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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT



FOURTH SESSION



*by Hon. Samuel Chepkong, Chairman, JLA Committee on Thursday, October 27, 2016*

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE PROGRESS OF IMPLEMENTATION OF THE ELECTION LAWS AMENDMENT ACT 2016 AND PREPARATIONS FOR THE 2017 GENERAL ELECTIONS

CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

OCTOBER, 2016

## **CHAIR'S FOREWORD**

On 11<sup>th</sup> and 18<sup>th</sup> October, 2016 pursuant to Standing Order 216, the Departmental Committee on Justice and Legal Affairs held two consultative meetings with the Secretariat of Independent Electoral and Boundaries Commission (IEBC) to deliberate on matters within the Committee's Mandate.

The two institutions found that it was fundamental to consult following emerging issues as a result of the Election Laws (Amendment) Act, 2016 and the Election Offences Act which came in force on 4<sup>th</sup> October, 2016.

The above developments followed negotiations spearheaded by the Joint Parliamentary Select Committee on matters relating to IEBC. The Committee embraced the changes given that they were largely negotiated and agreed upon across the political divide. The Committee appreciates that it is important to bring to the attention of the House some of the critical issues that Kenyans must be aware of in terms of implementing the new law and an opportunity to appraise the House on where the Country must be in terms of 2017 General Election preparations.

The Committee's Report contains some areas for consideration given their implications on election operations. In this report we seek to inform the House on the following areas: audit of the register of voters; inspection, verification and certification of the register of voters; the role of ICT in electoral processes; capping of the number of voters per polling stations; party primaries and nominations; and the budgetary implications of the new law.

The Committee, following consultations with the IEBC on what should be done wishes to update the House on Audit of the Register of Voters, Inspection, Verification and Certification of the Register, Capping of the Number of Voters per Polling Station, Candidate Selection and Nomination, CT in the Electoral Process and Budget implications.

On behalf of the committee, I wish 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.

Finally, pursuant to Standing Order 216, it is my pleasure and duty to present to the House, the Report on the Implications of the Election Laws Amendment Act 2016 and Preparations for the 2017 General Elections for consideration and adoption by the House.

**Hon. Samuel Chepkong'a, M.P**

## 2.0 MANDATE OF THE COMMITTEE

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics ,Integrity and anti-corruption and
- g) Human rights.

The Committee oversees the following Ministries/Departments:

- a) State Law Office
- b) The Judiciary
- c) Ethics and Anti-Corruption Commission
- d) Independent Electoral and Boundaries Commission
- e) Commission on Administrative Justice

The Committee also has oversight mandate over all matters relating to political parties.

### 3.0 MEMBERS OF THE COMMITTEE

<b>Chairperson</b>	Hon. Samuel Chepkong'a, M.P.
<b>Vice Chairperson</b>	Hon. Priscilla Nyokabi, M.P.
	Hon. Njoroge Baiya, M.P.
	Hon. Muriithi Waiganjo, M.P.
	Hon. Ndirangu Waihenya, M.P.
	Hon. Florence Kajuju, M.P.
	Hon. Kang'ata Irungu, M.P.
	Hon. Benson Mutura, M.P.
	Hon. John Njoroge Chege, M.P.
	Hon. William Cheptumo, M.P.
	Hon. Mohamed Abdi Haji, M.P.
	Hon. Bitok Kirwa, M.P.
	Hon. Sammy Koech, M.P.
	Hon. Moses Cheboi, M.P.
	Hon. Paul Bii, M.P.
	Hon. Charles Gimose, M.P.
	Hon. Johana Ng'eno, M.P.
	Hon. Boniface Otsiula, M.P.
	Hon. David Ouma Ochieng, M.P.
	Hon. Neto Agostinho, M.P.
	Hon. Kaluma Peter, M.P.
	Hon. Fatuma Ibrahim Ali, M.P.
	Hon. Ben Momanyi Orori, M.P.
	Hon. T. J. Kajwang', M.P.
	Hon. (Bishop) Mutua Mutemi, M.P.
	Hon. Olago Aluoch, M.P.
	Hon. Christine Oduor Ombaka, M.P.
	Hon. Benjamin Andayi, M.P.
	Hon. Mwamkale William Kamoti, M.P.

#### **4.0 COMMITTEE SECRETARIAT**

First Clerk Assistant  
Principal Legal Counsel  
Clerk Assistant III  
Legal Counsel  
Research Officer

Mr. Abenayo Wasike  
Mr. Dennis Abisai  
Mr. Ahmed Salim  
Ms. Mugure Gituto  
Ms. Clare Jerotich

## **5.0 BACKGROUND**

### **5.1 Establishment of the Departmental Committee on Justice and Legal Affairs**

The Departmental Committee on Justice and Legal Affairs is one of the Departmental Committees established under National Assembly Standing Order No.216 (1).

The Committee has mandate to;

- (a) investigate, inquire into ,and report on all matters relating to the mandate,management,activities,administration,operations and estimates of assigned Ministries and departments;
- (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- (f) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

### **5.2 Submissions by the IEBC on Implications of the New Law**

The IEBC briefed the Committee as follows;

#### **Audit of the Register of Voters**

The new law mandates the Commission to engage the services of a reputable professional firm to carry out an audit of the Register of Voters. The purpose of undertaking the audit is to Verify the accuracy of the Register; make recommendations for enhancing the accuracy of the Register; and updating the Register.

The Commission proceeded to advertise Expression of Interest inviting competent firms to bid on 10<sup>th</sup> October, 2016. The opening of the Expression of Interest was carried out on 17<sup>th</sup> October, 2016. The Commission has commenced the evaluation of the Expression of Interest submissions and is due to submit the request for proposals to the shortlisted firms. Based on the procurement timelines,the firm will come on board on 28<sup>th</sup> November, 2016 way beyond the statutory deadline set by the new law.

The Commission has had to suspend the earlier planned inspection of the register of voters until the audit is completed. In the meantime, the Commission will commence the preparations for the second phase of mass voter registration campaign.

### **Inspection, Verification and Certification of the Register**

The new law now requires verification of voters using biometric data for a period of 30 days at least 90 days before the election. This means that the Register must be opened 120 days before the election. Upon completion of verification, the Commission is required to gazette the final register and publish it online after incorporating the amendments arising from voter verification.

Based on the 90 days cut-off date, the first thing one notices is that the Register of Voters must be opened to the public between **10th April 2017** and **10th May, 2017** in accordance with the timelines set out in law. Indicatively, all registration must close by **23rd February 2017** counting backwards from **10th April 2017**. Unlike the earlier proposals in the Elections Laws (Amendment) Bill of 2015, the current law gives the Commission huge latitude on time.

Unlike before, verification must now happen at all the polling stations. In 2013, verification was conducted in 24,000 registration centres over a period of 14 days. With the new law, the Commission is required to cap polling stations at 500 voters. The Commission estimates that 57,000 polling stations will have to be created. Verification will have to take place in each of the 57,000 polling stations. This is more than 100% increase in terms of points of verification and 100% increase in terms of time required.

The new law currently requires the Commission to avail electronic devices at all polling stations for purposes of biometric data verification. It is obvious; therefore, that a new operational design and additional resources will be required to cater for increased centres of verification and the methodology of verification.

### **Capping of Number of Voters per Polling Station**

The Commission is required to cap the number of voters per polling station at 500 voters. With the current register standing at 15.87 million voters, the Commission project that the number of polling stations required is 44,000. If the registered number of voters is extrapolated to 22 million, the Commission will have to create over 57,000 polling stations.

There are areas where available infrastructure will not allow the creation of additional polling stations. This will be a challenge for the Commission. For that reason, the Commission recommends that the law be amended to give the Commission discretion to determine such other number to cater for emerging situation.

### **Candidate Selection and Nomination**

The new law is now explicit on the role of the Commission when it comes to party primaries. It states that a political party may request the Commission conduct its party primaries. And if such request is made, the Commission is obligated to comply.

Further, under the new law, both party primaries and the nomination of candidates by the Commission to end on the same date. Political parties are obligated to deliver to the Commission the membership lists of its candidates at least 90 days preceding the election. This means that by **10th May 2017**, political parties should have submitted the list of candidates participating in their primaries.

As a result of timelines provided for in the new law, the process of resolving disputes arising from both party primaries and nomination is not factored.

Since the sequencing of the processes highlight potential overlaps, it is important for political parties to be encouraged to start their processes much earlier than set out in law. In addition, the Commission will have to expand the timelines in a way that meets the legal requirements but at the same time allow for sufficient time for free and fair nomination process. For instance, the Commission may require political parties to carry out party primaries 90 days before the elections which will allow the Commission and parties 30 days to address any concerns before the nomination deadline set but law.

It is also clear that the new omits the requirement for political parties to finance party primaries in the event that they request the Commission to conduct the primaries. It is important that Parliament provides clarity on this matter.

Further, the requirement to gazette party primary candidates will entails costs that have not been budgeted for in the current financial year. The Commission must therefore factor this into the new law.

### **ICT in the Electoral Process**

The use of technology in elections continues to receive high significance in Kenya. The Commission had always planned to acquire the technology in good time, stress-test, and also offer adequate training to officials using the technology before deployment. The Commission is still fully committed to deliver the technology in good time before the elections.

***Integrated System:*** The new law brings on board changes which impact on the manner in which the technology used in elections should be acquired and deployed. This will entail integrating the Biometric Voter Registration (BVR), Electronic Voter Identification Devices (EVID) and Results Transmission System (RTS). The Commission has just completed preparing the draft specifications for the new technology in readiness for procurement.

***Procurement and Implementation of Technology:*** The new law requires that procurement of the technology must be done in an open and transparent manner. It then goes further to state that such technology must be procured at least **8 months** before the election. In this regard, the Commission is expected to develop specifications, advertise, evaluate, award and receive the equipment by **8th December, 2016**. **Annex 1** shows the options on key timelines towards procuring the integrated electoral system.

Clearly, the timelines provided for in the new law are at variance with the Public Procurement and Assets Disposals Act 2015 (PPAD). When crafting the new law, Parliament did not take into consideration the timelines required to procure ICTs in an open and transparent process as set out



in the PPAD Act 2015. Section 5 of the PPAD Act is also very clear that whenever there is any inconsistency between any other law and the PPAD Act on matters of procurement, then the PPAD Act prevails.

Parliament is invited to look at the two laws and take necessary steps to address the gaps. However, the Commission will operate on the assumption that the Public Procurement and Asset Disposal Act is a superior piece of legislation in matters relating to procurement and hence supersede the Elections Laws Amendment Act where the timelines clash in the two processes.

The Commission is required to establish a technical committee whose mandate is to oversee the adoption of technology in the electoral process and to implement the use of such technology. Accordingly, the Commission proposed to have the Committee composed of the ICT Committee of the Commission and representatives of the following institutions: Political Parties Liaison Committee (PPLC), the National Treasury, Ministry of ICT, Communications Authority of Kenya (CAK), the Registrar of Political Parties (RPP), the Commission on Administrative Justice (CAJ), Kenya Private Sector Alliance (KEPSA), the Institute of Education in Democracy (IED), Ushahidi, the Telecommunications Service Providers and Information Systems, Audit and Control Association (ISACA). The terms of reference for the Committee have been developed by the Commission and the first meeting is expected to be held on 26<sup>th</sup> October 2016.

In addition, the Commission is expected to develop and submit to parliament regulations on the use of ICT in elections within 30 days of the law coming into effect. The Commission intends to submit the envisaged regulations by **2<sup>nd</sup> Nov. 2016**. While the Commission is making effort to develop the draft regulations, the timelines given are too strict to the extent that we may not do justice to the process. The Commission recommends that these timelines be reviewed to at least 60 days.

### **Budget implications**

The Commission has recalculated the 2016/17 and 2017/18 financial year budget based on the changes to the election laws.

While the Commission planned with 44,000 polling stations, the capping of 500 voters per polling station has the effect of increasing the number of polling stations to 57,331. This is a 30% increase in the number of polling stations. The total additional budgetary requirement is projected to be **Kshs. 10,767 M**. The significant costs include the following:

#### **a. Voter Register Inspection - Kshs 3,142 M:**

- i. Voter register verification - Kshs 3,112 M - The amendment envisages biometric voter register verification at the polling stations. This implies that the voter identification device will be used at polling stations rather than at the registration centres. This will have direct implication on staff costs, transport, storage and security of the devices.
- ii. Voter Register Audit- Ksh 30 M.

**b. General Election KShs. 7,058 M**

- i. Electoral technology Kshs. 3,534 M
  - Additional devices and integrated technology KShs.2,800 M
  - Telecommunication network KShs. 300 M
  - Online Election results publication Kshs. 200 M
  - Other related costs KShs. 234 M
- ii. General election materials Kshs 643 M include both strategic and non-strategic materials.
- iii. Transportation costs Ksh 545 M
- iv. Wages for polling officials Ksh 1,397 M
- v. Training costs Kshs 517 M
- vi. Meals and allowances Kshs 419 M

**c. Legal and compliance costs Ksh 296 M**

- i. Includes two additional Gazette Notices envisaged for party primaries of Ksh 62 M
- ii. Publication of party list cost - Ksh 76 M
- iii. Other gazette notices- Ksh 78 M

## **6.0 PENDING REFORMS UNDER THE ELECTIONS LAWS AMENDMENT BILL, 2015**

While the new law adopts a substantial portion of the law reform agenda encapsulated in the Elections Laws (Amendment) Bill, 2015, (Chepkonga Bill), there are other important proposals that remain pending. These include:

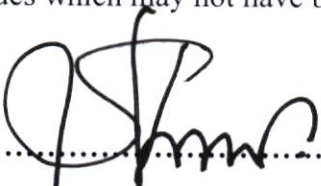
- Educational qualifications for Members of Parliament and the County Assemblies;
- Timelines for dispute resolution processes arising from party primaries and nomination processes;
- Timelines for reckoning of occurrence of a vacancy in Parliament;
- Timelines for submission of party constitutions and nomination rules and procedure for amendments;
- Procedure for processing party lists elections and determination of who can be in a party list;
- Timelines for resignation of public officers in the case of by-elections;
- Adjustments to the referendum process;
- Timelines for the coming into effect of the electoral code of conduct; and
- Provisions relating to boundaries delimitation in the IEBC Act;

## **7.0 COMMITTEE RECOMMENDATIONS**

**THAT Pursuant to Standing Order 216 (5) (g) of the National Assembly, the Committee recommends that the National Assembly adopts the Report and recommendations of the Independent Electoral and Boundaries Commission (IEBC) as follows;**

1. The Commission proceeds with preparations for the 2017 General Election considering that there is very limited time left.
2. The Commission proceeds with the procurement of the audit firm to audit the register of voters bearing in mind the requirement of the PPAD Act 2015.
3. The Justice and Legal Affairs Committee (JLAC) would take up the issue with respect to the clash between the electoral amendment law and procurement law.
4. The Commission should plan well for the next mass voter registrations to bring on board all eligible Kenyans to register as voters.

5. The Commission reviews the timelines with respect to the nomination of candidates including using its own discretion to expand the time where the law allows.
6. The JLAC revisits the capping of polling stations at 500 voters so that the Commission is allowed discretion to use alternative number in the event that obtaining circumstances makes it impossible to have the 500 limit.
7. The Commission proceeds to set up the Technical Committee as proposed Membership to the Technical Committee with a recommendation that the Political Parties Liaison Committee (PPLC) be represented by two members;
8. The Commission should proceed and advertise for the procurement of the integrated electronic electoral system in a transparent manner and to ensure that new system is available within reasonable time in readiness for the elections.
9. That in procuring the electoral technology, the Commission should explore the fast-track option noting that the statutory deadline of 8<sup>th</sup> December 2016 poses procurement challenges.
10. That Parliament should provide adequate resources to the Commission to cater for the cost for implementing the new law.
11. That Parliament should process the Election Laws Amendment Act no 3 of 2015 to cater focare of the issues which may not have been provided for by the new law.

Signed  .....

**Hon. Samuel Chepkong'a, M.P**

**(Chairperson)**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

Dated this 27<sup>th</sup> Day of October, 2016

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE  
AND LEGAL AFFAIRS HELD ON TUESDAY, 18<sup>TH</sup> OCTOBER, 2016 AT 10.00 A.M.  
IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE**

**PRESENT**

Hon. Samuel Chepkonga, M.P. - Chairperson  
Hon. Priscilla Nyokabi, M.P. - Vice Chairperson  
Hon. Agostinho Neto, M.P.  
Hon. Ben Momanyi, M.P.  
Hon. Benson Mutura, M.P.  
Hon. Bitok Kirwa, M.P.  
Hon. Charles Gimose, M.P.  
Hon. David Ochieng, M.P.  
Hon. Florence Kajuju, M.P.  
Hon. John M. Waiganjo, M.P.  
Hon. John Njoroge Chege, M.P.  
Hon. Kang'ata Irungu, M.P.  
Hon. Moses Cheboi, M.P.  
Hon. Paul K. Bii, M.P.  
Hon. Peter Kaluma, M.P.  
Hon. (Bishop) Robert Mutemi, M.P.  
Hon. Sammy Koech, M.P.  
Hon. Tom J. Kajwang', M.P.  
Hon. Ndirangu Waihenya, M.P.  
Hon. William Cheptumo, M.P.

**APOLOGY**

Hon. Dr. Christine Ombaka, M.P.  
Hon. Boniface Otsiula, M.P.  
Hon. Olago Aluoch, M.P.  
Hon. Kamoti Mwamkale William, M.P.  
Hon. Njoroge Baiya, M.P.

**ABSENT**

Hon. Johana Ngeno, M.P.  
Hon. Mohamed Abdi Haji, M.P.  
Hon. Fatuma Ibrahim, M.P.

## **SECRETARIAT**

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Ms. Mugure Gituto	-	Legal Counsel II
Ms. Clare Jerotich	-	Research Officer

## **IN ATTENDANCE**

Mr. Ezra Chiloba	-	CEO, IEBC
Ms. Betty Sungura	-	Dep. CEO, IEBC
Mr. Marjan Hussein M.	-	Dep. CEO, IEBC
Mr. Obadiah Keitany	-	DARC - IEBC
Mr. James Muhati	-	DICT - IEBC
Mr. Patrick Odame	-	IEBC
Mr. Osman Hassan	-	Director Finance, IEBC
Mr. Jason Akoyo	-	MB - IEBC
Mr. Siyad Abdi	-	IEBC - Social Media
Ms. Moses Kipkogei	-	Legal Officer, IEBC
Mr. Andrew Limo	-	IEBC

## **MIN No. JLA /2016:-**

## **PRELIMINARIES**

The Chairperson called the meeting to order at 10.05 a.m. and commenced with a word of prayer from Hon. Robert Mutemi.

## **MIN No. JLA /2016:-**

## **PREPARATION FOR APPROVAL HEARING OF THE DEPUTY CHIEF JUSTICE NOMINEE**

The Committee was informed that having received communication on the nominee for the position of the Deputy Chief Justice of the Republic of Kenya, the Committee will conduct approval hearing on 25<sup>th</sup> October 2016.

The Committee resolved that each Member shall ask a maximum of two questions to allow as many Members to engage the nominee and at the same time ensure that time is managed well.

The Chief Executive Officer of the IEBC gave a presentation to the Committee on Implications of the Election Laws Amendment Act on Preparations for the 2017 General Elections.

In his presentation, the CEO recalled that the National Assembly recently passed the Elections Laws (Amendment) Act 2016 together with the Elections Offences Act 2016 following negotiations spearheaded by the Joint Parliamentary Select Committee on IEBC.

However, even as the IEBC welcomed these changes, and given that they were largely negotiated and agreed upon across the political divide, the Commission wished to point out some areas for the Committee's consideration, given their implications on election operations. The presentation, therefore, sought to address the Committee on the following areas: audit of the register of voters; inspection, verification and certification of the register of voters; the role of ICT in electoral processes; capping of the number of voters per polling stations; party primaries and nominations; and the budgetary implications of the new law.

In the presentation, some of the details and recommendations were provided as follows:

<b>SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016</b>	<b>SITUATION</b>	<b>IMPLICATIONS</b>	<b>RECOMMENDATIONS</b>
<p><b>[Section 2]</b> Section 2(e) inserts the following new definitions–</p> <p><i>“biometric”</i> means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures; and</p> <p><i>“integrated electronic electoral system”</i> refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system.</p>	<ol style="list-style-type: none"><li>1) The current registration system does not capture all the biometric data as envisaged in the new current law. The current BVR system captures only facial and fingerprints.</li><li>2) The Commission deployed stand-alone systems in 2013 General</li></ol>	<ol style="list-style-type: none"><li>1) The Commission has to assess and redefine specifications for the integrated system which may mean additional budgetary allocation owing to the complex nature of “integration.”</li><li>2) This will also impact on the electoral timelines in terms of acquisition.</li></ol>	<p>Parliament to allocate additional funding to facilitate integration of the system.</p>

SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016	SITUATION	IMPLICATIONS	RECOMMENDATIONS
	Election.		
<p><b>[Section 5]</b> Section 6A (1) states that the Commission shall, not later than ninety days before the date of a general election, <b><u>open the Register of Voters for verification of biometric data</u></b> by members of the public at their respective polling stations for a period of thirty days.</p>	<p>The verification or inspection of the voter register has previously been undertaken manually or by SMS/web portal at registration centres.</p>	<ol style="list-style-type: none"> <li>1) The Commission must acquire technology to allow for biometric verification of voters at the polling station for over a period of 30 days.</li> <li>2) The deployment of the technology means additional workforce and attendant logistical requirements.</li> </ol>	<ol style="list-style-type: none"> <li>1) The law should also allow for verification through other means other than using biometric data – SMS or web portal.</li> <li>2) Parliament to allocate additional resource to cater for increased operational costs for verification.</li> </ol>
<p><b>[Section 6]</b> The new Section 8A (3) states that for purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of:</p> <p><i>(a) verifying the accuracy of the Register;</i>  <i>(b) recommending mechanisms of enhancing the accuracy of the Register; and</i>  <i>(c) updating the register.</i></p>	<p>Audit of the register of voters is a new requirement in the country's electoral process.</p>	<ol style="list-style-type: none"> <li>1) The new section impacts on elections operation timelines.</li> <li>2) There are overlaps between the timelines for engaging the audit firm and the procurement law.</li> <li>3) The activity was not budgeted for in the current work plan.</li> <li>4) The parameters for measuring accuracy of the Register of Voters are not defined.</li> </ol>	<ol style="list-style-type: none"> <li>1) Parliament should allocate additional funding to finance the audit and implementation of the recommendations.</li> <li>2) Parliament to consider amending the law to address the conflict between the procurement law and the new section.</li> <li>3) Regulations to be developed to guide the process of future audits.</li> </ol>
<p><b>[Section 8]</b> The new Section 13(1) states that a political party shall nominate its candidates for an election under this Act at least sixty days before a general election in accordance with its constitution and nomination rules.</p> <p><b><i>Read together with:</i></b></p>	<ol style="list-style-type: none"> <li>1) Previously party primaries would end 45 days before the election. The Commission had power to fix the date for nomination.</li> </ol>	<ol style="list-style-type: none"> <li>1) There is potential for conflict between the timelines for nomination of candidates by parties (party primaries) and the registration of candidates for election by the Commission.</li> </ol>	<p>Revisit the timelines under the Elections Laws (Amendment) Bill No. 3 of 2015.</p>



SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016	SITUATION	IMPLICATIONS	RECOMMENDATIONS
The new Section 2 (c) which defines "nomination day" to mean the day gazetted, at least sixty days before an election, by the Commission as the day for the nomination of candidates for that election.	2) Section 74 of the Elections Act gives the Commission 7 days to resolve dispute arising from party nominations.	2) By tabulating the timelines leading to nominations, there is almost no time to handle disputes arising from both party primaries and Commission nomination.	
<b>[Section 10]</b> The new Section 31 (2) states that the Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.	The Commission has not been conducting party primaries.	<ol style="list-style-type: none"> <li>1) Political parties are given the discretion to ask the Commission to conduct party primaries.</li> <li>2) If the Commission accedes to party requests, then the question of financing must be addressed.</li> <li>3) In addition, the Commission has no discretion to reject such requests.</li> <li>4) Lack of clarity between party membership list submitted to RPP and that submitted to the Commission.</li> </ol>	<ol style="list-style-type: none"> <li>1) The Commission should be allowed to develop guidelines for party primaries which may include conditions to be met by parties before the Commission may accede to their request.</li> <li>2) Address the issue of "who funds" party primaries.</li> </ol>
<b>[Section 10]</b> Section 31 (2C) states that the Commission shall publish, in the Gazette the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party	Cost of gazettment of persons contesting in Party Primaries was not factored in the current budget.	Gazettment of party primary candidates for all political parties requires adequate preparations and resource allocation. At the moment, the Commission can only estimate cost based on the number of political parties.	Parliament to consider additional funding for purposes of gazettment of candidates for party primaries.
<b>[Section 11]</b> Section 33(2) requires the Commission to publish in the Gazette, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.	As above	As above	As above

SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016	SITUATION	IMPLICATIONS	RECOMMENDATIONS
<p><b>[Section 13]</b> Section 38A, states that for the <b>efficient and effective</b> conduct of elections, the Commission shall determine the number of voters per polling station but such number shall not exceed five hundred voters.</p>	<ol style="list-style-type: none"> <li>1) The Commission had made a similar proposal to have the number of voters per polling station capped at 700 but also allowing the Commission to determine any other number.</li> <li>2) The MTEF budget was based on 44,000 polling stations.</li> </ol>	<ol style="list-style-type: none"> <li>1) The number of polling stations will increase by almost 100% if the Commission achieves its targeted 22 million voters. Current projection – 57,331 polling stations.</li> <li>2) As the main cost driver, the increase in polling stations is expected to have budgetary implications.</li> <li>3) There are certain locations that do not have space for expansion to accommodate additional polling stations.</li> </ol>	<ol style="list-style-type: none"> <li>1) Amend the law to provide discretion to the Commission to determine the number of voters per polling station. (See Bill No. 3 of 2015).</li> <li>2) Increase budgetary allocation to cater for additional polling stations operations.</li> </ol>
<p><b>[Section 14]</b> Section 39(1C) states that for purposes of a presidential election the Commission shall-</p> <p><i>(a) electronically transmit the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;</i></p> <p><i>(b) tally and verify the results received at the national tallying centre; and</i></p> <p><i>(c) publish the polling result forms on an online public portal maintained by the Commission.</i></p>	<ol style="list-style-type: none"> <li>1) The practice has been that provisional results are transmitted to the tallying centres from polling stations.</li> <li>2) The Commission has used discretion to determine how soon documents are made available to the public after poll.</li> </ol>	<ol style="list-style-type: none"> <li>1) The ICT infrastructure must be upgraded to enable scanning of all results forms and making them available online.</li> <li>2) The Commission will have to change the operational procedure at polling station and tallying centre to accommodate the scanning of Results Forms.</li> </ol>	<ol style="list-style-type: none"> <li>1) Parliament to allocate funding for additional budget to acquire an EDMS and additional ICT infrastructure.</li> <li>2) It is important to clarify that the results transmitted electronically from polling stations are provisional results and not final.</li> </ol>
<p><b>[Section 17]</b> Section 44(4) provides that the Commission shall, in an open and transparent manner –</p> <p><i>(a) procure and <b>put in place the</b> technology necessary for the conduct of a general election at least eight months before such elections; and</i></p>	<p>The Public Procurement and Assets Disposal Act 2015 governs all procurement in the public sector. The new does not make reference to the procurement law.</p>	<ol style="list-style-type: none"> <li>1) Given that the law became operational on 4<sup>th</sup> October 2016, it means that the Commission has only 64 days to procure the new systems.</li> <li>2) The timelines set out under the new law are inconsistent with those set out in</li> </ol>	<ol style="list-style-type: none"> <li>1) Amend the new law to be in sync with the procurement law.</li> </ol>

SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016	SITUATION	IMPLICATIONS	RECOMMENDATIONS
<i>(b) test, verify and deploy such technology at least sixty days before a general election.</i>		PPAD Act of 2015.	
<b>[Section 17]</b> Section 44(6) provides that notwithstanding the provisions of section 109(3) and (4), the Commission shall prepare and submit to Parliament, the regulations required made under subsection (4) within a period of thirty days from the date of commencement of this section.	The Commission does not have comprehensive regulations on the use of ICT in elections. This is a fairly technical areas that requires adequate professional input.	The time allocated may not be adequate to provide quality input to the Regulations including consultation with stakeholders.	<ol style="list-style-type: none"> <li>1) The law should be amended to allow a longer timeframe.</li> <li>2) Parliament to allocate additional budget to cater for this activity.</li> </ol>

After listening and engaging with the IEBC Secretariat, the Committee was convinced that most of the issues raised by the Commission were valid. It was resolved and agreed that the IEBC will go and fine-tune the presentation and their recommendations, and submit their report to the Committee for the Committee to move the House to act on the recommendations.

The Committee adopted the Report as follows;

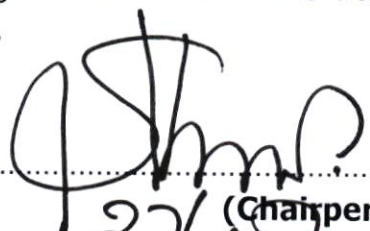
Hon.Bitok Kirwa proposed adoption of the report and seconded by Hon.Priscillah Nyokabi, M.P.

**MIN No.JLA/2016:-**

**ADJOURNMENT**

There being no other business to transact, the sitting adjourned at thirty minutes past one o'clock.

Signed.....



(Chairperson)

Date.....

27/10/2016






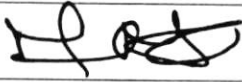
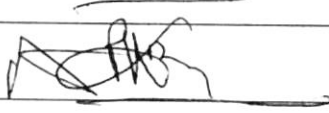

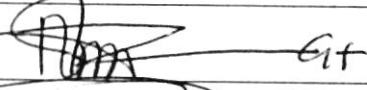




**KENYA NATIONAL ASSEMBLY**  
**ELEVENTH PARLIAMENT**


**DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS**

**MEMBERS' ATTENDANCE**

\*\*\*\*\*  
Date: 18<sup>th</sup> October 2016 (10:00 AM)  
Venue: COMMITTEE ROOM 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS  
Agenda: 1. MEETING WITH I.E.B.C. SECRETARIAT  
2. PREPARATION FOR APPROVAL HEARING OF DEPUTY CHIEF JUSTICE NOMINEE

	<b>NAMES</b>	<b>SIGNATURE</b>
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Bitok Kirwa	
8.	Hon. Charles Gimose	
9.	Hon. Christine Ombaka (Dr.)	
10.	Hon. David Ochieng'	
11.	Hon. Fatuma Ibrahim	
12.	Hon. Florence Kajuju	
13.	Hon. Irungu Kang'ata	
14.	Hon. Johanna Ngeno	
15.	Hon. John M. Waiganjo	

16.	Hon. John Njoroge	
17.	Hon. John Olago Aluoch	
18.	Hon. Kamoti W. Mwamkale	
19.	Hon. Mohamed Abdi Haji	
20.	Hon. Moses Cheboi	
21.	Hon. Njoroge Baiya	
22.	Hon. Paul K. Bii	
23.	Hon. Peter Kaluma	
24.	Hon. Robert Mutemi (Bishop)	
25.	Hon. Sammy Koech	
26.	Hon. T.J. Kajwang	
27.	Hon. Waihenya Ndirangu	
28.	Hon. William Cheptumo	

  
**A. M. Wasike**

**For: The Clerk of the National Assembly**

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



**BRIEFING TO THE JUSTICE AND LEGAL AFFAIRS COMMITTEE  
(JLAC) OF THE NATIONAL ASSEMBLY BY THE INDEPENDENT  
ELECTORAL AND BOUNDARIES COMMISSION**

*Implications of the Election Laws Amendment Act 2016 and  
Preparations for the 2017 General Elections*

**18<sup>th</sup> October, 2016**

## INTRODUCTION

The Commission wishes to thank the Justice and Legal Affairs Committee (JLAC) for according it an opportunity to address some salient issues concerning the preparations for the next General Election that is just about 10 months away.

The National Assembly recently passed the Elections Laws (Amendment) Act 2016 together the Elections Offences Act 2016 both of which came into force on 4<sup>th</sup> October 2016. This followed negotiations spearheaded by the Joint Parliamentary Select Committee on IEBC. The IEBC welcomes these changes given that they were largely negotiated and agreed upon across the political divide.

However, the Commission wishes to point out some areas for this Committee's consideration given their implications on election operations. In this presentation we seek to address you on the following areas: audit of the register of voters; inspection, verification and certification of the register of voters; the role of ICT in electoral processes; capping of the number of voters per polling stations; party primaries and nominations; and the budgetary implications of the new law.

More specific details and recommendations can be found under **Annex 3**.

## IMPLICATIONS OF THE NEW LAW

### Audit of the Register of Voters

1. The new law mandates the Commission to engage the services of a reputable professional firm to carry out an audit of the Register of Voters. The purpose of undertaking the audit is to verify the accuracy of the Register; make recommendations for enhancing the accuracy of the Register; and updating the Register. **Table 1** provides the roadmap towards the audit and projected timelines.



Table 1: Lead Timelines

	# of Days	Approx. Start Date	Approx. End date
a) Procure services of reputable audit firm	30	4-Oct-16	3-Nov-16
b) Audit firm carries out the audit of the register	30	4-Nov-16	4-Dec-16
c) Submission of audit report to Parliament	14	4-Dec-16	18-Dec-16
d) Implementation of audit recommendations	30	4-Dec-16	3-Jan-17

2. The Commission proceeded to advertise Expression of Interest inviting competent firms to bid on 10<sup>th</sup> October, 2016. The opening of the Expression of Interest was carried out on 17<sup>th</sup> October, 2016. The Commission has commenced the evaluation of the Expression of Interest submissions and is due to submit the request for proposals to the shortlisted firms. Based on the procurement timelines below the firm will come on board on 28<sup>th</sup> November, 2016 way beyond the statutory deadline set by the new law.

Table 2: Procurement Timelines as per the Public Procurement and Assets Disposal Act 2015

	# of Days	Start Date	End Date
EOI Advert	7	10/10/2016	10/17/2016
Opening	1	10/18/2016	10/18/2016
Shortlisting	3	10/19/2016	10/22/2016
Invitation and submission on RFP	14	10/22/2016	11/5/2016
Evaluation	7	11/6/2016	11/13/2016
Award/Contract	14	11/14/2016	11/28/2016
<b>Total</b>	<b>46</b>		

3. As mentioned earlier, the Commission has had to suspend the earlier planned inspection of the register of voters until the audit is completed. In the meantime, the Commission will commence the preparations for the second phase of mass voter registration campaign.

## Inspection, Verification and Certification of the Register

4. The new law now requires verification of voters using biometric data for a period of 30 days at least 90 days before the election. Which means that the Register must be opened 120 days before the election. Upon completion of verification, the Commission is required to gazette the final register and publish it online after incorporating the amendments arising from voter verification.
5. Based on the 90 days cut-off date, **Table 2** below shows the critical timelines that will constitute the preparation of the Register of Voters. The first thing one notices is that the Register of Voters must be opened to the public between **10th April 2017** and **10th May, 2017** in accordance with the timelines set out in law. Indicatively, all registration must close by **23rd February 2017** counting backwards from **10th April 2017**. Unlike the earlier proposals in the Elections Laws (Amendment) Bill of 2015, the current law gives the Commission a huge latitude on time.

Table 3: Indicative Voter Registration Timelines

Activity	# of days	Approx. Start Date	Approx. End date
(a) Conduct Phase II of MVR including Diaspora (30 for national + 15 Diaspora)	45	09-Jan-2017	23-Feb-2017
(b) Prepare provisional register by uploading data, matching, de-duplication and printing	45	24-Feb-2017	10-Apr-2017
<b>(c) Open the Provisional Register for verification using biometric voter data (120 days before the GE and close 90 days before GE)</b>	<b>30</b>	<b>10-Apr-2017</b>	<b>10-May-2017</b>
(d) Amend the Provisional Register	30	10-May-2017	09-Jun-2017
(e) Certification and publication of final Register	7	10-Jun-2017	17-Jun-2017

6. Unlike before, verification must now happen at all the polling stations. In 2013, verification was conducted in 24,000 registration centres

over a period of 14 days. With the new law, the Commission is required to cap polling stations at 500 voters. The Commission estimates that 57,000 polling stations will have to be created. Verification will have to take place in each of the 57,000 polling stations. This is more than 100% increase in terms of points of verification and 100% increase in terms of time required.

7. The new law currently requires the Commission to avail electronic devices at all polling stations for purposes of biometric data verification. It is obvious, therefore, that a new operational design and additional resources will be required to cater for increased centres of verification and the methodology of verification.

### **Capping of Number of Voters per Polling Station**

8. The Commission is required to cap the number of voters per polling station at 500 voters. With the current register standing at 15.87 million voters, the Commission projects that the number of polling stations required is 44,000. If we extrapolate the number of registered voters to 22 million, the Commission will have to create over 57,000 polling stations.
9. There are areas where available infrastructure will not allow the creation of additional polling stations. This will be a challenge for the Commission. For that reason, the Commission recommends that the law be amended to give the Commission discretion to determine such other number to cater for emerging situation.

### **Candidate Selection and Nomination**

10. The new law is now explicit on the role of the Commission when it comes to party primaries. It states that a political party may request the Commission conduct its party primaries. And if such request is made, the Commission is obligated to comply.

11. Further, under the new law, both party primaries and the nomination of candidates by the Commission to end on the same date. Political parties are obligated to deliver to the Commission the membership lists of its candidates at least 90 days preceding the election. This means that by **10th May 2017**, political parties should have submitted the list of candidates participating in their primaries.

Table 4: Nomination Timelines

Activity	# of Days	Approx. Start Date	Approx. End Date
(a) Membership list submitted to the Commission			10-May-17
(b) Names of candidates for party primaries submitted to the Commission at least 21 days before nomination day.	>21		19-May-17
(c) Commission to Gazette Candidates and date for party primaries	7	19-May-17	26-May-17
(d) Parties conduct party primaries 60 days before the Election.	>14	26-May-17	<b>9-June-17</b>
(e) Publish names of independent candidates 14 days before Nomination Day.	1	26-May-17	27-May-17
(f) <b>Submission of candidates to IEBC (Nomination Day) closes at least 60 days before GE.</b>	<b>1</b>	<b>9-Jun-17</b>	<b>9-Jun-17</b>
(g) Campaigns after nominations	60	10-Jun-17	08-Aug-17
(h) Party Lists submitted by parties	45	25-Jun-17	08-Aug-17

12. As a result of timelines provided for in the new law, the process of resolving disputes arising from both party primaries and nomination is not factored.
13. Since the sequencing of the processes highlight potential overlaps, it is important for political parties to be encouraged to start their processes much earlier than set out in law. In addition, the Commission will have to expand the timelines in a way that meets the legal requirements but at the same time allow for sufficient time for free and fair nomination process. For instance, the Commission may require political parties to carry out party primaries 90 days before the

elections which will allow the Commission and parties 30 days to address any concerns before the nomination deadline set but law.

14. It is also clear that the new omits the requirement for political parties to finance party primaries in the event that they request the Commission to conduct the primaries. It is important that Parliament provides clarity on funding of party primaries.
15. Further, the requirement to gazette party primary candidates will entails costs that have not been budgeted for in the current financial year. The Commission must therefore factor this into the new law.

### **ICT in the Electoral Process**

16. The use of technology in elections continues to receive high significance in Kenya. The Commission had always planned to acquire the technology in good time, stress-test, and also offer adequate training to officials using the technology before deployment. The Commission is still fully committed to deliver the technology in good time before the elections.
17. *Integrated System:* The new law brings on board changes which impact on the manner in which the technology used in elections should be acquired and deployed. This will entail integrating the Biometric Voter Registration (BVR), Electronic Voter Identification Devices (EVID) and Results Transmission System (RTS). The Commission has just completed preparing the draft specifications for the new technology in readiness for procurement.
18. *Procurement and Implementation of Technology:* The new law requires that procurement of the technology must be done in an open and transparent manner. It then goes further to state that such technology must be procured at least **8 months** before the election. In this regard, the Commission is expected to develop specifications, advertise, evaluate, award and receive the equipment by **8th**

December, 2016. Annex 1 shows the options on key timelines towards procuring the integrated electoral system.

19. Clearly, the timelines provided for in the new law are at variance with the Public Procurement and Assets Disposals Act 2015 (PPAD). When crafting the new law, Parliament did not take into consideration the timelines required to procure ICTs in an open and transparent process as set out in the PPAD Act 2015. Section 5 of the PPAD Act is also very clear that whenever there is any inconsistency between any other law and the PPAD Act on matters of procurement, then the PPAD Act prevails.
20. Parliament is invited to look at the two laws and take necessary steps to address the gaps. However, the Commission will operate on the assumption that the Public Procurement and Asset Disposal Act is a superior piece of legislation in matters relating to procurement and hence supersedes the Elections Laws Amendment Act where the timelines clash in the two processes.
21. The Commission is required to establish a technical committee whose mandate is to oversee the adoption of technology in the electoral process and to implement the use of such technology. Accordingly, the Commission proposed to have the Committee composed of the ICT Committee of the Commission and representatives of the following institutions: *Political Parties Liaison Committee (PPLC), the National Treasury, Ministry of ICT, Communications Authority of Kenya (CAK), the Registrar of Political Parties (RPP), the Commission on Administrative Justice (CAJ), Kenya Private Sector Alliance (KEPSA), the Institute of Education in Democracy (IED), Ushahidi, the Telecommunications Service Providers and Information Systems, Audit and Control Association (ISACA).*
22. The terms of reference for the Committee have been developed and the first meeting is expected to be held on 26<sup>th</sup> October 2016.

23. In addition, the Commission is expected to develop and submit to parliament regulations on the use of ICT in elections within 30 days of the law coming into effect. The Commission intends to submit the envisaged regulations by **2<sup>nd</sup> Nov. 2016**. While the Commission is making effort to develop the draft regulations, the timelines given are too strict to the extent that we may not do justice to the process. We recommend that these timelines be reviewed to at least 60 days.

## **BUDGET IMPLICATIONS**

24. The Commission has recalculated the 2016/17 and 2017/18 financial year budget based on the changes to the election laws. **Annex II** shows the summary budgetary requirements.
25. While the Commission planned with 44,000 polling stations, the capping of 500 voters per polling station has the effect of increasing the number of polling stations to 57,331.<sup>1</sup> This is a 30% increase in the number of polling stations. The total additional budgetary requirement is projected to be **Kshs. 10,767 M**. The significant cost include the following:

**a. Voter Register Inspection - Kshs 3,142 M:**

- i. Voter register verification - Kshs 3,112 M - The amendment envisages biometric voter register verification at the polling stations. This implies that the voter identification device will be used at polling stations rather than at the registration centres. This will have direct implication on staff costs, transport, storage and security of the devices.
- ii. Voter Register Audit- Ksh 30 M.

**b. General Election KShs. 7,058 M**

- i. Electoral technology Kshs. 3,534 M

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<sup>1</sup> The assumption is that the Commission will register 22 million additional voters.

- Additional devices and integrated technology KShs.2,800 M
  - Telecommunication network KShs. 300 M
  - Online Election results publication Kshs. 200 M
  - Other related costs KShs. 234 M
- ii. General election materials Kshs 643 M include both strategic and non-strategic materials.
  - iii. Transportation costs Ksh 545 M
  - iv. Wages for polling officials Ksh 1,397 M
  - v. Training costs Kshs 517 M
  - vi. Meals and allowances Kshs 419 M

**c. Legal and compliance costs Ksh 296 M**

- i. Includes two additional Gazette Notices envisaged for party primaries of Ksh 62 M
- ii. Publication of party list cost - Ksh 76 M
- iii. Other gazette notices- Ksh 78 M

**PENDING REFORMS UNDER THE ELECTIONS LAWS AMENDMENT BILL, 2015**

26. While the new law adopts a substantial portion of the law reform agenda encapsulated in the Elections Laws (Amendment) Bill, 2015, (Chepkonga Bill), there are other important proposals that remain pending. These include:

- Educational qualifications for Members of Parliament and the County Assemblies;
- Timelines for dispute resolution processes arising from party primaries and nomination processes;
- Timelines for reckoning of occurrence of a vacancy in Parliament;
- Timelines for submission of party constitutions and nomination



- rules and procedure for amendments;
- Procedure for processing party lists elections and determination of who can be in a party list;
- Timelines for resignation of public officers in the case of by-elections;
- Adjustments to the referendum process;
- Timelines for the coming into effect of the electoral code of conduct; and
- Provisions relating to boundaries delimitation in the IEBC Act;

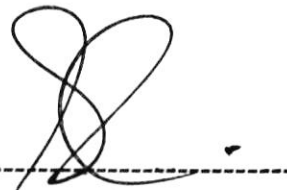
27. Parliament is therefore called upon to proceed with processing the above amendments as part of the continuous law reform agenda.

### **CONCLUSION AND WAY FORWARD**

28. The following recommendations should be taken on board to ensure smooth implementation of the new law:-
- a. THAT the Commission proceeds with preparations for the 2017 General Election considering that there is very limited time left.
  - b. THAT the Commission continues with the procurement of the audit firm to audit the register of voters bearing in mind the requirement of the PPAD Act 2015.
  - c. THAT JLAC takes up the issue with respect to the clash between the electoral amendment law and procurement law.
  - d. THAT the Commission should plan well for the next mass voter registration to bring on board all eligible Kenyans to register as voters.
  - e. THAT the Commission reviews the timelines with respect to the nomination of candidates including using its own discretion to expand the timeframe where the law allows.

- f. THAT JLAC revisits the capping of polling stations at 500 voters so that the Commission is allowed discretion to set an alternative number in particular stations in the event that obtaining circumstances makes it impossible to operationalize the 500 limit.
- g. THAT the Commission proceeds to set up the Technical Committee as proposed Membership to the Technical Committee with a recommendation that the PPLC be represented by two members;
- h. THAT the Commission proceeds to advertise for the procurement of the integrated electronic electoral system in a transparent manner and to ensure that new system is available within reasonable time in readiness for the elections.
- i. THAT in procuring the electoral technology, the Commission should explore the fast-track option noting that the statutory deadline of 8<sup>th</sup> December 2016 poses procurement challenges.
- j. THAT Parliament should provide adequate resources to the Commission to cater for cost for implementing the new law.
- k. THAT Parliament will process the Election Laws Amendment Act no 3 of 2015 to take care of the issues which may not have been provided for by the new law.
- l. THAT Parliament considers specific recommendations on the new law as proposed in Annex 3.

Ezra Chiloba  
Commission Secretary/CEO



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Annex 1 Procurement Timelines Options for KIEMS Subject to PPAD Act 2015

PROCUREMENT OF Kenya Integrated Elections Management System (KIEMS)

OPTION 1: Open Tender - Maximum Days (IDEAL)					
No	Step Description	Projected # of Days	Projected Start Date	Projected End Date	Assumptions/Conditions
1	Final specifications endorsed and requisition approved	14	Monday, October 17, 2016	Monday, October 31, 2016	Technical Committee to endorse ToRs
2	Advertisement, Submission of Bid and Opening	21	Tuesday, November 01, 2016	Tuesday, November 22, 2016	No extension request
3	Evaluation of Tenders	30	Wednesday, November 23, 2016	Friday, December 23, 2016	Includes due diligence mission
4	Preparation of the Professional Opinion	7	Saturday, December 24, 2016	Saturday, December 31, 2016	There might be need for clarification between CEO, HOP, EC
5	Award of Tender/Notification of Award/Signing Contract	14	Sunday, January 01, 2017	Sunday, January 15, 2017	Promptly prepared after acceptance of EC recommendations
6	Manufacturing and delivery of KIEMS	60	Monday, January 16, 2017	Friday, March 17, 2017	Items are not off-the-shelf
OPTION 2: Open Tender - Fast-Track					
No	Step Description	Projected # of Days	Projected Start Date	Projected End Date	Assumptions/Conditions
1	Final specifications endorsed and requisition approved	7	Monday, October 17, 2016	Monday, October 24, 2016	Technical Committee to endorse ToRs
2	Advertisement, Submission of Bid and Opening	21	Tuesday, October 25, 2016	Tuesday, November 15, 2016	No extension request
3	Evaluation of Tenders	21	Wednesday, November 16, 2016	Wednesday, December 07, 2016	Includes due diligence mission
4	Preparation of the Professional Opinion	4	Thursday, December 08, 2016	Monday, December 12, 2016	There might be need for clarification between CEO, HOP, EC
5	Award of Tender/Notification of Award/Signing Contract	14	Tuesday, December 13, 2016	Tuesday, December 27, 2016	Promptly prepared after acceptance of EC recommendations
6	Manufacturing and delivery of KIEMS	45	Wednesday, December 28, 2016	Saturday, February 11, 2017	Vendor has capacity to deliver on strict timelines
OPTION 3: Direct Procurement					
No	Step Description	Projected # of Days	Projected Start Date	Projected End Date	Assumptions/Conditions
1	Final specifications endorsed and approval of requisition	7	Monday, October 17, 2016	Monday, October 24, 2016	
2	Identify supplier	4	Friday, October 28, 2016	Tuesday, November 01, 2016	There is a supplier who is known
3	Submission of Bid	7	Wednesday, November 02, 2016	Wednesday, November 09, 2016	
4	Evaluation of Bid/Negotiation	3	Thursday, November 10, 2016	Sunday, November 13, 2016	
5	Signing Contract	2	Monday, November 14, 2016	Wednesday, November 16, 2016	
6	Manufacturing and delivery of KIEMS	21	Thursday, November 17, 2016	Thursday, December 08, 2016	Company has almost off-the-shelf items (More days will be required)

Annex 2: Budgetary Project on 57,000 Polling Stations

Activities	2016 /17			2017/18			TOTAL
	Approved Budget	New Budget	Increase	MTEF Budget	New Budget	Increase	Overall Increase
Voter Registration	3,256,584,601	3,256,584,601	-	85,000,000	85,000,000	-	-
Voter Register Inspection	1,208,230,676	4,620,088,476	<del>3,411,857,800</del>	-	-	-	3,411,857,800
2017 General Elections Operations	9,062,698,738	14,072,737,936	5,010,039,198	13,778,649,638	15,827,200,195	2,048,550,557	7,058,589,755
Cost of Compliance and Litigations	308,607,220	605,513,300	296,906,080	1,248,229,720	1,248,229,720	0	296,906,080
<b>2017 Election Budget</b>	<b>13,836,121,235</b>	<b>22,554,924,313</b>	<b>8,718,803,078</b>	<b>15,111,879,358</b>	<b>17,160,429,915</b>	<b>2,048,550,557</b>	<b>10,767,353,635</b>
Administrative /Operation Expenses	4,729,678,765	4,729,678,765	-	4,809,120,642	4,809,120,642	-	-
<b>Total Recurrent Budget</b>	<b>18,565,800,000</b>	<b>27,284,603,078</b>	<b>8,718,803,078</b>	<b>19,921,000,000</b>	<b>21,969,550,557</b>	<b>2,048,550,557</b>	<b>10,767,353,635</b>
<b>Total Development Budget</b>	<b>765,000,000</b>	<b>765,000,000</b>	<b>-</b>	<b>834,000,000</b>	<b>834,000,000</b>	<b>-</b>	<b>-</b>
<b>Total Commission Budget</b>	<b>19,330,800,000</b>	<b>28,049,603,078</b>	<b>8,718,803,078</b>	<b>20,755,000,000</b>	<b>22,803,550,557</b>	<b>2,048,550,557</b>	<b>10,767,353,635</b>

### Annex 3: Recommendations on the Election Laws (Amendment) Act, 2016

SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016	SITUATION	IMPLICATIONS	RECOMMENDATIONS
<p><b>[Section 2]</b> Section 2(e) inserts the following new definitions–</p> <p>“<i>biometric</i>” means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures; and</p> <p>“<i>integrated electronic electoral system</i>” refers to a system that includes <b>biometric voter registration, biometric voter identification and electronic result transmission system.</b></p>	<ol style="list-style-type: none"> <li>1) The current registration system does not capture all the biometric data as envisaged in the new current law. The current BVR system captures only facial and fingerprints.</li> <li>2) The Commission deployed stand-alone systems in 2013 General Election.</li> </ol>	<ol style="list-style-type: none"> <li>1) The Commission has to assess and redefine specifications for the integrated system which may mean additional budgetary allocation owing to the complex nature of “integration.”</li> <li>2) This will also impact on the electoral timelines in terms of acquisition.</li> </ol>	<p>Parliament to allocate additional funding to facilitate integration of the system.</p>
<p><b>[Section 5]</b> Section 6A (1) states that the Commission shall, not later than ninety days before the date of a general election, <b>open the Register of Voters for verification of biometric data</b> by members of the public at their respective polling stations for a period of thirty days.</p>	<p>The verification or inspection of the voter register has previously been undertaken manually or by SMS/web portal at registration centres.</p>	<ol style="list-style-type: none"> <li>1) The Commission must acquire technology to allow for biometric verification of voters at the polling station for over a period of 30 days.</li> <li>2) The deployment of the technology means additional workforce and attendant logistical requirements.</li> </ol>	<ol style="list-style-type: none"> <li>1) The law should also allow for verification through other means other than using biometric data – SMS or web portal.</li> <li>2) Parliament to allocate additional resource to cater for increased operational costs for verification.</li> </ol>
<p><b>[Section 6]</b> The new Section 8A (3) states that for purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of:</p> <p>(a) verifying the accuracy of the Register;</p> <p>(b) recommending mechanisms of enhancing the accuracy of the Register; and</p>	<p>Audit of the register of voters is a new requirement in the country’s electoral process.</p>	<ol style="list-style-type: none"> <li>1) The new section impacts on elections operation timelines.</li> <li>2) There are overlaps between the timelines for engaging the audit firm and the procurement law.</li> <li>3) The activity was not budgeted for in the current work plan.</li> <li>4) The parameters for measuring accuracy of the Register of Voters are not defined.</li> </ol>	<ol style="list-style-type: none"> <li>1) Parliament should allocate additional funding to finance the audit and implementation of the recommendations.</li> <li>2) Parliament to consider amending the law to address the conflict between the procurement law and the new section.</li> <li>3) Regulations to be developed to guide the process of future</li> </ol>

SECTION OF THE ELECTIONS LAWS (AMENDMENT) ACT 2016 (c) updating the register.	SITUATION	IMPLICATIONS	RECOMMENDATIONS
<p>[Section 8] The new Section 13(1) states that a political party shall nominate its candidates for an election under this Act at least sixty days before a general election in accordance with its constitution and nomination rules.</p> <p><b>Read together with:</b></p> <p>The new Section 2 (c) which defines “nomination day” to mean the day gazetted, at least sixty days before an election, by the Commission as the day for the nomination of candidates for that election.</p>	<p>1) Previously party primaries would end 45 days before the election. The Commission had power to fix the date for nomination.</p> <p>2) Section 74 of the Elections Act gives the Commission 7 days to resolve dispute arising from party nominations.</p>	<p>1) There is potential for conflict between the timelines for nomination of candidates by parties (party primaries) and the registration of candidates for election by the Commission.</p> <p>2) By tabulating the timelines leading to nominations, there is almost no time to handle disputes arising from both party primaries and Commission nomination.</p>	<p>Revisit the timelines under the Elections Laws (Amendment) Bill No. 3 of 2015.</p>
<p>[Section 10] The new Section 31 (2) states that the Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.</p>	<p>The Commission has not been conducting party primaries.</p>	<p>1) Political parties are given the discretion to ask the Commission to conduct party primaries.</p> <p>2) If the Commission accedes to party requests, then the question of financing must be addressed.</p> <p>3) In addition, the Commission has no discretion to reject such requests.</p> <p>4) Lack of clarity between party membership list submitted to RPP and that submitted to the Commission.</p>	<p>1) The Commission should be allowed to develop guidelines for party primaries which may include conditions to be met by parties before the Commission may accede to their request.</p> <p>2) Address the issue of “who funds” party primaries.</p>
<p>[Section 10] Section 31 (2C) states that the Commission shall publish, in the Gazette the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party</p>	<p>Cost of gazetteement of persons contesting in Party Primaries was not factored in the current budget.</p>	<p>Gazetteement of party primary candidates for all political parties requires adequate preparations and resource allocation. At the moment, the Commission can only estimate cost based on the number of political parties.</p>	<p>Parliament to consider additional funding for purposes of gazetteement of candidates for party primaries.</p>