserting the words “and publicise through electronic and print media of national circulation and other easily accessible medium,” immediately after the word “Gazette”.

REGULATION 11

THAT regulation 11(1) be amended by deleting the words “each presidential election” and substituting therefor the words “the respective elections in the *Gazette* and in the electronic and print media of national circulation as set out in the Act and through other easily accessible medium.”

REGULATION 13

THAT regulation 13(2) be amended by inserting the words “disability and category of disability” immediately after the word “sex”.

REGULATION 14

THAT regulation 14 be amended in paragraph (a) by inserting the words “and file with the Commission” immediately after the word “obtain”.

REGULATION 17

THAT regulation 17 be amended in paragraph (1), by-

(a) deleting the words “at the same time deliver to the Commission, eighty” and substituting therefor the words “deliver to the Commission at least five days to the day fixed for nomination, in a hard and electronic version”;

(b) inserting the words “identity card or passport number” immediately after the words “respective signatures”.

REGULATION 18

THAT regulation 18 be amended-

- (a) in paragraph (a) by deleting the words "five hundred thousand" and substituting therefor the words "one hundred thousand";
- (b) in paragraph (b) by deleting the words "one million" and substituting therefor the words "two hundred thousand".

REGULATION 19

THAT regulation 19 be amended in paragraph (2) by deleting the words "and be maintained for at least three months after the elections" immediately after the words "prior to the elections".

REGULATION 23

THAT regulation 23 be amended in paragraph (1) by-

- (a) deleting the expression "regulation 21 or"
- (b) deleting the word "forty" appearing immediately before the word standard

REGULATION 24

THAT regulation 24 be amended-

- (a) in paragraph (a) by deleting the words "one hundred and fifty thousand" and substituting therefor the words "ten thousand";
- (b) in paragraph (b) by deleting the words "two hundred and fifty thousand" and substituting therefor the words "twenty thousand"

REGULATION 27

THAT regulation 27 be amended in paragraph (1) by-

- (a) deleting the expression "regulation 25 or";
- (b) deleting the word "forty" appearing immediately before the word standard

REGULATION 28

THAT the proposed regulation 28 be amended-

- (a) in paragraph (a) by deleting the words "two hundred and fifty thousand" and substitution therefor the words "twenty five thousand";
- (b) in paragraph (b) by deleting the words "five hundred thousand" and substitution therefor the words "fifty thousand".

REGULATION 31

THAT regulation 31 be amended-

(a) in paragraph (1) by-

- (i) deleting the expression "regulation 29 or"
- (ii) deleting the word "twenty" appearing immediately before the word standard

(b) in paragraph (2) by deleting sub-paragraph (c)

REGULATION 32

THAT the proposed regulation 32 be amended-

(a) in paragraph (a) by deleting the words "two hundred and fifty thousand" and substitution therefor the words "twenty five thousand"

(b) in paragraph (b) by deleting the words "five hundred thousand" and substitution therefor the words "fifty thousand"

REGULATION 35

THAT regulation 35 be amended-

(a) in paragraph (1) by deleting the word "twenty" appearing immediately before the word standard

(b) in paragraph (2) by deleting sub-paragraph (c)

REGULATION 36

THAT the proposed regulation 36 be amended-

(a) in paragraph (a) by deleting the words "twenty five thousand" and substituting therefor the words "two thousand five hundred";

(b) in paragraph (b) by deleting the words "fifty thousand" and substituting therefor the words "five thousand".

REGULATION 37

THAT the proposed regulation 37 be amended-

(a) by deleting paragraph (b);

(b) in paragraph (c) by inserting the words "and by a proposer and seconder who shall be voters registered in the respective electoral areas, and who shall be members of the political party" immediately after the words "candidate".

REGULATION 42

THAT regulation 42 be amended by deleting paragraph (5) and substituting therefor the following new paragraph-

“(5) Notwithstanding that a returning officer has held nomination papers invalid, he may admit the same once the invalidity has been cured”.

REGULATION 45

THAT regulation 45 be amended by deleting paragraph (2) and substituting therefor the following new paragraph-

“(2) For purposes of this regulation, candidates shall submit the following documents to the Commission-

- (a) certificate of tax compliance from the Kenya Revenue Authority;
- (b) certificate of good conduct from the Kenya Police Service; and
- (c) clearance certificate from the Higher Education Loans Board.

REGULATION 53

THAT regulation 53 be amended-

- (a) in paragraph (2) by inserting the words “disability and its nature” immediately after the word “sex,”
- (b) in paragraph (8) by deleting the words “A political party submitting a party list shall also publish the party list” and substituting therefor the words “The Commission shall publish the final party list”.

REGULATION 55

THAT regulation 55 be deleted and replaced with the following new regulation-

Commission to publish formula for allocation of seats.

55.(1) The Commission shall before the election to which a party list applies publish in the Gazette and publicise through electronic and print media of national circulation and other easily accessible medium, the formula for allocating the seats to the respective political parties.

(2) The formula for allocation of seats to the respective political parties from the party lists shall be the number of seats won by a political party divided by the total number of seats multiplied by available seats for allocation in the respective House.

REGULATION 57

THAT regulation 57(1) be amended by deleting the words “and in at least two newspapers with national circulation” immediately after the words “Gazette” and substituting therefor the words “and through electronic and print media of national circulation and other easily accessible medium”.

NEW REGULATION

THAT the following new regulation be inserted immediately before regulation 60 under Part XI-

Appointment of
national and
county chief
elections agents.

59A. (1) Every political party shall at least fourteen days to the date of the election submit to the Commission the names of one national chief agent and forty seven county chief agents.

(2) Every independent candidate at a presidential election shall fourteen days to the date of the election submit to the Commission the names of one national chief agent and forty seven county chief agents.

REGULATION 61

THAT regulation 61 be amended by inserting the words “and publicise through electronic and print media of national circulation and other easily accessible medium” immediately after the word “*Gazette*”.

REGULATION 62

THAT regulation 62 be amended-

- (a) in paragraph (1) deleting the words “as the returning officer considers” immediately after the words “ballot papers”;
- (b) in paragraph (2) (a) by deleting the words “transparent” and substituting therefor the words “fairly transparent or translucent”;
- (c) in paragraph (2) (b) by deleting the words “on the lid thereof” and substituting therefor the words “prominently and distinctively”;
- (d) by inserting the following new paragraph immediately after paragraph (c) -

“(ca) clearly labelled with the text of the respective elective position”;
- (e) in paragraph (4) (a) by deleting the word “a copy of the” immediately before the words “Principal Register” and substituting therefor the words “both electronic and hard copy of the”.

REGULATION 63

THAT regulation 63 be amended in paragraph (1) (f) by deleting the word “incapacitated” immediately after the word “special needs or” and substituting therefor the word “assisted”.

REGULATION 65

THAT regulation 65 be amended in paragraph (2) (a) by deleting the words “the presiding officer thinks” immediately after the word “in such a manner as” and substituting therefor the word “is”.

REGULATION 67

THAT regulation 67 be amended by inserting the following new paragraph immediately after paragraph (2) -

“(2A) The voting outside Kenya shall follow the Kenyan time”.

REGULATION 69

THAT regulation 69 be amended in paragraph (2) by inserting the words “which is prominent and distinctive” immediately after the words “different colour”.

REGULATION 70

THAT regulation 70 be amended-

(a) in paragraph (1) by-

(i) renumbering subparagraphs (d), (e), (f), (g), (h) and (i) as subparagraphs (a), (b), (c), (d), (e) and (f), respectively;

(ii) by inserting the following new subparagraph immediately after the renumbered subparagraph (c) -

“(ca) in case of an electronic register, ask the voters to place their fingers on the fingerprint scanner and cross out the name of the voter once the image has been retrieved”;

(b) in paragraph (2) by inserting the following new subparagraph immediately after subparagraph (b)

“(ba) where a voter has no finger, make a mark on the next most suitable part of the body”;

(c) by deleting paragraph (4).

REGULATION 73

THAT regulation 73 be amended-

(a) by inserting the following new paragraph immediately after paragraph (1) -

“(1A) Where the person who applies to be assisted is not accompanied by a person who is qualified to assist him or her, the presiding officer shall assist such voter, in the presence of the agents.”

(b) in paragraph (2) by deleting the word “inquiries as the presiding officer may deem necessary” immediately after the word “may make such” and substituting therefor the words “necessary and respectful inquiry”

REGULATION 74

THAT regulation 74 be amended in paragraph (3) by deleting the words "who are present, shall make up into" immediately after the words "candidates or agents" and substituting therefor the words "shall seal in"

REGULATION 76

THAT regulation 76 be amended-

(a) in paragraph (2) by deleting subparagraphs (a) to (f) and substituting therefor the following new subparagraphs-

- "(a) president;
- (b) member of the National Assembly;
- (c) member of the County Assembly;
- (d) senator;
- (e) county woman representative in the National Assembly; and
- (f) county governor".

(b) by inserting the following new paragraph immediately after paragraph (4) -

"(4A) Subject to paragraph (2), the counting of votes cast outside Kenya shall follow the Kenyan time".

REGULATION 77

THAT regulation 77 be amended in paragraph (1) by deleting the words "as shall be present" immediately after the words "candidates or agents".

REGULATION 79

THAT regulation 79 be amended in paragraph (3) by deleting the words "or agent" immediately after the words "and any candidate" and substituting therefor the words "counting agent or observer".

REGULATION 84

THAT regulation 84 be amended-

- (a) in paragraph (1) by inserting the words "and observers, if present" immediately after the words "candidates or agents";
- (b) paragraph (1) (c) by inserting the expression "in the order provided in regulation 76 (2)" immediately after the words "in respect of each election".

REGULATION 91

THAT regulation 91 be amended in paragraph (1) by inserting the words "observers" immediately after the words "election officials".

REGULATION 100

THAT regulation 100 be amended-

(c) in paragraph (1) by deleting the words "may" immediately after the words "the Commission" and substituting therefor the word "shall";

(d) by inserting the new paragraph immediately after paragraph (1) -

"(1A) All disputes emanating from political party nominations shall be resolved by the Commission at least seven days to the day designated for submission to the Commission by political parties of the names of their respective candidates".

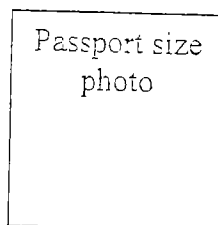
SCHEDULE

THAT the Regulations be amended in the Schedule as follows-

(a) by deleting FORM 12 appearing therein and substituting therefor with the new FORM 12A

Form 12

(r.15 (1))



NOMINATION PAPER FOR PRESIDENTIAL ELECTION

Election of President of the Republic of Kenya to be held on theday of 20.....

We, the undersigned being registered as voters, in the constituencies shown below do hereby nominate the under mentioned person as a candidate at the said election.

Particulars of the Candidate

Name in Full	
Occupation	

National ID card or Passport No.	
Sex	
Date of Birth	
Voters card number	
Physical address	
Postal address	
Political Party	
Party register No./ Clearance certificate No. of independent candidate	
Telephone contacts	1. 2.

And I, the aforesaid do hereby consent to my nomination as a candidate for election as President of the Republic of Kenya and hereby certify that I am in all respects qualified for nomination as such candidate.

.....
Signature of Candidate

SUPPORTERS OF PRESIDENTIAL ELECTION CANDIDATE

Election of the president of the republic of Kenya will be held on theday of20.....

We, the undersigned, being registered voters with the voters numbers indicated against our respective names, do hereby support the nomination of as a candidate for election as President of the Republic of Kenya.

No.	Name	County	Voters Number	Signature/Thumb Print	I.D Card No./ Passport No.

Supporter 1:

Full Names

Constituency

Voters Number

Party Office Held.....

Signature of.....

Supporter 2:

Full Names.....

Constituency

Voters Number

Party Office Held

Signature of the proposer.....

Dated.....

N/B a total of at least 2000 supporters from at least 24 counties must be submitted to the Returning officer.

(b) by deleting FORM 15 appearing therein and substituting therefor with the new FORM 15A

Form 15

(r. 21)



NOMINATION PAPER FOR NATIONAL ASSEMBLY/COUNTY WOMAN REPRESENTATIVE PARTY/INDEPENDENT ELECTION

Election of a member of national assembly of the Constituency/County to be held on the day of for....., 20.....

We, the undersigned, being registered voters in the constituency/county* and nominate the under-mentioned person as a candidate at the National Assembly/County woman representative election*.

Particulars of the candidate:

Name in Full	
Occupation	
National ID card or Passport No.	
Sex	
Date of Birth	
Voters card number	
Physical address	
Postal address	
Political party*	
Party register No./ Clearance certificate No. of independent candidate	
Telephone contacts	1. 2.

And I, the aforesaid do hereby consent to my nomination as a candidate for election as Member of National Assembly/Woman representative* of the constituency/county and hereby certify that I am in all respects qualified for nomination as such candidate.

.....
Signature of Candidate

Dated.....

SUPPORTERS OF NATIONAL ASSEMBLY/COUNTY WOMAN REPRESENTATIVE
PARTY/INDEPENDENT CANDIDATE

We, the undersigned, being registered voters with the voters numbers indicated against our respective names, do hereby support the nomination ofas a candidate for election as member of National Assembly/County woman representative* of the constituency.

No.	Name	County Assembly Ward	Voters Number	Signature Thumb Print	ID Card No. Passport No.

Supporter 1:

Full Names

Constituency

Voters Number

*Party Office Held.....

Signature of Proposer.....

Supporter 2:

Full Names.....

Constituency.....

Voters Number.....

Party Office Held*.....

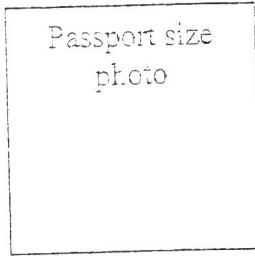
Signature.....

Dated.....

N/B a total of at least 1000 supporters from the constituency/county must be submitted to the Returning officers for every independent candidate.

**delete as appropriate*

(c) by deleting FORM 16 appearing therein and substituting therefor with the new FORM 16A



NOMINATION PAPER FOR SENATE ELECTION

Election of a Senator for the County to be held on the day of
, 20.....

We, the undersigned supporters, being registered as voters, in the county holding the election do hereby
 nominate the under mentioned person as a candidate at the said election.

Particular of candidate:

Name in Full	
Occupation	
National ID card or Passport No.	
Sex	
Date of Birth	
Voters card number	
Physical address	
Postal address	
Political Party	
Party register No./ Clearance certificate No. of independent candidate	
Telephone contacts	1. 2.

And I, the aforesaid do hereby consent to my nomination as a candidate for election as Senator of the County and hereby certify that I am in all respects qualified for nomination as such candidate.....

Signature of Candidate

SUPPORTERS OF SENATOR

We, the undersigned, being registered voters with the voter numbers indicated against our respective names, do hereby support the nomination of as a candidate for election as Senator of the County.

No.	Name	Constituency	Voters Number	Signature/Thumb Print	I.D Card No / Passport No.

Supporter 1:

Full Names
 Constituency
 Voters Number
 Party Office Held

Signature of Proposer.....

Supporter 2:

Full Names.....
 Constituency
 Voters Number
 Party Office Held
 Signature.....
 Dated.....

N/B a total of at least 2,000 supporters from the county for the Senate must be submitted to the Returning officers for every independent candidate.

(d) by deleting FORM 17 appearing therein and substituting therefor with the new FORM 17A



NOMINATION PAPER FOR COUNTY GOVERNOR

Election of a County Governor of the County to be held on the day of
, 20.....

We, the undersigned supporters, being registered as voters, in the county Assembly wards of county holding the election do hereby nominate the under mentioned person as a candidate at the said election.

Particulars of the Candidate

Name in Full	
Occupation	
National ID card or Passport No.	
Sex	
Date of Birth	
Voters card number	
Physical address	
Postal address	
Political Party	
Party register No./ Clearance certificate No. of independent candidate	
Telephone contacts	1. 2.

And I, the aforesaid do hereby consent to my nomination as a candidate for election as County Governor of the County and hereby certify that I am in all respects qualified for nomination as such candidate.

.....
Signature of Candidate

Dated

SUPPORTERS OF COUNTY GOVERNOR CANDIDATE

We, the undersigned, being registered voters with the voters numbers indicated against our respective names, do hereby support the nomination of as a candidate for election as County Governor of the County.

No.	Name	County Assembly Ward	Voters Number	Signature/Thumb Print	I.D Card No./ Passport No.

Supporter 1:

Full Names

Constituency

Voters Number

Party Office Held

Signature of Proposer.....

Supporter 2:

Full Names.....

Constituency.....
Voters Number.....
Party Office Held.....

Signature.....
Dated.....

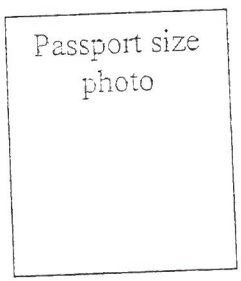
N/B a total of at least 500 supporters from wards concerned must be submitted to the Returning officers every independent candidate.

(e) by deleting FORM 18 appearing therein and substituting therefor with the new FORM 18A

Form 18

(r. 33, 34 35(2))

NOMINATION PAPER FOR COUNTY ASSEMBLY ELECTION



Election of a County Assembly Ward Member of the County Assembly Ward to be held on the day of, 20.....

We, the undersigned supporters, being registered as voters, in thecounty Assembly ward ofcounty holding the election do hereby nominate the under mentioned person as a candidate at the said election.

Particulars of candidate:

Name in Full	
Occupation	
National ID card or Passport No.	

Sex	
Date of Birth	
Voters card number	
Physical address	
Postal address	
Political party	
Party register No./ Clearance certificate No. of independent candidate	
Telephone contacts	1. 2.

And I, the aforesaid do hereby consent to my nomination as a candidate for election as county assembly member of the County assembly ward of county and hereby certify that I am in all respects qualified for nomination as such candidate.

.....
Signature of Candidate

Dated.....

SUPPORTERS OF COUNTY ASSEMBLY CANDIDATE

We, the undersigned, being registered voters with the voters numbers indicated against our respective names, do hereby support the nomination ofas a candidate for election as County Assembly Ward Member of the County Assembly ward.

No.	Name	County Assembly Ward	Voters Number	Signature/Thumb Print	ID CARD NO./PASSPORT NO

Supporter 1:

Full Names

Constituency

Voters Number

Party Office Held

Signature of Proposer

Dated

Supporter 2:

Full Names

Constituency

Voters Number

Party Office Held

Signature

Dated

N/B a total of at least 500 supporters from the county assembly ward must be submitted to the Returning officer every independent candidate.

4.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE ELECTIONS
(GENERAL) REGULATIONS, 2012:

RE: COMMITTEE STAGE AMENDMENTS TO THE PROPOSED ELECTIONS (VOTER
EDUCATION) REGULATIONS 2012

NOTICE is given that the chairperson of the Committee on Delegated Legislation, Hon. Amina Abdalla, intends to move the following amendments to the proposed Elections (Voter Education) Regulations 2012 at the Committee Stage—

REGULATION 1

THAT, regulation 1 be amended by-

- (c) Inserting the words “and shall come into effect upon publication in the Gazette” at the end thereof.

REGULATION 2

THAT, regulation 2 be amended-

- (c) in the definition of the term “constituency committee” by deleting the word “to” immediately before the word “regulation 4”.
- (d) in the definition of the term “voter educator” by deleting the word “an” immediately before the word “person”.

REGULATION 3

THAT, regulation 3 be amended by inserting the following new paragraphs immediately before paragraph (a)-

“(aa) implement Article 88(4)(g) of the Constitution.

REGULATION 15

THAT, regulation 5 be amended by inserting the following new paragraph immediately after paragraph (1)-

- (c) “(2A) all costs and expenses of the national and constituency committee shall be borne by the Commission.

5.0 RECOMMENDATIONS:

The Committee recommends that the House adopts its report on

1. The Elections Regulations, 2012 as amended.
2. The Elections (Voter Education) Regulations, 2012 as amended.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXENDXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MINUTES OF THE SIXTY SECOND SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 2ND OCTOBER, 2012 AT 9.30 AM AT THE LAKE VIEW ROOM, WINDSOR HOTEL & RESORT..

PRESENT

1. Hon. Amina Abdalla, M.P
2. Hon. Baiya Njoroge, M.P
3. Hon.B.C.Muturi Mwangi, MP

-Chairing

ABSENT WITH APOLOGIES

1. Hon. (Dr.)Julius Kones, M.P
2. Hon. Kiema Kilonzo, M.P.
3. Hon. Olago Aluoch, M.P.
4. Hon.Fahim Twaha, MP
5. Hon.Gitobu Imanyara, MP

IN ATTENDANCE

Mr. Jacob Ngwele
Mr. Micheal Karuru
Mr. Denis Mutua

NATIONAL ASSEMBLY

- Third Clerk Assistant
- Legal Counsel
- Parliamentary Intern

MIN.NO.39/2012 PRELIMINARIES

The Chairperson called the meeting to order at 9.00 AM and opened with a word of prayer by the Committee Clerk.

MIN.NO. 40/2012 DELIBERATION ON THE ELECTION (GENERAL) REGULATIONS, 2012

The Committee deliberated the Draft Elections Regulations 2012 as follows:-

Clause 1-9	Amendment proposed
Clause 10	Agreed to
Clause 11	Amendment proposed
Clause 12	Agreed to
Clause 13-19	Amendment proposed
Clause 20	Agreed to
Clause 21	Amendment proposed
Clause 22	Agreed to
Clause 23-24	Amendment proposed
Clause 25-26	Agreed to
Clause 27-28	Amendment proposed
Clause 29-30	Agreed to
Clause 31-32	Amendment proposed
Clause 33-34	Agreed to
Clause 35-37	Amendment proposed
Clause 38-41	Agreed to
Clause 42	Amendment proposed
Clause 43-44	Agreed to
Clause 45	Amendment proposed
Clause 46-52	Agreed to
Clause 53	Amendment proposed

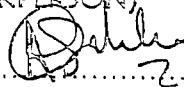
Clause 54	Agreed to
Clause 55	Amendment proposed
Clause 56-57	Agreed to
Clause 58	Amendment proposed
Clause 59-60	Agreed to
Clause 61-63	Amendment proposed
Clause 64	Agreed to
Clause 65	Amendment proposed
Clause 66	Agreed to
Clause 67	Amendment proposed
Clause 68	Agreed to
Clause 69-70	Amendment proposed
Clause 71-72	Agreed to
Clause 73-74	Amendment proposed
Clause 75	Agreed to
Clause 76-77	Amendment proposed
Clause 78	Agreed to
Clause 79	Amendment proposed
Clause 80-83	Agreed to
Clause 84	Amendment proposed
Clause 85-90	Agreed to
Clause 91	Amendment proposed
Clause 92-99	Agreed to
Clause 100	Amendment proposed
Clause 101-102	Agreed to

MIN.NO. 41/2012

ADJOURNMENT

The meeting was adjourned for a lunch break at 1pm. The next session will be at 2pm same venue

HON. AMINA ABDALLA, MP
(CHAIRPERSON)

Signed..........

Date:.....10/10/2012.....

MINUTES OF THE SIXTY THIRD SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 2ND OCTOBER, 2012 AT 2 PM AT THE LAKE VIEW ROOM, WINDSOR HOTEL & RESORT.

PRESENT

- 4. Hon. Amina Abdalla, M.P
- 5. Hon. Baiya Njoroge, M.P
- 6. Hon. B.C. Muturi Mwangi, MP

-Chairing

ABSENT WITH APOLOGIES

- 6. Hon. (Dr.) Julius Kones, M.P
- 7. Hon. Kiema Kilonzo, M.P.
- 8. Hon. Olago Aluoch, M.P.
- 9. Hon. Fahim Twaha, MP
- 10. Hon. Gitobu Imanyara, MP

IN ATTENDANCE

Mr. Jacob Ngwele
Mr. Micheal Karuru
Mr. Denis Mutua

NATIONAL ASSEMBLY

- Third Clerk Assistant
- Legal Counsel
- Parliamentary Intern

MIN.NO. 42/2012 DELIBERATION ON THE ELECTION (VOTER EDUCATION) REGULATIONS, 2012

The Committee deliberated the Draft Elections (Voter Education) Regulations 2012 as follows:-

Clause 1-3	Amendment proposed
Clause 4-14	Agreed to
Clause 15	Amendment proposed
Clause 16-27	Agreed to

MIN.NO. 43/2012 A.O.B


The Committee resolved that since there was no requisite number of members to adopt the report, that the same be adopted at the next sitting of the Committee at the Parliament Buildings.

MIN.NO. 44/2012 ADJOURNMENT

The meeting was at 4pm.

HON. AMINA ABDALLA, MP

(CHAIRPERSON)

Signed.....

Date:.....10/10/2012.....

MINUTES OF THE SIXTY FOURTH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 10TH OCTOBER, 2012 AT 10.30 AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Amina Abdalla, M.P. -Chairing
2. Hon. (Dr.) Julius Kones, M.P.
3. Hon. Kiema Kilonzo, M.P.
4. Hon. Olago Aluoch, M.P.
5. Hon. B.C. Muturi Mwangi, MP

ABSENT WITH APOLOGIES

1. Hon. Fahim Twaha, MP
2. Hon. Baiya Njoroge, M.P.
3. Hon. Gitobu Imanyara, MP

IN ATTENDANCE

Mr. Jacob Ngwele
Mr. Denis Mutua

NATIONAL ASSEMBLY

- Third Clerk Assistant
- Parliamentary Intern

MIN.NO. 45/2012 DELIBERATION ON THE REPORT ON THE DRAFT ELECTIONS REGULATIONS, 2012 AND DRAFT ELECTION (VOTER EDUCATION) REGULATIONS, 2012

Consistent the mandate of the Committee on Delegated legislations, the Committee made the following observations on the Draft Elections (General) Regulations 2012 and Draft Elections (Voter Education) Regulations 2012 , the Committee was guided by the following parameters:

1. **Compliance with the Constitution:**

Article 88 (4) of the Constitution provides that:-

“The Commission is responsible for conducting and supervising referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament and ,in particular for :-

- a) *The continuous registration of citizens as voters*
- b) *The regular revision of the voters’ roll*
- c) *.....*
- d) *the regulation of the process by which parties nominate candidates for elections;*
- e) *the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;*
- f) *the registration of candidates for election;*
- g) *voter education;*
- h) *the facilitation of the observation, monitoring and evaluation of elections;*
- i) *.....*

Article 88 (5) of the Constitution provides that:-

"The Commission shall exercise its powers and perform its functions in accordance with this Constitution and National legislation".

Some of the key provisions of these regulations flagged by the Committee as *ultra vires* the Constitution include:-

- a. Whereas Article 99, 177 and 190 of the Constitution states the qualifications for election of members of Parliament, Governors and members of County Assembly, the Constitution does not impose any requirement for supporters on candidates nominated by political parties as it does for independent candidates. The Committee notes that the Regulations have imposed a requirement that all the candidates must submit names of their respective supporters. It was the committee's view that the Regulations are asking for more than what the constitution required for political party sponsored candidates.
- b. Article 35 of the Constitution provided that every citizen has right of access to information which implies an obligation both to publish and publicise any important information affecting the nation, there were certain aspects of the Regulations that did not provide adequate provisions for accessibility of the notices published in the Gazette by the Commission.
- c. The Draft Elections (General) Regulations 2012 imposed high nomination fees to candidates. The Committee deliberated on this issue and notes that the requirement for candidates to pay high nomination fees is unconstitutional given that its import is to defeat the very essence of democracy- ability for everyone to contest for any elective or nominative position.

2. Compliance with the Parent Act:

- a. Sections 23, 24, 25 and 33 of the Elections Act, 2011 stipulate the qualification for nomination of as President, Member of Parliament, county assembly and independent candidates. Apart from the President and independent candidates, the Act does not impose a requirement for candidates nominated by political parties to submit to the Commission a list of supporters. The Committee notes that the Regulations have imposed a requirement that all the candidates nominated by political parties must submit names of their respective supporters. It was the Committee's view that this requirement is *ultra vires* the election Act.
- b. Section 74 of the Election Act mandates the Commission to frame rules for resolution of disputes emanating from the nomination exercise. The Committee noted that the Regulation did not enact adequate provisions for resolution of disputes emanating from the nomination exercise and the Commission only postponed the issue to be addressed at unspecified future time.

3. Gaps in the Regulations:

The Committee further noted that there were many glaring gaps within the Regulations and certain important issues were missing. A case in point was the absence job description for the Returning officers and lack of clear guidance on regulation of campaign activities. The Regulations sought to

criminalize all the campaign activities outside the campaign period without making a clear distinction between actual campaign activities which are undertaken within the campaign period and promotion of a political party which is undertaken anytime within the year.

4. **Inconsistency with the stakeholders wishes:**

The Committee received and considered written memorandum from various civil society bodies, which made representation with respect to certain aspects of the regulations. Key among them was the issue of high nomination fees that are not only discriminatory but punitive for those who sponsored by political parties since they also have to pay high nomination fees to their respective parties. The Committee also noted that the amount of fees charged to persons with disability, the youth and women was exorbitant and contrary to the spirit of Article 27 (6) (7) & (8) of the Constitution.

5. **Typographical and drafting errors:**

Finally, a better part of the Committee time was spent addressing many typographical and drafting errors in the Draft Regulation in order to avoid the poor quality of final version.


MIN.NO. 46/2012 ADOPTION OF THE COMMITTEE'S REPORT ON THE DRAFT ELECTIONS REGULATIONS, 2012 AND THE DRAFT ELECTIONS (VOTER EDUCATION) REGULATIONS, 2012

Member's present unanimously adopted the Committee's report on the Draft Elections Regulations, 2012 and the Draft Elections (Voter Education) Regulations, 2012.

MIN.NO. 47/2012 ADJOURNMENT

There be no other business the Committee adjourned its sitting at 11.40 AM. Next meeting will be on Notice.

HON. AMINA ABDALLA, MP
(CHAIRPERSON)

Signed..........

Date:.....10/10/2012.....