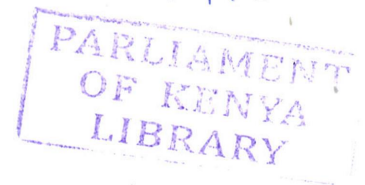


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26/9/2012



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - FOURTH SESSION (2012)

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REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION

ON DRAFT ELECTIONS (REGISTRATION OF VOTERS) 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

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 Sittings

Upon the tabling of the above Regulations, the Committee on Delegated Legislation resolved to incorporate the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation and Oversight Committee in order to have more input on the Regulations.

Subsequent thereto, the Joint Committee held a total of five (5) sittings. The joint Committee noted with the concern the apathy displayed by the IEBC in adhering to deadlines and the low sense of responsibility to such an important issue. During a Speakers Kamukunji held on 30<sup>th</sup> August, 2012, it was agreed given the short period within which the regulations were tabled, it was impossible for Parliament to approve them before the stipulated deadline of 4<sup>th</sup> September, 2012. The House therefore passed the Elections (Amendment) Bill, 2012 which amended Section 103(4) of the Elections Act to provide for the approval by the House of the Draft Electoral Regulations four months to the date of the next General Elections.

Mr. Speaker Sir, during its sitting of 18<sup>th</sup> September, 2012, the joint Committee agreed that owing to the urgency of the voter registration exercise, it will be prudent to fast track the approval of the Draft Elections (Registration of Voters) Regulations, 2012 as we

await the scrutiny of the other sets of the Regulations. Due to the urgency of the matter, the Committee on Delegated Legislations reviewed the Draft Elections (Registration of Voters) Regulations, 2012.

During the review of the Draft Elections (Registration of Voters) Regulations, 2012, and upon the review of the Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012, it come to the attention of the Committee apart from the subject matter involved, both regulation were similar since they covered the issue of registration of Kenyans as voters. The Committee therefore resolved to incorporate and harmonize the provisions of the Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012 into the Draft Elections (Registration of Voters) Regulations, 2012. The end result will be that the Parliament will not need to approve Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012 and the Committee therefore requests the Hon. Minister for Justice and Constitutional Affairs to withdraw the same.

### 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.....

*for* Hon. Amina Abdalla, MP  
Co-Chairperson

Date: 26/9/12

## 2.0 BACKGROUND

1. The Independent Electoral and Boundaries Commission (IEBC) is established under Article 88 of the Constitution of Kenya. The Commission comprises of the Chairperson and eight other members appointed in accordance with Article 250 (4) of the Constitution and the provisions of the Independent Electoral and Boundaries Commission.
2. 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) *.....*
3. 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”.*
4. Section 109 (1) of the Elections Act (Act 24 of 2011) provides that:-

*“The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations to— :-*

5. Further, Section 109 (3) of the Elections Act (Act 24 of 2011) provides that:-

*“The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least six months preceding a general election.*

6. In exercise of the above power to make regulations, the Commission has developed the Draft Elections (Registration of Voters) Regulations 2012 (hereafter referred to as the Draft Elections Regulations

#### The Draft Elections (Registration of Voters) Regulations 2012

7. The Draft Elections (Registration of Voters) Regulations 2012 covers *inter alia*.

- a. Designation of registration centers within Kenya;
- b. Appointment of registration officers and assistant registration officers;
- c. Preparation of the principal register of voters and matters connected herewith;
- d. Registration of voters and matters connected herewith;
- e. Mechanism for handling claims arising from the registration exercise;
- f. Inspection of the register
- g. Preparation of new register etc

### 3.0 SCRUTINY OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS 2012

8. The Committee scrutinize the Draft Elections (Registration of Voters) Regulations 2012 and has made the following observations:-

Regulation No.	Provision	Comment	Recommendation
5(3)	<b>Assistant registration officers</b> An assistant registration shall be subject to the general direction and control of the registration officer.	Missing word	Insert the word "officer" in the statement to read; 5 (3) An assistant registration <u>officer</u> shall be subject to the general direction and control of the registration officer.
6	<b>Preparation of Register</b> "Each registration officer shall prepare and maintain a register of voters for his or her constituency in such form as the Commission may prescribe."	There should be preparation of registers in line with the Act.	The regulation should therefore include the mention of polling station register ward register and constituency register in line with the Act.  The processes of preparing these registers should also be included in the regulations.
7	<b>"Registration areas and polling stations."</b>	The space used for registration should be referred to as registration area or registration centre. Polling station is a place used for voting.	The heading should read as follows: - <b>"Registration areas and registration centers"</b>
7 (c)	"appoint a place or places or designate a vehicle or vehicles at which the polling station for each registration area shall be established; and"	The words <b>vessel and vessels</b> is also used for registration. So that the regulations are consistent with the Act, include the words vessel and vessels.	The regulation should therefore read as follows: -  "appoint a place or places or designate a vehicle or vehicles, <b>vessel or vessels</b> at which the polling station for each registration area shall be established; and"

7 (d)	<b>Registration areas and polling stations</b> 7 (d) Publish in the Gazette a notice specifying -	This Regulation only provides for publishing and not publicising. Article 35 of the Constitution provides that every citizen has the right of access to information. This implies an obligation both to publish and publicise any important information affecting the nation.	The following re-draft is proposed to capture the requirement of publicising:  9 (d) Publish in the Gazette <u>and publicise through electronic and print media of national circulation and other easily accessible medium.</u> a notice specifying -
7 (d) (iii)	“the place or places appointed, or the vehicle or vehicles, designed, for the establishment of registration centre.”	The words vessel and vessels is also used for registration. So that the regulations are consistent with the Act, include the words vessel and vessels.	The regulation should therefore read as follows: -  “the place or places appointed, or the vehicle or vehicles, <u>vessel or vessels</u> designed, for the establishment of registration centre.”
8	<b>Registration particulars</b> 8 . A register of voters shall contain the particulars set out in Form A in the Schedule.	The Form prescribed titled, “Application for Registration as a Voter” should include a section on literacy. Capturing such information on assisted voters in advance at registration stage will be beneficial; assist the Commission in planning and further lessen the incidences of fraudulent assisted voting which has been common and is less likely to be orchestrated at the early stages of registration.  Further, the form should capture data on the categories of disability. Again, this information will be useful to the Commission for planning purposes.	The form should therefore read;  <b>Disability (if Any) and Category:</b> <u>Can you read and write:</u>
12 (4)	<b>Certificate of Register</b> The registration officer shall publish the certified register of voters in the following manner— (a) by making the register available for inspection at such	The Elections Act, 2011 gives the Commission authority use technology as it considers appropriate. This is one such instance and it’s therefore proposed	Insert a new sub-regulation:  (c) <b>by having in place an electronic register which may be accessed on a website, via mobile phone and such other</b>



	places as the Commission may designate by notice in the Gazette; and (b) by posting, at a place within the registration area where the public has access, a notice of the availability of the register for inspection.	to have an additional manner;	<b>electronic media as the Commission may determine.</b>
13	Application for Registration	The step-by-step procedure to register as a voter and the biometric characteristics that are collected during registration is not described.  Form B: There is reference polling station. This is a registration process form.	The application procedure needs to be enhanced. There is need to include in the regulations the step-by-step registration process.  Need to regulate what biometric characteristics will be collected.
14	Transfer of Registration	The cross referencing that is made to sub-regulation 2 is wrong. Sub-regulation 2 is interpretations. This needs to be cross referenced to sub regulation 10 (g) which needs to be enhanced to address 14 (2) (b).  Form D in the schedule is what should be Form C  Form D is missing in the schedule and needs to be included.	Make the corrections.
17	"A claim to a registration officer under section 12 of the Act in respect of an application under these regulations shall be at any time by the registered voter."	Section 12 of the Act reads: "A person who has duly applied to be registered and whose name is not included in the register of voters may submit a claim for the name to be included in the register to the registration officer in the prescribed form and manner and within the prescribed time."  The regulations say that the claim can be made any time. There is need to include a timeline because the principle register of voters must be	<b>The regulation should say that claims cannot be made three months to a general election or referendum and 60 days before a by- election.</b>

		ready 3 months before an election to enable the electoral process to flow smoothly.	
27	<p><b>Publication of register, etc.</b></p> <p>27 (2) The Commission shall publish a notice of the availability of the register for inspection in the Gazette and in at least one newspaper with nationwide circulation.</p>	This Regulation only provides for publishing but not via all modes accessible to ordinary public. Article 35 of the Constitution provides that every citizen has the right of access to information. This implies an obligation both to publish and publicise any important information affecting the nation.	<p>The regulation should be re-drafted to read:</p> <p>The Commission shall publish a notice of the availability of the register for inspection in the Gazette and in at least one newspaper with nationwide circulation <u>and through other easily accessible medium.</u></p>
34 (2)	<p><b>Replacement of voter's cards</b></p> <p>34 (2) The registration officer shall require proof, satisfactory to him or her, that a voter's card has been lost or destroyed.</p>	Here the returning officer's role is one of obligation and not discretion; the drafting language should reflect the same	<p>It should read as;</p> <p>34(2) The registration officer shall require, <u>satisfactory</u> proof <del>to him or her</del>, that a voter's card has been lost or destroyed.</p>
40	<p><b>Alternative means of signification</b></p> <p>40 If, because of physical incapacity, illness or illiteracy, a person cannot sign an application form, he or she may do any of the following instead of signing...</p>		<p>Delete reference to incapacity and replace with inability. It should read;</p> <p>40 If, because of physical <u>inability</u>, illness or illiteracy, a person cannot sign an application form, he or she may do any of the following instead of signing -</p>
41	"These regulations shall apply with necessary modifications to Kenyans residing outside Kenya."	The regulations should be specific to the requirements for registration of Kenyans living outside Kenya.	IEBC to Provide specific regulations.

## 4.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE ELECTIONS

### (REGISTRATION OF VOTERS) 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 (Registration of Voters) Regulations 2012 —

#### REGULATION 2

THAT, regulation 2 be amended by inserting the following definitions in the proper alphabetical order.

**“Commission” means the Independent Electoral and Boundaries Commission established by the Constitution;**

**“foreign representative of Kenya” means a public officer serving in Kenyan foreign mission abroad;**

#### REGULATION 6

THAT, regulation 6 be amended by inserting the words **“polling stations, ward and”** immediately after the word **“his or her”**.

#### REGULATION 7

THAT, regulation 7 be amended-

- (a) in the marginal notes by deleting the words **“Registrations areas”** and substituting therefor the words **“Registration areas and Registration centers”**.
- (b) In sub-regulation 7(c) by inserting the words **“vessels or vessels”** immediately after the words **“vehicle or vehicles”**.
- (c) In sub-regulation 7(d) by inserting the words **“and publicise through electronic and print media of national circulation and other easily accessible medium”** immediately after the words **“Gazette”**.
- (d) In sub-regulation 7 (d)(iii) by inserting the words **“vessels or vessels”** immediately after the words **“vehicle or vehicles”**.
- (e) by inserting a new paragraphs (dd) (ee) and (ff) immediately after paragraph (c) as follows-

- (d) Designate such areas outside Kenya, in which registration is to be held, as a single registration area;
  - (e) Declare the entire territory of the foreign country or any part of a foreign country, to be a registration area;
  - (f) Declare a region consisting of more than one foreign country to be a single registration area; and
- (f) by inserting new sub-regulations (3A) and (4A) immediately after sub-regulation (2) as follows-

(3A) The Commission may use facilities of Kenyan foreign missions abroad, free of charge, for the purposes of voter registration or polling, as the case may be;

(4A) The Commission shall, in respect of each registration area appoint a registration officer to be responsible for the compilation of a register for the respective area;

#### REGULATION 12

THAT, regulation 12 be amended in sub-regulation clause (4) by inserting a new paragraph (d) as follows-

(d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

#### REGULATION 17

THAT, regulation 17 be amended by inserting the following proviso-

“Provided that such claim shall not be made ninety days to a date of a general election or referendum and sixty days before a by-election”

#### REGULATION 27

THAT, regulation 27 in sub-regulation (2) be amended by inserting the words “and through other easily accessible medium.” immediately after the word “nationwide circulation”.

#### REGULATION 28

THAT, regulation 28 in sub-regulation (1) be amended by deleting the words “26” and substituting therefor the words “27” immediately after the word “regulation”

#### REGULATION 29

THAT, regulation 29 be amended by deleting paragraph (b)

## REGULATION 30

THAT, regulation 30 be amended by deleting sub-regulation (4)

## REGULATION 31

THAT, regulation 31 be amended -

- (a) in sub-regulation (2) by deleting paragraph (a).
- (b) in sub-regulation (2) (b) deleting the words “close” immediately after the words “may” and substituting therefor the words “transfer”.
- (c) In sub-regulation (3) deleting the words “closes” immediately after the words “if the registration officer” and substituting therefor the words “transfers”.

## REGULATION 33

THAT, regulation 33 be amended -

- (a) in sub-regulation (1) by deleting paragraph (a) and substituting therefor the following-
  - (a) by making the relevant register available for inspection at the respective registration centre, ward and constituency Commission offices; and
- (b) in sub-regulation (1) (b) deleting the words “headquarters of the division” immediately after the words “at a place at the” and substituting therefor the words “the Commissions website, constituency offices, registration center and ward”.
- (c) In sub-regulation (1) ) by inserting a new paragraph (d) as follows-
  - (d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

## NEW PART VII – REGISTRATION OF KENYAN CITIZENS RESIDING OUTSIDE KENYA

THAT, the Regulation be amended by inserting a new PART VII REGISTRATION OF KENYAN CITIZENS RESIDING OUTSIDE KENYA immediately after regulation 33 and renumbering the rest of Regulations in a proper sequence.

## NEW REGULATION

THAT, the following new regulations be inserted immediately after regulation 33-

Registration of  
Kenyan  
citizens  
residing out of  
Kenya.

**33A(1).** The Commission shall, at regular intervals, publish the names of countries in which registration and voting of is scheduled to take place.  
**(2)** a decision by the Commission to register Kenyan citizens residing outside Kenya or to conduct elections outside Kenya shall be based on-

- (a) The presence of a Kenyan Embassy, High Commission or Consulate; or
- (b) Other logistical considerations.

Registration particulars of Kenyan citizens residing out of Kenya.

**34A.** A register of voters who are Kenya citizens residing outside Kenya shall contain the particulars set out in Form AA in the Schedule

Application for registration by Kenyan citizens residing out of Kenya.

**35A.** A Kenya citizen residing outside Kenya shall apply for registration as a voter in the Form set out in Form BB in the Schedule

Eligibility to vote

**36A.** A Kenya citizen residing outside Kenya shall apply for registration as a voter upon production of a valid Kenyan Passport or National Identification Card.

Registration personnel

**37A.** for the purpose of registration of Kenyan citizen residing outside Kenya as voters, the Commission may use the services of foreign representatives of Kenyan who shall not be either the Ambassador, Deputy Ambassador, the High Commissioner or the Deputy High Commissioner .

Type of elections

**38A.** A Kenya citizen residing outside Kenya shall only participate in a presidential election or a referendum.

## REGULATION 34

THAT, regulation 34 be amended by deleting sub-regulation (2) and substituting therefor the following-

(2) The registration officer shall require, satisfactory proof that a voter's card has been lost or destroyed

## REGULATION 36

THAT, regulation 36 in paragraph (a) be amended by inserting the words "at least seven day to the date of hearing" immediately after the word "sent".

## REGULATION 40

THAT, regulation 40 be amended -

(a) By deleting the words "incapacity" immediately after the words "physical" and substituting therefor the words "inability".

(b) By deleting paragraph (c)

**REGULATION 41**

THAT, regulation 41 be deleted -

**SCHEDULE**

THAT the Regulations be amended in the Schedule as follows-

(a) By inserting the following **FORM A**

(b) By inserting the following **FORM AA**

(c) By inserting the following **FORM BB**

**FORM BB**

[Regulation 35 A]

APPLICATION FOR REGISTRATION BY A VOTER BY A KENYAN RESIDING OUTSIDE  
KENYA

1. FULL NAME:

- (a) Surname.....
- (b) Other names.....
- (c) Passport Number, Date and place of issue, passport expiry date.....
- (d) Identity Card Number, Date and place of issue, .....
- (e) Date of birth .....

2. CITIZENSHIP

- (a) Country of Birth.....
- (b) Citizen by birth/ registration.....
- (c) if by registration, date of registration (dd mm yyyy)

3. COUNTRY OF RESIDENCE.....

4. PHYSICAL ADDRESS.....

5. CONTACT ADDRESS.....

- (a) Telephone (country code, telephone number) .....
- (b) Email.....
- (c) Postal Address.....

6. APPLICANT'S LAST RESIDENCE IN KENYA

- (a) Constituency-----
- (b) Ward.....

(c) Address.....

(d) Cell phone number.....

7. DURATION OF STAY IN COUNTRY OF RESIDENCE

(a) Years.....

(b) Months.....

(c) Days.....

8. Disability (if Any):.....

9. Whether you will require to be assisted by any one during voting:.....

I, the applicant, hereby apply to be registered in the Principal Register of Voters for the following elective positions:

(a) Presidential

(b) Referenda

**DECLARATION**

I declare that:

- (i) I am qualified to be, and not disqualified from being, registered as an voter under the Law in respect of the class or classes of election for which I now apply for registration.
- (ii) I am in possession of a Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form (which I have entered, read or have had read to me) are in every respect true and correct.

Dated: ..... 20 ...

.....  
*Signature or thumbprint of Applicant*

Declared before me: .....

*Registration Officer/Assistant Registration Officer*

*Official Stamp: .....*

**(d)** By deleting **FORM C** appearing therein and substituting therefor with the **NEW FORM C** as follow



**FORM C**

[Regulation 13 (1)]

**APPLICATION FOR REGISTRATION AS A VOTER**

**To the Registration Officer** -----  
constituency

County:----- Ward..... Registration  
centre.....

Surname:.....

Other names.....

Identity card no./Kenyan passport no:.....

Date of birth:.....

Sex.....

Residential address:.....

Contact Telephone.....

Postal address:.....

Email: .....

Disability (if Any):.....

Whether you will require to be assisted by any one during  
voting:.....

I, the above named applicant, hereby apply to be registered in the Principal Register  
of Voters in accordance to the Constitution and the Elections Act.

**DECLARATION**

I ,..... declare that at the date of this  
application:

- (i) I am qualified to be, and not disqualified from being, registered as a voter under the law in respect of the classes of election for which I now apply for registration.
- (ii) I am in possession of a national identity card or Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form or submitted to the Commission (which I have entered, read or have had read to me) are true to the best of my knowledge.

Dated: ....., 20 .....

.....  
*Signature or thumbprint of Applicant*

Witnessed by: .....  
*Registration Officer/Assistant Registration Officer*

*Official stamp.*

(e)By deleting **FORM J** appearing in Schedule and substituting therefor with the **NEW FORM J** as follow

**FORM J**

Form J [Regulation 33 (1)(b)]

**NOTICE OF AVAILABILITY OF REGISTER FOR INSPECTION**

Date of posting notice: .....

NOTICE is hereby given that the new preliminary register of voters for the ..... Constituency has been completed and is available for inspection for .....days. The register may be inspected at the places listed in the Schedule.

**How to make a claim:**

A person who claims that he or she should be included in the register may make a claim to the registration officer within the period prescribed for inspection.

The claim must be made in the prescribed Form.

**How to make an objection:**

A person who is registered and who wishes to object to his or her own registration or the registration of another may make an objection to the Court within the period prescribed for inspection.

A person who is registered and who wishes to object to a claim of another may make an objection to the Court within the prescribed inspection period after the claim was posted.

An objection must be made in the prescribed form.

Dated the ....., 20 .....

Registration Officer

Dated.....

**SCHEDULE**

Places where application may be made:

Dated the: .....

5.0 RECOMMENDATIONS:

9. The Committee recommends that the House adopts its report on the Elections (Registration of voters) Regulations, 2012.

XXXXXXXXXXXXXXXXXXXXXXXXXENDXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MINUTES OF THE SIXTIETH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 24<sup>TH</sup> SEPTEMBER, 2012 AT 2.30 9PM IN THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Amina Abdalla, M.P
2. Hon. Baiya Njoroge, M.P
3. Hon. Olago Aluoch, M.P.
4. Hon.Fahim Twaha, MP

–Chairing

ABSENT WITH APOLOGIES

1. Hon.Gitobu Imanyara, MP
2. Hon. (Dr.)Julius Kones, M.P
3. Hon. Kiema Kilonzo, M.P.
4. Hon.B.C.Muturi Mwangi, MP

IN ATTENDANCE

Mr. Jacob Ngwele

NATIONAL ASSEMBLY

- Third Clerk Assistant

MIN.NO.33/2012 PRELIMINARIES

The Chairperson called the meeting to order at 2.50 Pm and opened with a word of prayer by the Committee Clerk.

MIN.NO. 34/2012 SCRUTINY OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS 2012

The Chairperson informed the Committee that the Committee has received representation on the Draft Elections (Registration of Voters) regulations 2012, from the National Democratic Institute and the Election Observation Group .

The Committee read the Draft Elections (Registration of Voters) regulations 2012 clause by clause while refereeing to the Memorandum from the two organizations and made the recommendations contained in the 4<sup>th</sup> Column of the schedule below:

Regulation No.	Provision	Comment	Recommendation
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5(3)	<p><b>Assistant registration officers</b></p> <p>An assistant registration shall be subject to the general direction and control of the registration officer.</p>	Missing word	<p>Insert the word "officer" in the statement to read;</p> <p>5 (3) An assistant registration <u>officer</u> shall be subject to the general direction and control of the registration officer.</p>
6	<p><b>Preparation of Register</b></p> <p>"Each registration officer shall prepare and maintain a register of voters for his or her constituency in such form as the Commission may prescribe."</p>	There should be preparation of registers in line with the Act.	<p>The regulation should therefore include the mention of polling station register ward register and constituency register in line with the Act.</p> <p>The processes of preparing these registers should also be included in the regulations.</p>
7	"Registration areas and polling stations."	The space used for registration should be referred to as registration area or registration centre. Polling station is a place used for voting.	The heading should read as follows: - "Registration areas and registration centers"
7 (c)	"appoint a place or places or designate a vehicle or vehicles at which the polling station for each registration area shall be established; and"	The words <b>vessel and vessels</b> is also used for registration. So that the regulations are consistent with the Act, include the words vessel and vessels.	<p>The regulation should therefore read as follows: -</p> <p>"appoint a place or places or designate a vehicle or vehicles, <b><u>vessel or vessels</u></b> at which the polling station for each registration area shall be established; and"</p>
7 (d)	<p><b>Registration areas and polling stations</b></p> <p>7 (d) Publish in the Gazette a notice specifying -</p>	This Regulation only provides for publishing and not publicising. Article 35 of the Constitution provides that every citizen has the right of access to information. This implies an obligation both to publish and publicise any important information affecting the nation.	<p>The following re-draft is proposed to capture the requirement of publicising:</p> <p>9 (d) Publish in the Gazette <b><u>and publicise through electronic and print media of national circulation and other easily accessible medium</u></b>, a notice specifying -</p>
7 (d) (iii)	"the place or places appointed, or the vehicle or vehicles, designed, for the establishment of registration centre."	The words vessel and vessels is also used for registration. So that the regulations are consistent with the Act, include the words vessel and vessels.	<p>The regulation should therefore read as follows: -</p> <p>"the place or places appointed, or the vehicle or vehicles, <b><u>vessel or vessels</u></b> designed, for the</p>

			establishment of registration centre.”
8	<p><b>Registration particulars</b></p> <p>8 . A register of voters shall contain the particulars set out in Form A in the Schedule.</p>	<p>The Form prescribed titled, “Application for Registration as a Voter” should include a section on literacy. Capturing such information on assisted voters in advance at registration stage will be beneficial; assist the Commission in planning and further lessen the incidences of fraudulent assisted voting which has been common and is less likely to be orchestrated at the early stages of registration.</p> <p>Further, the form should capture data on the categories of disability. Again, this information will be useful to the Commission for planning purposes.</p>	<p>The form should therefore read;</p> <p><b><u>Disability (if Any) and Category:</u></b> <b><u>Can you read and write:</u></b></p>
12 (4)	<p><b>Certificate of Register</b></p> <p>The registration officer shall publish the certified register of voters in the following manner—</p> <p>(a) by making the register available for inspection at such places as the Commission may designate by notice in the Gazette; and</p> <p>(b) by posting, at a place within the registration area where the public has access, a notice of the availability of the register for inspection.</p>	<p>The Elections Act, 2011 gives the Commission authority use technology as it considers appropriate. This is one such instance and it’s therefore proposed to have an additional manner;</p>	<p>Insert a new sub-regulation:</p> <p><b>(c) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.</b></p>
13	<p><b>Application for Registration</b></p>	<p>The step-by-step procedure to register as a voter and the biometric characteristics that are collected during registration is not described.</p> <p>Form B: There is reference polling station. This is a registration process form.</p>	<p>The application procedure needs to be enhanced. There is need to include in the regulations the step-by-step registration process.</p> <p>Need to regulate what biometric characteristics will be collected.</p>

14	Transfer of Registration	<p>The cross referencing that is made to sub-regulation 2 is wrong. Sub-regulation 2 is interpretations. This needs to be cross referenced to sub regulation 10 (g) which needs to be enhanced to address 14 (2) (b).</p> <p>Form D in the schedule is what should be Form C</p> <p>Form D is missing in the schedule and needs to be included.</p>	Make the corrections.
17	"A claim to a registration officer under section 12 of the Act in respect of an application under these regulations shall be at any time by the registered voter."	<p>Section 12 of the Act reads: "A person who has duly applied to be registered and whose name is not included in the register of voters may submit a claim for the name to be included in the register to the registration officer in the prescribed form and manner and within the prescribed time."</p> <p>The regulations say that the claim can be made any time. There is need to include a timeline because the principle register of voters must be ready 3 months before an election to enable the electoral process to flow smoothly.</p>	The regulation should say that claims cannot be made three months to a general election or referendum and 60 days before a by- election.
27	<p><b>Publication of register, etc.</b></p> <p>27 (2) The Commission shall publish a notice of the availability of the register for inspection in the Gazette and in at least one newspaper with nationwide circulation.</p>	<p>This Regulation only provides for publishing but not via all modes accessible to ordinary public. Article 35 of the Constitution provides that every citizen has the right of access to information. This implies an obligation both to publish and publicise any important information affecting the nation.</p>	<p>The regulation should be re-drafted to read:</p> <p>The Commission shall publish a notice of the availability of the register for inspection in the Gazette and in at least one newspaper with nationwide circulation <u>and through other easily accessible medium.</u></p>
34 (2)	<p><b>Replacement of voter's cards</b></p> <p>34 (2) The registration officer shall require proof, satisfactory to him or her, that a voter's card</p>	<p>Here the returning officer's role is one of obligation and not discretion; the drafting language should reflect the same</p>	<p>It should read as;</p> <p>34(2) The registration officer shall require, <u>satisfactory proof</u> <del>to him or her</del>, that a voter's</p>



	has been lost or destroyed.		card has been lost or destroyed.
40	Alternative means of signification 40 If, because of physical incapacity, illness or illiteracy, a person cannot sign an application form, he or she may do any of the following instead of signing...		Delete reference to incapacity and replace with inability. It should read; 40 If, because of physical <u>inability</u> , illness or illiteracy, a person cannot sign an application form, he or she may do any of the following instead of signing -
41	"These regulations shall apply with necessary modifications to Kenyans residing outside Kenya."	The regulations should be specific to the requirements for registration of Kenyans living outside Kenya.	IEBC to Provide specific regulations.

MIN.NO. 35/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at 5.30pm. The next meeting will be on Tuesday 25<sup>th</sup> September, 2012.

HON. AMINA ABDALLA, MP  
(CHAIRPERSON)

Signed.....  


Date:..... 25/9/2012 .....



MINUTES OF THE SIXTY FIRST SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 25<sup>TH</sup> SEPTEMBER, 2012 AT 10.30 AM IN THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Amina Abdalla, M.P
2. Hon. Baiya Njoroge, M.P
3. Hon. Olago Aluoch, M.P.
4. Hon.Fahim Twaha, MP
5. Hon.Gitobu Imanyara, MP
6. Hon.B.C.Muturi Mwangi, MP

–Chairing

ABSENT WITH APOLOGIES

1. Hon. (Dr.)Julius Kones, M.P
2. Hon. Kiema Kilonzo, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Jacob Ngwele

- Third Clerk Assistant

MIN.NO.36/2012 PRELIMINARIES

The Chairperson called the meeting to order at 10.50 AM and opened with a word of prayer by the Committee Clerk.

MIN.NO. 37/2012 ADOPTION OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS 2012

Members reviewed both the Draft Elections (Registration of Voters) Regulations, 2012, and upon the review of the Draft Elections (Kenya Citizens Residing Outside Kenya) (Registration and Voting) Regulations 2012, and ADOPTED to the following amendments to Draft Elections (Registration of Voters) Regulations, 2012.

REGULATION 2

THAT, regulation 2 be amended by inserting the following definitions in the proper alphabetical order.

“Commission” means the Independent Electoral and Boundaries Commission established by the Constitution;

“foreign representative of Kenya” means a public officer serving in Kenyan foreign mission abroad;

REGULATION 6

THAT, regulation 6 be amended by inserting the words “polling stations, ward and” immediately after the word “his or her”.

## REGULATION 7

THAT, regulation 7 be amended-

- (a) in the marginal notes by deleting the words “Registrations areas” and substituting therefor the words “Registration areas and Registration centers”.
- (b) In sub-regulation 7(c) by inserting the words “vessels or vessels” immediately after the words “vehicle or vehicles”.
- (c) In sub-regulation 7(d) by inserting the words “and publicise through electronic and print media of national circulation and other easily accessible medium” immediately after the words “Gazette”.
- (d) In sub-regulation 7 (d)(iii) by inserting the words “vessels or vessels” immediately after the words “vehicle or vehicles”.
- (e) by inserting a new paragraphs (dd) (ee) and (ff) immediately after paragraph (c) as follows-
  - (d) Designate such areas outside Kenya, in which registration is to be held, as a single registration area;
  - (e) Declare the entire territory of the foreign country or any part of a foreign country, to be a registration area;
  - (f) Declare a region consisting of more than one foreign country to be a single registration area; and
- (f) by inserting new sub-regulations (3A) and (4A) immediately after sub-regulation (2) as follows-

(3A) The Commission may use facilities of Kenyan foreign missions abroad, free of charge, for the purposes of voter registration or polling, as the case may be;

(4A) The Commission shall, in respect of each registration area appoint a registration officer to be responsible for the compilation of a register for the respective area;

## REGULATION 12

THAT, regulation 12 be amended in sub-regulation clause (4) by inserting a new paragraph (d) as follows-

(d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

## REGULATION 17

THAT, regulation 17 be amended by inserting the following proviso-

“Provided that such claim shall not be made ninety days to a date of a general election or referendum and sixty days before a by-election”

## REGULATION 27

THAT, regulation 27 in sub-regulation (2) be amended by inserting the words “and through other easily accessible medium.” immediately after the word “nationwide circulation”.

## REGULATION 28

THAT, regulation 28 in sub-regulation (1) be amended by deleting the words “26” and substituting therefor the words “27” immediately after the word “regulation”

## REGULATION 29

THAT, regulation 29 be amended by deleting paragraph (b)

## REGULATION 30

THAT, regulation 30 be amended by deleting sub-regulation (4)

## REGULATION 31

THAT, regulation 31 be amended -

- (a) in sub-regulation (2) by deleting paragraph (a).
- (b) in sub-regulation (2) (b) deleting the words “close” immediately after the words “may” and substituting therefor the words “transfer”.
- (c) In sub-regulation (3) deleting the words “closes” immediately after the words “if the registration officer” and substituting therefor the words “transfers”.

## REGULATION 33

THAT, regulation 33 be amended -

- (a) in sub-regulation (1) by deleting paragraph (a) and substituting therefor the following-
  - (a) by making the relevant register available for inspection at the respective registration centre, ward and constituency Commission offices; and
- (b) in sub-regulation (1) (b) deleting the words “headquarters of the division” immediately after the words “at a place at the” and substituting therefor the words “the Commissions website, constituency offices, registration center and ward”.
- (c) In sub-regulation (1) ) by inserting a new paragraph (d) as follows-
  - (d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

## NEW PART VII – REGISTRATION OF KENYAN CITIZENS RESIDING OUTSIDE KENYA

THAT, the Regulation be amended by inserting a new **PART VII REGISTRATION OF KENYAN CITIZENS RESIDING OUTSIDE KENYA** immediately after regulation 33 and renumbering the rest of Regulations in a proper sequence.

## NEW REGULATION

THAT, the following new regulations be inserted immediately after regulation 33-

Registration of Kenyan citizens residing outside Kenya.      **33A(1).** The Commission shall, at regular intervals, publish the names of countries in which registration and voting of is scheduled to take place.  
(2) a decision by the Commission to register Kenyan citizens residing outside Kenya or to conduct elections outside Kenya shall be based on-

- (a) The presence of a Kenyan Embassy, High Commission or Consulate; or
- (b) Other logistical considerations.

Registration particulars of Kenyan citizens residing out of Kenya.      **34A.** A register of voters who are Kenya citizens residing outside Kenya shall contain the particulars set out in Form AA in the Schedule

Application for registration by Kenyan citizens residing out of Kenya.      **35A.** A Kenya citizen residing outside Kenya shall apply for registration as a voter in the Form set out in Form BB in the Schedule

Eligibility to vote      **36A.** A Kenya citizen residing outside Kenya shall apply for registration as a voter upon production of a valid Kenyan Passport or National Identification Card.

Registration personnel      **37A.** for the purpose of registration of Kenyan citizen residing outside Kenya as voters, the Commission may use the services of foreign representatives of Kenyan who shall not be either the Ambassador, Deputy Ambassador, the High Commissioner or the Deputy High Commissioner .

Type of elections      **38A.** A Kenya citizen residing outside Kenya shall only participate in a presidential election or a referendum.

## REGULATION 34

THAT, regulation 34 be amended by deleting sub-regulation (2) and substituting therefor the following-

(2) The registration officer shall require, satisfactory proof that a voter's card has been lost or destroyed

## REGULATION 36

THAT, regulation 36 in paragraph (a) be amended by inserting the words “at least seven day to the date of hearing” immediately after the word “sent”.

#### REGULATION 40

THAT, regulation 40 be amended -

(a) By deleting the words “incapacity” immediately after the words “physical” and substituting therefor the words “inability”.

(b) By deleting paragraph (c)

#### REGULATION 41

THAT, regulation 41 be deleted -

#### SCHEDULE

THAT the Regulations be amended in the Schedule as follows-

(a) By inserting the following **FORM A**

(b) By inserting the following **FORM AA**

(c) By inserting the following **FORM BB**

**FORM BB**

[Regulation 35 A]

#### APPLICATION FOR REGISTRATION BY A VOTER BY A KENYAN RESIDING OUTSIDE KENYA

##### 1. FULL NAME:

(a) Surname.....

(b) Other names.....

(c) Passport Number, Date and place of issue, passport expiry date.....

(d) Identity Card Number, Date and place of issue, .....

(e) Date of birth .....

##### 2. CITIZENSHIP

(a) Country of Birth.....

(b) Citizen by birth/ registration.....

(c) if by registration, date of registration (dd mm yyyy)

##### 3. COUNTRY OF RESIDENCE.....

##### 4. PHYSICAL ADDRESS.....

##### 5. CONTACT ADDRESS.....

(a) Telephone (country code, telephone number) .....

- (b) Email.....
- (c) Postal Address.....

6. APPLICANT'S LAST RESIDENCE IN KENYA

- (a) Constituency-----
- (b) Ward.....
- (c) Address.....
- (d) Cell phone number.....

7. DURATION OF STAY IN COUNTRY OF RESIDENCE

- (a) Years.....
- (b) Months.....
- (c) Days.....

8. Disability (if Any):.....

9. Whether you will require to be assisted by any one during voting:.....

I, the applicant, hereby apply to be registered in the Principal Register of Voters for the following elective positions:

- (a) Presidential
- (b) Referenda

**DECLARATION**

I declare that:

- (i) I am qualified to be, and not disqualified from being, registered as an voter under the Law in respect of the class or classes of election for which I now apply for registration.
- (ii) I am in possession of a Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form (which I have entered, read or have had read to me) are in every respect true and correct.

Dated: ..... 20 ...

.....  
*Signature or thumbprint of Applicant*

Declared before me: .....

*Registration Officer/Assistant Registration Officer*

*Official Stamp: .....*



(d) By deleting FORM C appearing therein and substituting therefor with the NEW FORM C as follow

FORM C

[Regulation 13 (1)]

APPLICATION FOR REGISTRATION AS A VOTER

To the Registration Officer ----- constituency

County:----- Ward..... Registration centre.....

Surname:.....

Other names.....

Identity card no./Kenyan passport no:.....

Date of birth:.....

Sex.....

Residential address:.....

Contact Telephone.....

Postal address:.....

Email: .....

Disability (if Any):.....

Whether you will require to be assisted by any one during voting:.....

I, the above named applicant, hereby apply to be registered in the Principal Register of Voters in accordance to the Constitution and the Elections Act.

DECLARATION

I, ..... declare that at the date of this application:

- (i) I am qualified to be, and not disqualified from being, registered as a voter under the law in respect of the classes of election for which I now apply for registration.
- (ii) I am in possession of a national identity card or Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form or submitted to the Commission (which I have entered, read or have had read to me) are true to the best of my knowledge.

Dated: ....., 20 .....

.....  
*Signature or thumbprint of Applicant*

Witnessed by: .....  
*Registration Officer/Assistant Registration Officer*

*Official stamp.*

(e) By deleting **FORM J** appearing in Schedule and substituting therefor with the **NEW FORM J** as follow

**FORM J**

Form J [Regulation 33 (1)(b)]

**NOTICE OF AVAILABILITY OF REGISTER FOR INSPECTION**

Date of posting notice: .....

NOTICE is hereby given that the new preliminary register of voters for the ..... Constituency has been completed and is available for inspection. for .....days. The register may be inspected at the places listed in the Schedule.

**How to make a claim:**

A person who claims that he or she should be included in the register may make a claim to the registration officer within the period prescribed for inspection.

The claim must be made in the prescribed Form.

**How to make an objection:**

A person who is registered and who wishes to object to his or her own registration or the registration of another may make an objection to the Court within the period prescribed for inspection.

A person who is registered and who wishes to object to a claim of another may make an objection to the Court within the prescribed inspection period after the claim was posted.

An objection must be made in the prescribed form.

Dated the ....., 20 .....

Registration Officer

Dated.....

SCHEDULE

Places where application may be made:

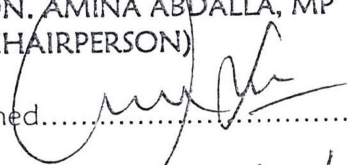
Dated the: .....

MIN.NO. 35/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at 11.30am. The next meeting will be on Wednesday 26<sup>th</sup> September, 2012.

 HON. AMINA ABDALLA, MP  
(CHAIRPERSON)

Signed.....  


Date:.....  
